

Australian Standard™

**Subcontract conditions**



**S t a n d a r d s** Australia

This Australian Standard was prepared by Committee OB/3, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 17 August 1993 and published on 27 September 1993

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The following interests are represented on Committee OB/3:

Australian Chamber of Commerce and Industry  
Australian Electrical and Electronic Manufacturers Association  
Australian Institute of Project Management  
Australian Institute of Purchasing and Supply Management  
Australian Institute of Quantity Surveyors  
Australian Mining Industry Council  
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# Australian Standard™

## Subcontract conditions

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## PREFACE

This Standard was prepared by the Standards Australia Committee on General Conditions of Contract to supersede AS 2545—1987, *Subcontract conditions* to provide a set of compatible subcontract conditions involving site work on projects where AS 2124—1992, *General conditions of contract*, is in use as the head contract between Perle and the Principal.

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*This Standard incorporates Amendment No. 1 (October 2000). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure, or part thereof affected.*

This edition of the Standard has been revised to be compatible with AS 2124—1992, AS 2125—1992 and AS 2127—1992, and is therefore recommended for use in conjunction with them. As far as possible, Clause numbers in this Standard are parallel with the corresponding provisions in AS 2124.

A form of formal instrument of agreement, and general conditions of tendering and form of tender are also included as an annexure at the end of AS 2545. Attention is drawn to the desirability for the parties to this contract to execute the formal instrument of agreement at the earliest opportunity, immediately after the necessary documents to form part of the subcontract are prepared. (See Clause 6.2 in this Standard in relation to the procedure for execution of the formal instrument of agreement.)

To be compatible with AS 2124—1992, this document mirrors it, on a clause by clause basis, unless the subject matter makes it inappropriate to do so. However, the difference between this edition of AS 2545 and the 1987 edition, is, with a number of appropriate exceptions, the same as the difference between AS 2124—1986 and AS 2124—1992. The latter differences are summarized in Doc 2124N Notes on Changes in the General Conditions of Contract, 4th edition (AS 2124—1992), as compared with the 3rd edition (AS 2124—1986).

Attention is invited to the provisions of Clause 49 in which the details of services and facilities to be provided are to be agreed between the parties, and indicated in the Annexure.

**WARNING:**

**Users of this Australian Standard are warned that Clause 17 (damage to persons and property) does not limit the liability of parties for special, indirect or consequential losses.**

**This unlimited liability overrides any limitations or exclusions permitted under Insurance Clauses 18 (Insurance of the Works) and 19 (Public Liability Insurance).**

**Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.**

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**Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.**

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## STANDARDS AUSTRALIA

**Australian Standard**  
**Subcontract conditions**

NOTE: Clauses prefixed by an asterisk can be omitted without making consequential amendments.

**1 CONSTRUCTION OF SUBCONTRACT**

The law governing the Subcontract, its interpretation, any agreement to arbitrate and the conduct of any arbitration or litigation is the law of the State or Territory stated in the Annexure.

Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency at the place stated in the Annexure.

Communications between Perle and the Subcontractor shall be in the English language.

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Measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the National Measurement Act 1960 as amended from time to time.

Where provisions in the Subcontract Conditions are expressed to be alternatives and the Subcontract fails to state which alternative applies, the first alternative shall apply.

If any part of this Subcontract is void or unenforceable or would be so unless severed, then the rest of the document will continue to have the full force and effect.

Words denoting one gender include every gender.

**2 INTERPRETATION**

In the Subcontract, except where the context otherwise requires—

'Bill of Quantities' means a document named therein as a Bill of Quantities issued to tenderers by or on behalf of Perle, stating estimated quantities of work to be carried out;

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'Constructional Plant' means appliances and things used in the execution of the work under the Subcontract but not forming part of the Works;

'Date of Acceptance of Tender' means the date which appears on the notice in writing of acceptance of the tender;

'Date for Substantial Completion' means—

- (a) where the Annexure provides a date for Substantial Completion, the date;
- (b) where the Annexure provides a period of time for Substantial Completion, the last day of the period,

but if any extension of time for Substantial Completion is granted by Perle or allowed in any arbitration or litigation, it means the date resulting therefrom;

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'Date of Substantial Completion' means—

- (a) the date certified by Perle in a Certificate of Substantial Completion issued pursuant to Clause 42.5, to be the date upon which Substantial Completion was reached; or

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(b) where another date is determined in any arbitration or litigation as the date upon which Substantial Completion was reached, that other date;

‘day’ means calendar day;

‘Drawings’ means the drawings referred to in the Subcontract and any modification of such drawings notified to the Subcontractor by Perle and includes such other drawings as may from time to time be supplied to the Subcontractor by Perle, or the use of which has been permitted by Perle, for the purposes of the Subcontract;

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‘GST’ has the same meaning as I the GST Act and includes and replacement or similar tax;

‘GST Act’ means A New Tax System (Goods and Services Tax) Act 1999 (Cth);

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‘Main Contract’ means the agreement between the Principal and Perle;

**Deleted:** ‘Main Contractor’

‘Main Contract Works’ means the whole of the work to be executed under the Main Contract;

**Deleted:** ‘Main Contractor’ means the Main Contractor stated in the Annexure;¶  
‘Main Contractor’s Representative’ means the person stated in the Annexure as the Main Contractor’s Representative or other person from time to time appointed in writing by the Main Contractor to be the Main Contractor’s Representative for the purposes of the Subcontract, and notified as such in writing to the Subcontractor by the Main Contractor;¶

‘month’ means calendar month;

‘person’ includes a firm or body corporate or unincorporate or an individual;

‘Priced Bill of Quantities’ means the Bill of Quantities priced and lodged by the Subcontractor with Perle and corrected where necessary from time to time under Clause 4.3;

‘Principal’ means the Principal stated in the Annexure;

‘Project’ means the whole of the Head Contract Works under the Head Contract between Perle and the Principal;

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‘provisional sum’ includes monetary sum, contingency sum and prime cost item;

‘Schedule of Rates’ means any schedule included in the Subcontract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, provisional sums, other sums, quantities and prices;

‘secondary subcontract’ means a subcontract between the Subcontractor and a secondary subcontractor;

‘secondary subcontractor’ means a subcontractor to the Subcontractor;

‘Separable Portion’ means a portion of the work under the Subcontract described in the Subcontract as a Separable Portion or which Perle has determined pursuant to Clause 35.4 shall be a Separable Portion;

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‘Services’ includes, electrical, mechanical, hydraulic, data, telephonic conduit piping or wiring or other related elements of the installation at these parts of the Site or the Works;

‘Site’ means the lands and other places to be made available and any other lands and places made available to the Subcontractor by Perle for the purpose of the Subcontract;

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‘Specification’ means the specification referred to in the Subcontract and any modification of such specification thereafter directed or the use of which has been permitted by Perle pursuant to powers contained in the Subcontract;

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‘Subcontract’ means the agreement between Perle and the Subcontractor;

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‘Subcontractor’ means the person bound to execute the work under the Subcontract;

‘Subcontractor Agreement’ means the Formal Instrument of Agreement entered into between Perle and the Subcontractor including the further conditions therein setout.

‘Subcontract Sum’ means—



- (a) where Perle accepted a lump sum, the lump sum;
- (b) where Perle accepted rates, the sum ascertained by calculating the products of the rates and the corresponding quantities in the Bill of Quantities or Schedule of Rates;
- (c) where Perle accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),

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including provisional sums but excluding any additions or deductions which may be required to be made under the Subcontract;

‘Substantial Completion’ is that stage in the execution of the work under the Subcontract when—

- (a) the Works are complete except for minor omissions and minor defects—
  - (i) which do not prevent the Works from being reasonably capable of being used for their intended purpose; and
  - (ii) which Perle determines that the Subcontractor has reasonable grounds for not promptly rectifying; and
  - (iii) rectification of which will not prejudice the convenient use of the Works; and
- (b) those tests which are required by the Subcontract to be carried out and passed before the Works reach Substantial Completion have been carried out and passed; and
- (c) documents and other information required under the Subcontract which, in the opinion of Perle, are essential for the use, operation and maintenance of the Works have been supplied;

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‘Superintendent’ means the person stated in the Annexure as the Superintendent or other person from time to time appointed in writing by the Principal to be the Superintendent and notified as such in writing to the Subcontractor by Perle and, so far as concerns the functions exercisable by a Superintendent’s Representative, includes a Superintendent’s Representative;

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‘Temporary Works’ means works used in the execution of the work under the Subcontract but not forming part of the Works;

‘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;

‘Works’ means the whole of the work to be executed in accordance with the Subcontract, including variations provided for by the Subcontract, which by the Subcontract is to be handed over to Perle;

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NOTE: In addition to these definitions, some terms, specific to a clause, are defined in that clause. Refer to the Index.

The clause headings and sub-clause headings in the Subcontract Conditions shall not form part of the Subcontract Conditions and shall not be used in the interpretation of the Subcontract.

Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.

Words importing a gender include every gender.

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### 3 NATURE OF SUBCONTRACT

#### 3.1 Performance and Payment

The Subcontractor shall execute and complete the work under the Subcontract.

Perle shall pay the Subcontractor—

- (a) for work for which Perle accepted a lump sum, the lump sum;
- (b) for work for which Perle accepted rates, the sum ascertained by multiplying the measured quantity of each section or item of work actually carried out under the Subcontract by the rate accepted by Perle for the section or item,

adjusted by any additions or deductions made pursuant to the Subcontract.

The Subcontractor acknowledges that the Subcontractor's lump sum or rate includes all costs associated with the payment to the Subcontractor's employees of all award related allowances and any other Site allowances which may become payable during the course of the Project.

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#### 3.2 Quantities

Quantities in a Bill of Quantities or Schedule of Rates are estimated quantities only.

A direction shall not be required to be given by Perle by reason of the actual quantity of an item required to perform the Subcontract being greater or less than the quantity shown in the Bill of Quantities or Schedule of Rates.

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#### 3.3 Adjustment for Actual Quantities—Schedule of Rates

Where otherwise than by reason of a direction of Perle to vary the work under the Subcontract, the actual quantity of an item required to perform the Subcontract is greater or less than the quantity shown in the Schedule of Rates—

- (a) where Perle accepted a lump sum for the item, the difference shall be valued under Clause 40.5 as if it were varied work directed by Perle as a variation;
- (b) where Perle accepted a rate for the item, the rate shall apply to greater or lesser quantities provided that where limits of accuracy are stated in the Annexure the rate shall apply to the greater or lesser quantities within the limits and quantities outside the limits shall be valued under Clause 40.5 as if they were varied work directed Perle as a variation.

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If a Schedule of Rates omits an item which should have been included, the item shall be valued under Clause 40.5 as if it were extra work directed by Perle as a variation.

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### 4 BILL OF QUANTITIES

#### 4.1 Purpose of the Bill of Quantities

*Alternative 1*

A Bill of Quantities forms part of the Subcontract only to the extent provided in the Subcontract.

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A Bill of Quantities shall not form part of the Subcontract.¶  
*Alternative 3*¶  
A Bill of Quantities forms part of the Specification.

#### 4.2 Pricing and Lodgment

Where there is a Bill of Quantities—

- (a) all items included in the Bill of Quantities shall be priced and extended by the Subcontractor and the prices as extended shall, on addition, equal the sum accepted by Perle for the execution of the whole of the work to which the Bill of Quantities relates;
- (b) the Subcontractor shall lodge the Bill of Quantities so priced and extended with Perle before the expiration of the time for lodgment stated in the Annexure or such further time as may be directed by Perle from time to time;
- (c) notwithstanding any other provision of the Subcontract, the Subcontractor shall not be entitled to payment until the Subcontractor has lodged the Bill of Quantities, so priced and extended.

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### 4.3 Errors in Pricing

Any errors in extension or addition or both, or correction of incorrect or inconsistent rates or prices (including the insertion of rates or prices wrongly omitted and the deletion of rates or prices wrongly included) discovered by Perle or the Subcontractor in the Priced Bill of Quantities shall be notified to Perle in writing by the party making the discovery and corrected in a manner agreed between the Subcontractor and Perle or, in the event of failure to agree, as determined by Perle so that the total of all items in the Priced Bill of Quantities continues to equal the sum accepted by Perle for the execution of the whole of the work to which the Bill of Quantities relates.

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### 4.4 Errors in Bills of Quantities

If the Priced Bill of Quantities is in error in that it—

- (a) contains an incorrect quantity in relation to any item included therein; or
- (b) contains an item which should not have been included therein; or
- (c) omits an item which should have been included therein;

then —

- (i) in a case of Clause 4.4(a) where the item is deficient in quantity or in the case of Clause 4.4(c)—upon application in writing to Perle by the Subcontractor; and
- (ii) in a case of Clause 4.4(a) where the item is excessive in quantity or in the case of Clause 4.4(b)—upon notification in writing to the Subcontractor by Perle.

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the lump sum accepted by Perle for the execution of the whole of the work to which the Bill of Quantities relates shall except when the value of the error is less than \$400, be adjusted by such amount as is required to correct the error, determined in the manner provided by Clause 40.5 for the valuation of variations as if the correction were a variation under Clause 40.

The Bill of Quantities shall be deemed to be in error as aforesaid to the extent that the items and quantities included in it differ from those required for the execution of the Works in accordance with the drawings and specification referred to in the Subcontract, measured in accordance with the method of measurement evidenced by the Subcontract.

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## **5 SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS**

### **5.1 Purpose**

Security, retention moneys and performance undertakings are for the purpose of ensuring the due and proper performance of the Subcontract.

### **5.2 Provision of Security**

If it is provided in the Annexure that a party shall provide security then the party shall provide security in the amount stated in the Annexure and in accordance with this Clause.

If at anytime Perle considers that the security provided by the Subcontractor is insufficient to secure the performance of the Subcontractor's obligations under this Subcontract, Perle may request the Subcontractor provide additional security for an amount and in a form approved by Perle, acting reasonably.

### **5.3 Form of Security**

The security shall be in the form of cash, bonds or inscribed stock issued by the Australian Government or the Government of a State or Territory of Australia, interest bearing deposit in a trading bank carrying on business in Australia, an approved unconditional undertaking given by an approved financial institution or insurance company, or other form approved by the party having the benefit of the security.

The party having the benefit of the security shall have a discretion to approve or disapprove of the form of an unconditional undertaking and the financial institution or insurance company giving it or other form of security offered. The form of unconditional undertaking attached to these Subcontract Conditions is approved.

If the security is not transferable by delivery it shall be accompanied by an executed transfer or such other documentation as is necessary to effect a transfer of the security. The costs (including all stamp duty or other taxes) of and incidental to the transfer and retransfer shall be borne by the party providing the security.

### **5.4 Time for Lodgment of Security**

Security shall be lodged within 28 days of the Date of Acceptance of Tender.

### **5.5 Recourse to Retention Moneys and Conversion of Security**

A party may have recourse to retention moneys and/or cash security and/or may convert into money security that does not consist of money where—

- (a) the party has become entitled to exercise a right under the Subcontract in respect of the retention moneys and/or security; and
- (b) the party has given the other party notice in writing for the period stated in the Annexure, or if no period is stated, five days, of the party's intention to have recourse to the retention moneys and/or cash security and/or to convert the security; and
- (c) the period stated in the Annexure or if no period is stated, five days has or have elapsed since the notice was given.

### **5.6 Substitution of Security for Retention Moneys**

The Subcontractor shall be at liberty at any time to provide in lieu of retention moneys, security in any of the forms permitted by Clause 5.3. To the extent that such security is

provided, Perle shall not deduct retention moneys and shall forthwith release retention moneys.

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### \* 5.7 Reduction of Security and Retention Moneys

Upon issue of the Certificate of Substantial Completion, Perle's entitlement to security and retention moneys shall be reduced to the percentage thereof stated in the Annexure or, if no percentage is stated, to 50 percent thereof.

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Subject to the first paragraph of Clause 5.7, if in the opinion of Perle it is reasonable to further reduce Perle's entitlement to security and retention moneys, that entitlement shall be reduced to the amount which Perle determines to be reasonable.

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Perle shall, within 14 days of Perle making such a determination, release security and retention moneys in excess of the entitlement.

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### 5.8 Release of Security

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If the Subcontractor has provided additional security pursuant to Clause 42.4, Perle shall release that additional security within 21 days of incorporation into the Works of the unfixed plant or materials in respect of which the additional security was furnished.

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If Perle has provided security, then when the Subcontractor has been paid all moneys finally due to the Subcontractor under the Subcontract or a Separable Portion, the Subcontractor shall release the security lodged by Perle in respect of the Subcontract or the Separable Portion, as the case may be.

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If the Subcontractor has provided security, then Perle shall release it when required by Clause 42.8.

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### 5.9 Interest on Security and Retention Moneys

#### Alternative 2

A party holding retention moneys or cash security shall own any interest earned on the retention moneys or security. Except where retention moneys or cash security are held by a government department or agency or a municipal, public or statutory authority, retention moneys or cash security shall be held in trust by the party holding them for the other party until Perle or the Subcontractor is entitled to receive them.

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A party holding retention moneys and/or cash security shall forthwith deposit the money in an interest bearing account in a bank. That party shall nominate the bank and the type of account. The account shall be in the joint names of the Main Contractor and the Subcontractor and shall be one from which moneys can only be drawn with the signatures of two persons, one appointed by each of the Main Contractor and the Subcontractor. The moneys shall be held until the Main Contractor or the Subcontractor is entitled to receive them.¶

Interest earned on security lodged by the Subcontractor and on retention moneys belongs to the Subcontractor. Interest earned on security lodged by the Main Contractor belongs to the Main Contractor.¶

Upon the Main Contractor or the Subcontractor becoming entitled to receive any moneys, including interest in the account, the other party shall forthwith have that party's appointee sign all documentation necessary to withdraw the moneys and shall give the signed documentation to the other party.¶

### 5.10 Deed of Guarantee, Undertaking and Substitution

Where—

- (a) a party is a corporation that is related to or is a subsidiary of another corporation as defined in the Corporations Act 2001 as amended from time to time; and
- (b) Perle has included in the Subcontract tender documents a form of Deed of Guarantee, Undertaking and Substitution;

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that party shall, if requested by the other party in writing within 7 days after the Date of Acceptance of Tender lodge with the other party, within 14 days after that request having been made, a Deed of Guarantee, Undertaking and Substitution in the form included in such tender documents duly executed by the first party and that other corporation for the performance of the obligations and the discharge of the liabilities of the first party under the Subcontract.

For the purpose of Clause 5.10, the terms ‘corporation’ and ‘subsidiary’ have the meanings defined in the Corporations Act 2001.

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## 6 EVIDENCE OF SUBCONTRACT

### 6.1 Subcontract in Absence of Formal Instrument of Agreement

Unless a Formal Instrument of Agreement is executed by the parties, the agreement in writing between the parties for the execution of the work under the Subcontract, including documents or parts of documents to which reference may properly be made to ascertain the rights and obligations of the parties, shall evidence the Subcontract.

### 6.2 Formal Instrument of Agreement

If the conditions of tender require a Formal Instrument of Agreement, Perle shall prepare in duplicate a Formal Instrument of Agreement and shall, within 28 days after the Date of Acceptance of Tender, forward it to the Subcontractor with a request that it be executed.

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Within 14 days after being requested in writing by Perle so to do, the Subcontractor shall execute both copies of the Formal Instrument of Agreement in the manner directed in writing by Perle and return them to Perle.

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Within 14 days after receipt from the Subcontractor of the two copies of the Formal Instrument of Agreement duly executed by the Subcontractor, Perle shall execute both copies, have them stamped (unless they are exempt from duty) and forward one copy to the Subcontractor.

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Perle may extend the periods under Clause 6.2 by notice in writing to the parties.

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Perle shall bear the cost of any stamp duty payable on the Subcontract.

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## 7 SERVICE OF NOTICES

A notice shall be deemed to have been received when:

(a) if hand delivery, on delivery;

(b) if posted, 3 days after the date of posting by pre-paid registered post;

(c) if sent by facsimile, when the sender's facsimile machine generates a confirmation of delivery report for successful transmission of all pages.

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**Deleted:** it is received by the person to whom it is addressed or is delivered to the address of that person stated in the Subcontract or last communicated in writing by that person to the person giving the notice, whichever is the earlier.

Perle and the Subcontractor shall each notify the others of a change of address.

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Without limiting the generality of ‘notice’, it includes a document.

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## 8 SUBCONTRACT DOCUMENTS

### 8.1 Discrepancies

The several documents forming the Subcontract are to be taken as mutually explanatory of one another. If either party discovers an ambiguity or discrepancy in any document prepared for the purpose of executing the work under the Subcontract, that party shall notify Perle in writing of the ambiguity or discrepancy. In the event of an ambiguity or discrepancy being discovered and brought to the attention of Perle or discovered by Perle, Perle shall direct the Subcontractor as to the interpretation to be followed by the Subcontractor in carrying out the work. Any consequent increase in the cost shall be deemed to have anticipated at the time of tendering.

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## 8.2 Dimensions

Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall take priority over scaled dimensions.

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## 8.3 Supply of Documents by Main Contractor

Perle shall supply to the Subcontractor the number of copies stated in the Annexure, or if no number is stated then 3 copies of the Drawings, Specification, Bill of Quantities (if any) and other documents required by the Subcontract to be supplied to the Subcontractor by Perle.

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Documents supplied to the Subcontractor by Perle shall remain the property of Perle and shall be returned by the Subcontractor to Perle on demand in writing. The documents shall not, without the prior written approval of Perle, be used, copied or reproduced for any purpose other than the execution of the work under the Subcontract.

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## 8.4 Supply of Documents by Subcontractor

If the Subcontract requires the Subcontractor to supply documents, the Subcontractor shall supply the number of copies stated in the Annexure, or if no number is stated then 5 copies.

If the Subcontractor submits documents to Perle, then—

(a) Perle shall not be bound to check the documents for errors, omissions or compliance with the requirements of the Subcontract;

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(b) notwithstanding the provisions of Clause 23, Perle's approval shall not relieve the Subcontractor from responsibility for the Subcontractor's errors or omissions or compliance with the requirements of the Subcontract;

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(c) if the Subcontract provides that the Subcontractor must obtain Perle's direction whether documents are suitable or are not suitable then within the time stated in the Annexure (or if no time is stated then within 28 days) after receipt of the documents, Perle shall notify the Subcontractor that the documents are suitable or are not suitable;

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(d) if Perle notifies the Subcontractor that the documents are not suitable, Perle shall give reasons why the documents are not suitable, and the Subcontractor shall submit new or amended documents for Perle's direction under this Clause;

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(e) Perle shall not reject documents which are in accordance with the requirements of the Subcontract.

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Copies of documents supplied by the Subcontractor shall be the property of Perle but shall not be used or copied otherwise than for the use, maintenance or alteration of the Works or the Main Contract Works by Perle, the Principal, the Superintendent and their identified consultants.

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## 8.5 Availability of Documents

Whilst work under the Subcontract is being performed, one complete set of Drawings, Specification and other written information supplied by Perle, and the Subcontractor shall be kept by the Subcontractor at the Site or other location approved in writing by Perle and shall be available at all times for reference by Perle and any persons nominated in writing by either of them.

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During the manufacture or assembly of any significant part of the work under the Subcontract away from the part of the Site where the Works are to be constructed, a set of the drawings and written information relevant to that part of the work shall be kept by the Subcontractor at the place of manufacture or assembly and shall be available for reference by Perle and any person nominated in writing by them.

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### 8.6 Confidential Information

Drawings, specifications and other information, samples, models, patterns and the like, supplied by either the Subcontractor or Perle and marked or otherwise identified as confidential shall be regarded as confidential, and shall not be disclosed to a third party other than the Principal, the Superintendent and their identified consultants for the purpose of the execution, use, maintenance or alteration of the Main Contract Works except with the prior agreement of the other party to the Subcontract.

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If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else other than the Principal, the Superintendent and their identified consultants any confidential matter even after the issue of the Final Certificate pursuant to Clause 42.8 or the earlier termination of the Subcontract.

### \* 8.7 Media Releases

The Subcontractor shall not issue any information, publication, document or article for publication concerning the project in any media without prior approval of Perle, which approval shall not be unreasonably withheld. The Subcontractor shall refer to Perle any enquiries concerning the project from any media.

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## 9 ASSIGNMENT AND SECONDARY SUBCONTRACTING

### 9.1 Not used

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### 9.2 Secondary Subcontracting

The Subcontractor shall not without the written approval of Perle, which approval shall not be unreasonably withheld, subcontract or allow a secondary subcontractor to assign or subcontract work described in the Annexure.

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With a request for approval the Subcontractor shall provide to Perle particulars in writing of the work to be subcontracted and the name and the address of the proposed secondary subcontractor.

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The Subcontractor shall provide to Perle other information which Perle reasonably requests, including the proposed secondary subcontract documents without prices.

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Within 28 days after a request by the Subcontractor for approval to subcontract work, Perle shall advise the Subcontractor of approval or the reasons why approval is not given.

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Approval may be conditional upon the secondary subcontract including—

- (a) provision that the secondary subcontractor shall not assign or subcontract without the consent in writing of the Subcontractor;
- (b) provisions which may be reasonably necessary to enable the Subcontractor to fulfil the Subcontractor's obligations to Perle.

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### 9.3 Subcontractor's Responsibility

Approval to subcontract shall not relieve the Subcontractor from any liability or obligation under the Subcontract.

### 9.4 Proportionate liability

- (a) To the extent permitted by law, the operation of Part 4 of the Civil Liability Act 2002\* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Subcontract, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.
- (b) Without limiting paragraph (a), the rights, obligations and liabilities of Perle and the Subcontractor in respect of proportionate liability as are specified in this Subcontract and not otherwise, whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.
- (c) The Subcontractor must:
- (i) In each secondary subcontract into which it enters for the carrying out of the Subcontractor's activities, include provisions that, to the extent permitted by law, effectively exclude the operations of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all rights, obligations or liabilities under each secondary subcontract whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.
- (ii) Require and ensure that each secondary subcontractor includes in any further contract that it enters into with others for the carrying out of the Subcontractor's activities, provisions that, to the extent permitted by law, each such further subcontract will include provisions that effectively exclude the operation of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all rights, obligations or liabilities under such further subcontract, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

**Deleted:** Except where the Subcontract otherwise provides, the Subcontractor shall be liable to the Main Contractor 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.

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## 10 SELECTED AND NOMINATED SECONDARY SUBCONTRACTORS

### 10.1 Definitions

If the Subcontract provides that certain work or the supply of certain items shall be subcontracted to a Selected or Nominated Secondary Subcontractor, the work or the supply of the items is 'Selected Secondary Subcontract Work' or 'Nominated Secondary Subcontract Work' as the case may be, and:

'Selected Secondary Subcontractor' means a secondary subcontractor identified in the Subcontractor's tender from a list of secondary subcontractors provided by Perle, in the tender documents for Selected Secondary Subcontract Work. The list may include one or more secondary subcontractors.

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'Nominated Secondary Subcontractor' means—

- (a) a secondary subcontractor to whom the Subcontractor is directed by Perle to subcontract Nominated Secondary Subcontract Work; or
- (b) a secondary subcontractor named in the Subcontract with whom Perle has entered into a prior contract for the Nominated Secondary Subcontract Work, which prior contract

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requires the secondary subcontractor to assign the prior contract to the Subcontractor and a copy of which prior contract is included in the tender documents; or

- (c) a secondary subcontractor named in the Subcontract with whom Perle has entered into a prior contract for the Nominated Secondary Subcontract Work, which requires the secondary subcontractor to enter into deed of novation with the Subcontractor for the Nominated Secondary Subcontract Work and a copy of which deed of novation is included in the tender documents.

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'Nominated Secondary Subcontract Work' shall relate only to work or the supply of items for which a Provisional Sum has been included in the Subcontract.

## 10.2 Selected Secondary Subcontract

If the Subcontract includes Selected Secondary Subcontract Work the Subcontractor shall subcontract the Selected Secondary Subcontract Work to a Selected Secondary Subcontractor.

If the tender documents specify the terms and conditions upon which the secondary subcontract is to be entered into, the secondary subcontract shall include those terms and conditions.

## 10.3 Nominated Secondary Subcontract

If the Subcontract includes Nominated Secondary Subcontract Work, at such time as is necessary to avoid delay to the Subcontractor, Perle shall direct the Subcontractor to subcontract the Nominated Secondary Subcontract Work to a Nominated Secondary Subcontractor.

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If the Subcontract provides that Perle may assign to the Subcontractor the benefit of a prior contract made between Perle and a Nominated Secondary Subcontractor, the Subcontractor shall, when directed by Perle, accept the assignment of that prior contract.

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If the Subcontract provides that Perle may novate to the Subcontractor a prior contract made between Perle and a Nominated Secondary Subcontractor in respect of Nominated Secondary Subcontract Work, the Subcontractor shall when directed by Perle, execute a deed of novation of that prior contract in the form included in the tender documents and unless the Subcontract otherwise provides, the Subcontractor shall give Perle credit for payments made by Perle to the Nominated Secondary Subcontractor in respect of the Nominated Secondary Subcontract Work.

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The Subcontractor shall ensure that the provisions of the secondary subcontract are severally set out in the secondary subcontract documents, so that the secondary subcontract is fully expressed and complete in itself and includes provisions—

- (a) that in respect of the Nominated Secondary Subcontract Work, the Nominated Secondary Subcontractor will undertake towards the Subcontractor obligations and liabilities which will enable the Subcontractor to discharge the Subcontractor's obligations and liabilities to Perle under the terms of the Subcontract;
- (b) that the Nominated Secondary Subcontractor will indemnify the Subcontractor against loss resulting from any failure by the Nominated Secondary Subcontractor to perform such obligations or fulfil such liabilities;
- (c) that the Nominated Secondary Subcontractor will indemnify the Subcontractor against loss resulting from any negligence by the Nominated Secondary Subcontractor and the Nominated Secondary Subcontractor's servants and agents and against any misuse by them of any Constructional Plant or Temporary Works provided by the Subcontractor for the purposes of the secondary subcontract;

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- (d) that the Nominated Secondary Subcontractor will lodge security in a form provided by Clause 5.3 and that security and retention moneys shall be calculated on the same scale and on the same basis respectively as apply in the Subcontract;
- (e) equivalent to those in Clause 44.

The Subcontractor shall not be obliged to enter into a secondary subcontract with a Nominated Secondary Subcontractor against whom the Subcontractor raises reasonable objection.

If the Subcontractor declines to enter into a secondary subcontract with the Nominated Secondary Subcontractor on the ground that the Nominated Secondary Subcontractor refuses to enter into a secondary subcontract containing provisions in paragraphs (a) to (e) of Clause 10.3, Perle shall nominate another Nominated Secondary Subcontractor or direct the Subcontractor to enter into a secondary subcontract with the Nominated Secondary Subcontractor on such other terms as Perle specifies. In the latter event—

- (i) the Subcontractor shall not be bound to discharge obligations and liabilities under the Subcontract to the extent that the secondary subcontract terms so specified by Perle are inconsistent with the discharge; and
- (ii) if the Subcontractor suffers loss arising out of the refusal of the Nominated Secondary Subcontractor to accept such provisions Perle shall pay to the Subcontractor the amount of loss which the Subcontractor could not reasonably avoid.

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#### 10.4 Provisions applying generally to Selected and Nominated Secondary Subcontract Work

If the Subcontractor is required by Clause 10 to enter a secondary subcontract, or to accept an assignment or to execute a deed of novation, the Subcontractor shall proceed promptly to do so and shall notify Perle in writing as soon as the secondary subcontract, assignment or novation has been effected.

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With the consent of the Subcontractor, Perle may direct the Subcontractor to perform Selected or Nominated Secondary Subcontract Work.

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Notwithstanding Clause 16.2 if the Subcontractor is to be responsible to Perle for the design or suitability of Selected or Nominated Secondary Subcontract Work, as distinct from the quality or workmanship, the responsibility shall be expressly stated in the Subcontract and the Subcontractor's liability for the design or suitability of the Selected or Nominated Secondary Subcontract Work shall only be that which is expressly stated in the Subcontract.

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Except as herein contained, and subject to any reasonable objection made by the Subcontractor pursuant to this Clause—

- (i) Perle shall have no liability to a Selected or Nominated Secondary Subcontractor arising from the secondary subcontract between the Subcontractor and Selected or Nominated Secondary Subcontractor; and
- (ii) Perle shall not be liable to the Subcontractor for any act, default or omission or breach of contract by a Selected or Nominated Secondary Subcontractor, arising from the secondary subcontract between the Subcontractor and Selected or Nominated Secondary Subcontractor.

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### 10.5 Direct Payment of Nominated Secondary Subcontractor

In respect of Nominated Secondary Subcontract Work performed by a Nominated Secondary Subcontractor, Perle shall make payment directly to the Nominated Secondary Subcontractor. Except where the Subcontractor has accepted an assignment of the benefit of a prior contract made between Perle and a Nominated Secondary Subcontractor—

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- (a) such payment shall be made on behalf of the Subcontractor; and
- (b) if the Subcontractor reasonably requests Perle in writing not to make a payment to the Nominated Secondary Subcontractor, Perle shall withhold payment but under no circumstances, including bankruptcy or winding up of the Subcontractor, shall payment be made to the Subcontractor.

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Perle as stakeholder shall hold retention moneys and security provided by a Nominated Secondary Subcontractor and shall disburse or apply the retention moneys or security as jointly requested by the Subcontractor and the Nominated Secondary Subcontractor or in accordance with the decision of an arbitrator or Court.

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### 10.6 Termination of Nominated Secondary Subcontract

The Subcontractor shall not unreasonably terminate a secondary subcontract for Nominated Secondary Subcontract Work and as early as possible the Subcontractor shall notify Perle of the Subcontractor's intention to terminate and the reasons. If a Nominated Secondary Subcontractor repudiates or abandons the secondary subcontract or it is terminated, the Subcontractor shall forthwith notify Perle in writing and Perle shall proceed under Clause 10.3 to nominate a Nominated Secondary Subcontractor to complete the secondary subcontract work and Clause 11(b) shall apply.

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## 11 PROVISIONAL SUMS

A provisional sum included in the Subcontract shall not itself be payable by Perle but where at the direction of Perle the work or item to which the provisional sum relates is performed or supplied by—

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- (a) the Subcontractor, the work or item shall be valued under Clause 40.5;
- (b) a secondary subcontractor to the Subcontractor Perle shall pay the Subcontractor the amount payable by the Subcontractor to the secondary subcontractor for the work or item, disregarding any damages payable by the Subcontractor to the secondary subcontractor or vice versa, plus the amount or percentage thereon for profit and attendance stated in the Annexure or, where not so stated, as stated elsewhere in the Subcontract; and
- (c) a Nominated Secondary Subcontractor pursuant to a prior contract made between Perle and a Nominated Secondary Subcontractor, the benefit of which has been assigned to the Subcontractor, Perle shall pay the Subcontractor the amount stated in the Annexure or the percentage for profit and attendance stated in the Annexure of the amount payable by Perle to the Nominated Secondary Subcontractor for the work or item or, where no amount or percentage is stated, as stated elsewhere in the Subcontract, disregarding any damages payable by Perle to the Nominated Secondary Subcontractor or vice versa.

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The amount payable to a secondary subcontractor for materials or goods is to be taken to be the nett cost to the Subcontractor (disregarding any deduction of cash discount for prompt payment).

## 12 LATENT CONDITIONS

### 12.1 Definition

Latent Conditions are—

- (a) physical conditions on the Site or its surroundings, including the nature, design, location and type of Services, artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by the Subcontractor at the time of the Subcontractor's tender if the Subcontractor had—
- (i) examined all information made available in writing by Perle ~~to the~~ Subcontractor for the purpose of tendering; and
  - (ii) examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
  - (iii) inspected the Site and its surroundings; and
- (b) any other conditions which the Subcontract specifies to be Latent Conditions.

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### 12.2 Notification

If during the execution of the work under the Subcontract, the Subcontractor becomes aware of a Latent Condition, the Subcontractor shall forthwith and where possible before the Latent Condition is disturbed, give written notice thereof to Perle.

If required by Perle, the Subcontractor shall provide to Perle a statement in writing specifying—

- (a) the Latent Condition encountered and in what respects it differs materially;
- (b) the additional work and additional resources which the Subcontractor estimates to be necessary to deal with the Latent Condition;
- (c) the time the Subcontractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Substantial Completion;
- (d) the Subcontractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
- (e) other details reasonably required by Perle.

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### 12.3 Extension of Time and Cost

Delay caused by a Latent Condition may justify an extension of time under Clause 35.5.

If a Latent Condition causes the Subcontractor to—

- (a) carry out additional work;
- (b) use additional Constructional Plant; or
- (c) incur extra cost (including but not limited to the cost of delay or disruption),

which the Subcontractor could not reasonably have anticipated at the time of tendering, a valuation shall be made under Clause 40.5.

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## 12.4 Time Bar

In making a valuation pursuant to Clause 12.3, regard shall not be had to the value of additional work carried out, additional Constructional Plant used or extra cost incurred more than 21 days before the date on which the Subcontractor gives the written notice required by the first paragraph of Clause 12.2.

## 13 PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

~~Perle~~ warrants that unless otherwise provided in the Subcontract—

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- (a) design;
- (b) materials;
- (c) documents; and
- (d) methods of working,

specified in the Subcontract or provided or directed by ~~Perle~~, will not infringe any patent, registered design, trademark or name, copyright or other protected right.

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The Subcontractor warrants that any other design, materials, documents and methods of working provided by the Subcontractor will not infringe any patent, registered design, trademark or name, copyright or other protected right.

## 14 STATUTORY REQUIREMENTS

### 14.1 Complying with Statutory Requirements

The Subcontractor shall comply with the requirements of—

- (a) Acts of the Commonwealth;
- (b) Acts and Ordinances of the State or Territory in which the work under the Subcontract or any part thereof is carried out;
- (c) Ordinances, regulations, by-laws, orders and proclamations under the Acts and Ordinances;
- (d) persons acting in the exercise of statutory powers enabling them to give directions affecting the work under the Subcontract.

If a requirement is at variance with a provision of the Subcontract, as soon as the Subcontractor discovers the variance the Subcontractor shall notify the Main Contractor's Representative in writing specifying the difference.

If a requirement necessitates a change to the Works or so much of the Temporary Works or method of working as may be specified in the Subcontract, the Main Contractor's Representative shall direct a variation under Clause 40.1.

Except to the extent that the Subcontract provides reimbursement in respect of a requirement referred to in Clause 14.1 the Subcontractor shall bear the cost of complying with the requirement, whether the requirement existed at the time of tendering or not.

### \* 14.2 Payment Where There is No Variation

If a requirement does not necessitate a variation under Clause 40 but is—

- (a) a change after the 28th day prior to the date of closing of tenders in a requirement referred to in Clause 14.1 (a), (b) or (c); or
- (b) a requirement referred to in Clause 14.1 (d),

which necessitates a change in the Temporary Works or the Subcontractor's method of working and thereby causes the Subcontractor to incur more or less cost than the Subcontractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5.

### 14.3 Notices and Fees

The Subcontractor shall give the notices necessary to comply with the requirements referred to in Clause 14.1.

The Subcontractor shall pay any fees or charges necessary to comply with the requirements referred to in Clause 14.1.

If a requirement necessitates the provision or expansion of services of a municipal, public or statutory authority in relation to the Works or the Temporary Works, the Subcontractor shall pay any fee or charge payable to the authority for the services and to the extent to which the services are not included in the work under the Subcontract, the fee or charge shall be reimbursed by the Main Contractor to the Subcontractor.

If after the 14th day prior to the date of closing of tenders there is required to be paid by the Subcontractor to a municipal, public or statutory authority in relation to the Works or the Temporary Works—

- (a) an increase or decrease in a fee or charge, the difference shall be valued under Clause 40.5; and
- (b) there is a new fee or charge, that fee or charge shall be reimbursed by the Main Contractor to the Subcontractor.

### 14.4 Documents Evidencing Approvals of Authorities

The Subcontractor shall give ~~Perle~~ copies of documents issued to the Subcontractor by municipal, public or other statutory authorities in respect of the work under the Subcontract and, in particular, any approvals of work.

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### 15 PROTECTION OF PEOPLE AND PROPERTY

Except to the extent that ~~Perle~~ is required by Clause 49 to provide things or take measures, in so far as compliance with the requirements of the Subcontract permits, the Subcontractor shall—

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- (a) provide all things and take all measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles;
- (c) prevent nuisance and unreasonable noise and disturbance.

Without limiting the generality of the Subcontractor's obligations, they include the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

If the Subcontractor or the employees or agents of the Subcontractor damage property, including but not limited to public utilities and services and property on or adjacent to the Site, the Subcontractor shall promptly make good the damage and pay any compensation which the law requires the Subcontractor to pay.

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If the Subcontractor fails to comply with an obligation under Clause 15 Perle may, in addition to any other remedy, perform the obligation on the Subcontractor's behalf and the cost incurred by Perle shall be a debt due from the Subcontractor to Perle.

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## 16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

### 16.1 Care of the Work Under the Subcontract

From and including the earlier of the date of commencement of work and the date on which the Subcontractor is given access to the Site to 4 p.m. on the Date of Substantial Completion of the Works, the Subcontractor shall be responsible for the care of the work under the Subcontract.

Without limiting the generality of the Subcontractor's obligations, the Subcontractor shall be responsible for the care of unfixed items the value of which has been included in a payment certificate under Clause 42.1, things entrusted to the Subcontractor by Perle for the purpose of carrying out the work under the Subcontract, things brought on to the Site by secondary subcontractors for that purpose, the Works, the Temporary Works and Constructional Plant and the Subcontractor shall provide the storage and protection necessary to preserve these items and things and the Works, the Temporary Works and Constructional Plant.

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After 4 p.m. on the Date of Substantial Completion the Subcontractor shall remain responsible for the care of outstanding work and items to be removed from the Site by the Subcontractor and shall be liable for damage occasioned by the Subcontractor in the course of completing outstanding work or complying with obligations under Clauses 30.6, 31.1 and 37.

### 16.2 Reinstatement

If loss or damage (except loss or damage which is the direct consequence, without fault or omission on the part of the Subcontractor, of an Excepted Risk defined in Clause 16.3) occurs to anything while the Subcontractor is responsible for its care, the Subcontractor shall at the Subcontractor's own cost promptly make good the loss or damage.

### 16.3 Excepted Risks

The Excepted Risks are—

- (a) any negligent act or omission of the Principal, the Superintendent, Perle or the employees, consultants or agents of Perle;
- (b) any risk specifically excepted in the Subcontract;
- (c) war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Subcontractor or the Subcontractor's employees or agents;
- (e) use or occupation by the Principal, Perle or the employees or agents of either of them or other contractors to the Principal or Perle (not being employed by the Subcontractor or a Nominated Subcontractor engaged by Perle pursuant to a prior contract the benefit of which has been assigned to the Subcontractor pursuant to the Subcontract) of any part of the Works or the Temporary Works;

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- (f) defects in the design of the work under the Subcontract other than a design provided by the Subcontractor.

## 17 DAMAGE TO PERSONS AND PROPERTY OTHER THAN THE WORKS

### 17.1 Indemnity by Subcontractor

The Subcontractor shall indemnify Perle against—

- (a) loss of or damage to property of Perle, including existing property in or upon which the work under the Subcontract is being carried out;
- (b) claims by any person against Perle in respect of personal injury or death or loss of or damage to any property,

arising out of or as a consequence of the carrying out by the Subcontractor of the work under the Subcontract, but the Subcontractor's liability to indemnify Perle shall be reduced proportionally to the extent that the act or omission of Perle or employees or agents of Perle may have contributed to the loss, damage, death or injury.

Clause 17.1 shall not apply to—

- (i) the extent that the liability of the Subcontractor is limited by another provision of the Subcontract;
- (ii) exclude any other right of Perle to be indemnified by the Subcontractor;
- (iii) things for the care of which the Subcontractor is responsible under Clause 16.1;
- (iv) damage which is the unavoidable result of the construction of the Works in accordance with the Subcontract; and
- (v) claims in respect of the right of Perle to construct the work under the Subcontract on the Site.

### 17.2 Indemnity by Perle

Perle shall indemnify the Subcontractor in respect of damage referred to in Clause 17.1(iv) and claims referred to in Clause 17.1(v).

## 18 INSURANCE OF THE WORKS

On or before the Date of Acceptance of Tender, Perle shall cause to have in force a policy of insurance in relation to the work under the Subcontract in the terms of the policy or proposed policy included in the documents on which the Subcontractor tendered or if not so included, a copy of which was provided to the Subcontractor following receipt by Perle of a written request by the Subcontractor for a copy of the policy. The policy or proposed policy shall include the name of the insurer. Perle shall maintain or cause to be maintained the policy while ever the Subcontractor has an interest therein and Perle shall pay or cause to be paid all premiums thereon.

## 19 PUBLIC LIABILITY INSURANCE

### Alternative 2

Before the Subcontractor commences work, the Subcontractor shall take out a Public Liability Policy of insurance in the joint names of the Principal, Perle and the Subcontractor which covers the Principal, the Superintendent, Perle and the Subcontractor and all

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On or before the Date of Acceptance of Tender, the Main Contractor shall cause to have in force in relation to the work under the Subcontract a policy of insurance in the terms of the policy or proposed policy included in the documents on which the Subcontractor tendered or if not so included, a copy of which was provided to the Subcontractor following receipt by the Main Contractor of a written request from the Subcontractor for a copy of the policy. The policy or proposed policy shall include the name of the insurer. The Main Contractor shall maintain or cause to be maintained the policy while ever the Subcontractor has an interest therein and the Main Contractor shall pay or cause to be paid all premiums thereon.

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secondary subcontractors employed from time to time 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 Perle and Main Contractor's liability to the Subcontractor for loss of or damage to property (other than property required to be insured by Clause 18) and the death of or injury to any person (other than liability which is required by law to be insured under a Workers Compensation Policy of insurance).

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The Public Liability Policy of insurance shall be for an amount in respect of any one occurrence not less than the sum stated in the Annexure.

Any insurance policy to be effected or maintained under the Subcontract must be in a form acceptable to Perle with an insurer authorised to carry on business under the Insurance Act 1973 (Cth).

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## 20 INSURANCE OF EMPLOYEES

Before commencing work the Subcontractor shall insure against liability for death of or injury to persons employed by the Subcontractor including liability by statute and at common law. The insurance cover shall be maintained until all work including remedial work is completed.

The insurance shall be extended to indemnify the Principal and Perle for their respective statutory liabilities to persons employed by the Subcontractor.

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The Subcontractor shall ensure that every secondary subcontractor to the Subcontractor is similarly insured.

## 21 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

### 21.1 Proof of Insurance

Before the Subcontractor commences work and whenever requested in writing by the other party, a party liable to effect or maintain insurance shall produce evidence to the satisfaction and approval of the other party of the insurance effected and maintained.

The effecting of insurance shall not limit the liabilities or obligations of a party under other provisions of the Subcontract.

### 21.2 Failure to Produce Proof of Insurance

If, after being requested in writing by the other party so to do, a party fails to produce evidence of compliance with insurance obligations under Clauses 18, 19 or 20 which is to the satisfaction and approval of the other party, the other party may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due from the party in default to the other party. Where the defaulting party is the Subcontractor, Perle may refuse payment until evidence of compliance with insurance obligations under Clauses 18, 19 and 20 is produced by the Subcontractor to the satisfaction and approval of Perle. The rights given by Clause 21.2 are in addition to any other right.

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### 21.3 Notices from or to the Insurer

The party effecting insurance under Clause 18 or 19 shall ensure that each policy of insurance contains provisions acceptable to the other party that will—

- (a) require the insurer, whenever the insurer gives the Principal, Perle or the Subcontractor, a notice of cancellation or other notice concerning the policy, at the same time, to inform the other party in writing that the notice has been given;

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- (b) provide that a notice of claim given to the insurer by the Principal, the Superintendent, Perle or the Subcontractor shall be accepted by the insurer as a notice of claim given by the Principal, the Superintendent, Perle and the Subcontractor; and
- (c) require the insurer, whenever the party fails to renew the policy or to pay a premium, to give notice in writing thereof forthwith to the Principal, Perle and the Subcontractor and prior to the insurer giving any notice of cancellation.

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#### 21.4 Notices of Potential Claims

The Subcontractor shall, as soon as practicable, inform Perle in writing of any occurrence that may give rise to a claim under a policy of insurance required by Clause 18 or 19 and shall keep Perle informed of subsequent developments concerning the claim. The Subcontractor shall ensure that secondary subcontractors in respect of their operations similarly inform Perle.

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Where a policy of insurance required by the Subcontract has been effected by Perle, Perle shall similarly inform the Subcontractor.

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#### 21.5 Settlement of Claims

Upon settlement of a claim under the insurance specified by Clause 18—

- (a) to the extent that the work under the Subcontract needing reinstatement has been the subject of a payment or allowance by Perle to the Subcontractor, if the Subcontractor has not completed reinstatement of that work, moneys received shall, if not paid into a joint account pursuant to the Main Contract, be paid into a trust account in the name of Perle at a bank agreed upon by the parties. As the Subcontractor proceeds to reinstate the loss or damage, Perle shall certify against the Subcontract trust account for the cost of reinstatement; and
- (b) to the extent that the work to be reinstated has not been the subject of a payment or allowance by Perle to the Subcontractor, the Subcontractor shall be entitled immediately to receive from moneys received, the amount of money so paid in relation to any loss suffered by the Subcontractor relating to that work under the Subcontract (including the supply of goods and materials on site whether or not incorporated in the Works).

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#### 21.6 Cross Liability

Any insurance required to be effected by the Subcontractor in joint names in accordance with the Subcontract other than the insurance referred to in Clause 20, shall 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 (subject always to the overall sum insured not being increased thereby).

#### 22 NOT USED

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24 **DIRECTIONS BY OTHERS**

Perle may from time to time appoint individuals to exercise any functions of Perle under the Subcontract but not more than one such individual shall be delegated the same function at the same time. The appointment of such an individual shall not prevent Perle from exercising any function.

Perle shall forthwith notify the Subcontractor in writing of—

- (a) the appointment and the name of each individual so appointed and the functions delegated to that individual;
- (b) the termination of the appointment of each individual.

If the Subcontractor makes a reasonable objection to the appointment of any such individual, Perle shall terminate the appointment.

No direction shall have any force or effect under the Subcontract unless given by Perle or an individual authorized to give that direction.

If anyone other than Perle or any individual so authorized by Perle purports to give the Subcontractor a direction, the Subcontractor shall forthwith notify Perle.

25 **NOT USED**

26 **NOT USED**

27 **SITE**

27.1 **Access to Site**

Perle shall on or before the expiration of the time stated in the Annexure give the Subcontractor access to the Site or sufficient of the Site to enable the Subcontractor to commence work. If Perle has not given the Subcontractor access to the whole Site, Perle shall from time to time give the Subcontractor access to such further parts of the Site as may be necessary to enable the Subcontractor to execute the work under the Subcontract in accordance with the requirements of the Subcontract. Perle shall advise the Subcontractor in writing of the date upon which access to the Site or any part thereof will be available.

Notwithstanding the provisions of Clause 27.1, if the Subcontractor is in breach of Clause 21.1 or clause 8 of the Subcontract Agreement, Perle may refuse to give the Subcontractor access to the Site or any part of the Site until the Subcontractor has complied with the requirements of Clause 21.1 and clause 8 of the Subcontract Agreement.

The Subcontractor is not entitled to sole possession of any part of the Site. The Subcontractor acknowledges that Perle and others will be carrying out work on the Site concurrently with the performance of the work under the Subcontract.

27.2 **Access for Perle and Others**

The Subcontractor shall allow to Perle, to the Principal, to the Superintendent, to other authorized consultants for the Main Contract Works and to their respective authorized representatives, to the Clerk of Works and inspectors under the Main Contract, to other subcontractors and to others engaged by Perle or the Principal, access at all reasonable times to the Works.

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**Deleted:** The Main Contractor shall ensure that at all times there is a Main Contractor's Representative and that in the exercise of the functions of the Main Contractor's Representative under the Subcontract, the Main Contractor's Representative—¶ <#>acts honestly and fairly;¶ <#>acts within the time prescribed under the Subcontract or where no time is prescri... [1]

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The Subcontractor shall also allow to Perle, the Principal, the Superintendent, to other authorized consultants for the Main Contract Works and to their respective authorized representatives, and to the Clerk of Works and inspectors access to all places where work under the Subcontract is being performed and shall provide all facilities for such access as may be reasonably necessary.

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If requested by the Subcontractor, Perle shall provide to the Subcontractor the names of the persons entitled to such access.

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Perle shall ensure that the Subcontractor is not impeded in the execution of the Subcontractor's work by any persons referred to in Clause 27.2, whilst exercising the right of access given by Clause 27.2.

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### 27.3 Delivery of Materials to and Work on Site Before Access

Until access to the Site or part of the Site is given to the Subcontractor under Clause 27.1, the Subcontractor shall not deliver materials to or perform work on the Site or part of the Site, as the case may be, unless approval is given in writing by Perle.

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### 27.4 Use of Site by Subcontractor

Unless the Subcontract otherwise provides or Perle gives prior written approval, the Subcontractor shall not use the Site or allow it to be used for—

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- (a) camping;
- (b) residential purposes; or
- (c) any purpose not connected with the work under the Subcontract.

### 27.5 Finding of Minerals, Fossils and Relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site shall, as between the parties, be and remain the property of Perle. Immediately upon the discovery of these things the Subcontractor shall take precautions to prevent their loss, removal or damage and shall notify Perle of the discovery.

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If compliance with obligations under Clause 27.5 causes the Subcontractor to incur more or less cost than the Subcontractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5.

## 28 SETTING OUT THE WORKS

### 28.1 Setting Out

Perle shall supply to the Subcontractor the information and survey marks necessary to enable the Subcontractor to set out the Works and the survey marks specified in the Subcontract. Upon receipt of any necessary information and survey marks, the Subcontractor shall set out the Works in accordance with the Subcontract and shall provide all instruments and things necessary for that purpose.

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### 28.2 Care of Survey Marks

The Subcontractor shall keep in their true positions all survey marks supplied by Perle.

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If a survey mark is disturbed or obliterated, the Subcontractor shall immediately notify Perle and, Perle otherwise directs, the Subcontractor shall reinstate the survey mark.

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If the disturbance or obliteration is caused by a person other than the Subcontractor, or a secondary subcontractor to the Subcontractor or the agents of either of them, the cost incurred by the Subcontractor in reinstating the survey mark shall be valued under Clause 40.5.

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### 28.3 Errors in Setting Out

If the Subcontractor discovers an error in the position, level, dimensions or alignment of any work under the Subcontract, the Subcontractor shall immediately notify Perle and, unless Perle otherwise directs, the Subcontractor shall rectify the error.

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If the error has been caused by incorrect information, survey marks or data supplied by Perle, the cost incurred by the Subcontractor in rectifying the error shall be valued under Clause 40.5.

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### 28.4 Survey Mark Defined

'Survey mark' in Clause 28 means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work under the Subcontract.

## 29 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

### 29.1 Provision of Materials, Labour and Constructional Plant

Except to the extent that the Subcontract otherwise provides, the Subcontractor shall supply everything necessary for the proper performance of the Subcontractor's obligations and discharge of the Subcontractor's liabilities under the Subcontract.

### 29.2 Removal of Materials and Constructional Plant

From time to time Perle may by written notice to the Subcontractor direct the Subcontractor not to remove from the Site Constructional Plant or materials. Thereafter, the Subcontractor shall not remove the materials or the Constructional Plant without the prior written approval of Perle, which approval shall not be unreasonably withheld.

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### 29.3 Manufacture and Supply of Materials

Perle may direct the Subcontractor to supply particulars of—

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- (a) the mode and place of manufacture;
- (b) the source of supply;
- (c) the performance capacities; and
- (d) other information,

in respect of any materials, machinery or equipment to be supplied by the Subcontractor under or used in connection with the Subcontract.

## 30 MATERIALS AND WORK

### 30.1 Quality of Materials and Work

The Subcontractor shall use the materials and standards of workmanship required by the Subcontract. In the absence of any requirement to the contrary, the Subcontractor shall use suitable new materials.

### \* 30.2 Quality Assurance

The Subcontractor shall, if requirements are so stated in the Subcontract—

- (a) plan, establish and maintain a quality system which conforms to those requirements;
- (b) provide Perle with access to the quality system of the Subcontractor and each of the secondary subcontractors to the Subcontractor to enable monitoring and quality auditing.

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Any such quality system shall be used only as an aid to achieving compliance with the Subcontract and to document such compliance. Such system shall not relieve the Subcontractor of the responsibility to comply with the Subcontract.

NOTE: The inclusion of Quality Assurance requirements in the Subcontract will require detailed clauses in the Specification or elsewhere in the Subcontract which have regard to the Quality Standard selected for the work.

### 30.3 Defective Materials or Work

If Perle discovers material or work provided by the Subcontractor which is not in accordance with the Subcontract, Perle Representative may direct the Subcontractor to—

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- (a) remove the material from the Site;
- (b) demolish the work;
- (c) reconstruct, replace or correct the material or work; or
- (d) not to deliver the material or work to the Site.

Perle may direct the times within which the Subcontractor must commence and complete the removal, demolition, replacement or correction.

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If the Subcontractor fails to comply with the direction issued by Perle pursuant to Clause 30.3 within the time specified by Perle in the direction and provided Perle has given the Subcontractor notice in writing that after the expiry of 5 days from the date on which the Subcontractor receives the notice Perle intends to have the work carried out by other persons, Perle may have the work of removal, demolition, replacement or correction carried out by other persons and the cost incurred by Perle in having the work so carried out shall be a debt due from the Subcontractor to Perle.

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### 30.4 Variations due to Defective Materials or Work

Instead of a direction under Clause 30.3, Perle may direct a variation pursuant to Clause 40. The variation shall be valued under Clause 40.5 and—

- (a) if the variation causes an increase or decrease in the value to Perle of the Works, regard shall also be had to the increase or decrease; and

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- (b) if the variation results in the Subcontractor incurring more or less cost than would reasonably have been incurred had the Subcontractor been given a direction under Clause 30.3, regard shall also be had to the difference.

### 30.5 Acceptance of Defective Materials or Work

Instead of a direction under Clause 30.3 or 30.4, Perle may notify the Subcontractor that Perle elects to accept the material or work notwithstanding that it is not in accordance with the Subcontract. In that event the resulting increase or decrease in the value to Perle of the Works and any other loss suffered by Perle shall be valued under Clause 40.5.

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### 30.6 Generally

Perle shall give either a direction under Clause 30.3 or 30.4 or a notice under Clause 30.5 as soon as practicable after Perle becomes aware that material or work is not in accordance with the Subcontract. Perle may give the direction or notice at any time before the issue of the Final Certificate under Clause 42.8.

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Except to the extent that to do so would be inconsistent with a direction under Clause 30.4 or a notice under Clause 30.5 and notwithstanding that Perle has not given a direction under Clause 30.3, the Subcontractor shall promptly remove, demolish, replace or correct material or work that is not in accordance with the Subcontract.

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A progress payment, or a test or a failure by Perle or anyone else to disapprove any material or work shall not prejudice the power of Perle to subsequently give a direction under Clause 30.3 or 30.4 or a notice under Clause 30.5.

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Nothing in Clause 30 shall prejudice any other right which Perle may have against the Subcontractor arising out of the failure of the Subcontractor to provide material or work in accordance with the Subcontract.

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Perle shall not be obliged to give a direction under Clause 30.4 or a notice under Clause 30.5 to assist the Subcontractor.

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## 31 EXAMINATION AND TESTING

### 31.1 Main Contractor's Representative May Order Tests

In Clause 31 'test' includes examine and measure.

At any time prior to the issue of the Final Certificate, Perle may direct that any material or work under the Subcontract be tested. The Subcontractor shall provide such assistance and samples and make accessible such parts of the work under the Subcontract as may be required by Perle. On completion of the tests, the Subcontractor shall make good the work under the Subcontract so that it fully complies with the Subcontract.

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### 31.2 Covering Up of Work

Perle's Representative may direct that any part of the work under the Subcontract shall not be covered up or made inaccessible without Perle's prior approval.

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### 31.3 Who Conducts Tests

Tests shall be conducted as provided in the Subcontract or by Perle or a person (which may include the Subcontractor) nominated by Perle.

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### 31.4 Notice of Tests

Before conducting a test under the Subcontract, the party conducting the test, being Perle or the Subcontractor, shall give reasonable notice in writing to the other of the time, date and place of the test. If the other does not then attend, the test may nevertheless proceed.

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### 31.5 Procedure if Tests Delayed

Without prejudice to any other right, if the Subcontractor or Perle delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

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### 31.6 Results of Tests

Results of tests shall be promptly made available by each party to the other and to Perle.

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### 31.7 Costs of Testing

Costs of and incidental to testing shall be valued under Clause 40.5 and shall be borne by Perle or paid by Perle to the Subcontractor unless—

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- (a) the Subcontract provides that the Subcontractor shall bear the costs or the test is one which the Subcontractor was required to conduct other than pursuant to a direction under Clause 31.1;
- (b) the test shows that the material or work is not in accordance with the Subcontract;
- (c) the test is in respect of work under the Subcontract covered up or made inaccessible without Perle's prior approval where such was required;
- (d) the test is consequent upon a failure of the Subcontractor to comply with a requirement of the Subcontract.

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Where such costs are not to be borne by Perle, they shall be borne by the Subcontractor or paid by the Subcontractor to Perle.

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### 31.8 Access for Testing

If during the Defects Liability Period—

- (a) Perle asserts that material or work is not in accordance with the Subcontract; and
- (b) the Subcontractor requests permission to test the material or work,

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Perle shall not unreasonably refuse the Subcontractor access to test the material or work.

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## 32 WORKING HOURS

The working hours and working days shall be as stated in the Subcontract and if not so stated as notified by Perle to the Subcontractor prior to commencement of work on Site and shall not be varied without the prior approval of Perle except when, in the interests of safety of the work under the Subcontract or to protect life or property the Subcontractor finds it necessary to carry out work outside the working hours or on other than the working days stated in the Subcontract. In such cases the Subcontractor shall notify Perle in writing of the circumstances as early as possible.

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All costs attributable to the contract administration by or on behalf of Perle of work during times approved pursuant to the last paragraph shall be borne by Perle.

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### 33 PROGRESS AND PROGRAMMING OF THE WORKS

#### 33.1 Rate of Progress

The Subcontractor shall proceed with the work under the Subcontract with due expedition and without delay.

The Subcontractor shall not suspend the progress of the whole or any part of the work under the Subcontract except where the suspension is under Clause 44.9 or is directed or approved by Perle under Clause 34.

The Subcontractor shall give Perle reasonable advance notice of when the Subcontractor requires any information, materials, documents or instructions from Perle, the Superintendent or the Principal.

Upon the request of Perle, the Subcontractor shall provide to Perle all information which may be reasonably required to enable the proper coordination of the Main Contract Works.

Upon the request of the Subcontractor, Perle shall provide to the Subcontractor all information which may be reasonably required to enable the proper coordination of the work under the Subcontract with the Main Contract Works.

Perle shall not be obliged to furnish any information, materials, documents or instructions earlier than Perle should reasonably have anticipated at the Date of Acceptance of Tender.

The Subcontractor shall permit the execution of work on the Site by persons engaged by Perle or the Principal and shall co-operate with Perle's other subcontractors and with others engaged by Perle or the Principal and subject to Perle being responsible for the overall coordination of the work under the Subcontract into the Main Contract Works, Perle and the Subcontractor agree to coordinate the execution of the work under the Subcontract with the execution of the Main Contract Works.

Perle may direct in what order and at what time the various stages or parts of the work under the Subcontract shall be performed. If the Subcontractor can reasonably comply with the direction, the Subcontractor shall do so. If the Subcontractor cannot reasonably comply, the Subcontractor shall notify Perle in writing, giving reasons.

If compliance with the direction causes the Subcontractor to incur more or less cost than otherwise would have been incurred had the Subcontractor not been given the direction, the difference shall be valued under Clause 40.5.

#### 33.2 Construction Program

### 34 SUSPENSION OF THE WORKS

#### 34.1 Suspension by Perle

If Perle considers that the suspension of the whole or part of the work under the Subcontract is necessary—

- (a) because of an act or omission of—
  - (i) the Principal, the Superintendent or an employee, consultant or agent of the Principal; or
  - (ii) Perle, another subcontractor or an employee or agent of any of them;
  - (iii) the Subcontractor, a secondary subcontractor to the Subcontractor or an employee or agent of either;

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The Subcontractor may voluntarily furnish to the Main Contractor's Representative a construction program.¶

The Main Contractor's Representative may direct the Subcontractor to furnish to the Main Contractor's Representative a construction program within the time and in the form directed by the Main Contractor's Representative.¶

The Subcontractor shall not, without reasonable cause, depart from—¶

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- (b) for the protection or safety of any person or property; or  
 (c) to comply with an order of a court,

Perle shall direct the Subcontractor to suspend the progress of the whole or part of the work under the Subcontract for such time as Perle thinks fit.

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### 34.2 Suspension by Subcontractor

If the Subcontractor wishes to suspend the whole or part of the work under the Subcontract, otherwise than under Clause 44.9, the Subcontractor shall obtain the prior approval of Perle. Perle may approve of the suspension and may impose conditions of approval.

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### 34.3 Recommencement of Work

As soon as Perle becomes aware that the reason for any suspension no longer exists, Perle shall direct the Subcontractor to recommence work on the whole or on the relevant part of the work under the Subcontract.

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If work is suspended pursuant to Clause 34.2 or 44.9, the Subcontractor may recommence work at any time after reasonable advance notice to Perle.

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### 34.4 Cost of Suspension

Any cost incurred by the Subcontractor by reason of a suspension under Clause 34.1 or Clause 34.2 shall be borne by the Subcontractor but if the suspension is due to an act or omission of the Principal, the Superintendent or an employee, consultant or agent of the Principal, or is due to an act, default or omission of Perle, or an employee or agent of Perle, and the suspension causes the Subcontractor to incur more or less cost than otherwise would have been incurred but for the suspension, the difference shall be valued under Clause 40.5.

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### 34.5 Effect of Suspension

Suspension shall not affect the Date for Substantial Completion but the cause of suspension may be a ground for extension of time under Clause 35.5.

## 35 TIMES FOR COMMENCEMENT AND SUBSTANTIAL COMPLETION

### 35.1 Time for Commencement of Work on the Site

The Subcontractor shall give Perle 7 days' notice of the date upon which the Subcontractor proposes to commence work on the Site.

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Perle may reduce the period of notice required.

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The Subcontractor shall commence work on the Site within 14 days after Perle has given the Subcontractor possession of sufficient of the Site to enable the Subcontractor to commence work.

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Perle may extend the time for commencement of work on the Site.

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### 35.2 Time for Substantial Completion

The Subcontractor shall execute the work under the Subcontract to Substantial Completion by the Date for Substantial Completion.

Upon the Date of Substantial Completion the Subcontractor shall give possession of the Works to Perle.

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### 35.3 Separable Portions

The interpretations of—

- (a) Date for Substantial Completion;
- (b) Date of Substantial Completion;
- (c) Substantial Completion,

and Clauses 5.7, 16, 35, 37, 38, 42.3 and 42.5 shall apply separately to each Separable Portion and references therein to the Works and to work under the Subcontract shall mean so much of the Works and the work under the Subcontract as is comprised in the relevant Separable Portion.

If the Subcontract does not make provision for the amount of security, retention moneys, liquidated damages or bonus applicable to a Separable Portion, the respective amounts applicable shall be such proportion of the security, retention moneys, liquidated damages or bonus applicable to the whole of the work under the Subcontract as the value of the Separable Portion bears to the value of the whole of the work under the Subcontract.

### 35.4 Use of Partly Completed Works

If a part of the Works has reached Substantial Completion but another part of the Works has not reached Substantial Completion and the parties cannot agree upon the creation of Separable Portions, Perle may determine that the respective parts shall be Separable Portions.

In using the Separable Portion that has reached Substantial Completion, Perle shall not hinder the Subcontractor in the performance of the work under the Subcontract.

### 35.5 Extension of Time for Substantial Completion

When it becomes evident to the Subcontractor that anything, including an act or omission of the Principal, the Superintendent, Perle, Perle's other subcontractors or the employees, consultants, other contractors or agents of any of them may delay the work under the Subcontract, the Subcontractor shall promptly notify Perle in writing with details of the possible delay and the cause.

When it becomes evident to Perle that anything which Perle is obliged to do or provide under the Subcontract may be delayed, Perle shall notify the Subcontractor in writing of the extent of the likely delay.

If the Subcontractor is or will be delayed in reaching Substantial Completion by a cause described in the next paragraph and within 2 days after the Subcontractor first become aware or should have become aware of the delay the Subcontractor gives Perle a written claim for an extension of time for Substantial Completion setting out:

- (a) the facts on which the claim is based;
- (b) the period of extension claimed; and
- (c) the basis of calculating that period

the Subcontractor shall be entitled to an extension of time for Substantial Completion.

The causes are—

- (i) a strike, lockout, demarcation or industrial dispute which:
  - (A) concurrently affects the Site and the building industry on a State-wide, Territory-wide or nationwide basis;

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(B) is not specific to the Subcontractor, the Subcontractors Associates (as defined in the Corporations Act 2001) or the Site;

(C) occurs on or before the Date for Practical Completion; and

(D) is beyond the reasonable control of the Subcontractor.

(ii) delays caused by an act or omission of—

—the Principal;

—the Superintendent;

— Perle;

— Perle's other subcontractors;

—the employees, consultants, other contractors or agents of any of the above;

(iii) any breach of the Subcontract by Perle;

(iv) any other cause which is expressly stated in the Subcontract to be a cause for extension of time for Substantial Completion.

Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a cause referred to in the preceding paragraph, then to the extent that the delays are concurrent, the Subcontractor shall not be entitled to an extension of time for Substantial Completion.

In determining whether the Subcontractor is or will be delayed in reaching Substantial Completion regard shall not be had to—

— whether the Subcontractor can reach Substantial Completion by the Date for Substantial Completion without an extension of time;

— whether the Subcontractor can, by committing extra resources or incurring extra expenditure, make up the time lost.

With any claim for an extension of time for Substantial Completion, or as soon as practicable thereafter, the Subcontractor shall give Perle written notice of the number of days extension claimed.

If the Subcontractor is entitled to an extension of time for Substantial Completion Perle shall, within 35 days after receipt of the notice of the number of days extension claimed, grant a reasonable extension of time. If within the 35 days Perle does not grant the full extension of time claimed, Perle shall before the expiration of the 35 days give the Subcontractor notice in writing of the reason.

In determining a reasonable extension of time for an event causing delay, Perle shall have regard to whether the Subcontractor has taken all reasonable steps to preclude the occurrence of the cause and minimize the consequences of the delay.

Notwithstanding that the Subcontractor is not entitled to an extension of time Perle may at any time and from time to time before the issue of the Final Certificate by notice in writing to the Subcontractor extend the time for Substantial Completion for any reason.

A delay by Perle or the failure of Perle to grant a reasonable extension of time or to grant an extension of time within 35 days shall not cause the Date for Substantial Completion to be set at large but nothing in this paragraph shall prejudice any right of the Subcontractor to damages.

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<#>latent conditions;¶  
<#>variations directed under Clause 40;¶  
<#>repudiation or abandonment by a Nominated Secondary Subcontractor;¶  
<#>changes in the law;¶  
<#>directions by municipal, public or statutory authorities but not where the direction arose from the failure of the Subcontractor to comply with a requirement referred to in Clause 14.1;¶  
<#>delays by municipal, public or statutory authorities not caused by the Subcontractor;¶  
<#>claims referred to in Clause 17.1(v);¶

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Perle will not be liable in contract, tort or otherwise for any cost, expense or loss incurred by the Subcontractor which arises out of or is connected with delay or disruption to the progress of completion of the Works howsoever caused whether or not Perle has granted an extension of time for completion of the Works.

### 35.6 Damages for Delay in Reaching Substantial Completion

If the Subcontractor fails to reach Substantial Completion by the Date for Substantial Completion the Subcontractor shall be indebted to Perle for—

- (a) extra costs incurred by Perle for extended overheads and other damages excluding damages referred to in Clause 35.6(b); and
- (b) if the failure by the Subcontractor causes Perle to be in breach of the Main Contract, damages whether liquidated or otherwise which Perle thereby becomes liable to pay the Principal.

The Subcontractor's indebtedness under Clause 35.6(a) shall be liquidated and the Subcontractor shall pay Perle liquidated damages at the rate stated in the Annexure for every day after the Date for Substantial Completion to and including the Date of Substantial Completion or the date that the Subcontract is terminated under Clause 44, whichever first occurs.

The Subcontractor's indebtedness under Clause 35.6(b) is not included in the liquidated damages applicable to Clause 35.6(a).

If after the Subcontractor has paid damages, liquidated or otherwise, or such damages have been deducted, the time for Substantial Completion is extended, Perle shall forthwith repay to the Subcontractor any damages paid or deducted in respect of the period up to and including the new Date for Substantial Completion.

### \* 35.7 Limit on Damages for Delay

The Subcontractor's liability under Clause 35.6(a) is limited to the amount stated in the Annexure.

The Subcontractor's liability under Clause 35.6(b) is limited to the amount stated in the Annexure.

### \* 35.8 Not Used

### 36, NOT USED

### 37, DEFECTS LIABILITY

The Defects Liability Period shall commence on the Date of Substantial Completion.

As soon as possible after Substantial Completion, the Subcontractor shall rectify any defects or omissions in the work under the Subcontract existing at Substantial Completion.

Unless otherwise stated in the Annexure or elsewhere in the Subcontract, the Defects Liability Period shall be a period expiring on the expiration of the Defects Liability Period under the Main Contract or if there are several, then the last to expire.

Where the date of expiration of the Defects Liability Period is the same as the date of expiration of the Defects Liability Period under the Main Contract, Perle shall within 14 days of becoming aware of the date of expiration of the Defects Liability Period under the Main Contract, inform the Subcontractor in writing of that date.

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**Deleted:** If the Date of Substantial Completion is earlier than the Date for Substantial Completion the Main Contractor shall pay the Subcontractor the bonus stated in the Annexure for every day after the Date of Substantial Completion up to and including the Date for Substantial Completion.¶  
The total of the bonus shall not exceed the limit stated in the Annexure.¶

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Where the Subcontractor has been granted an extension of time under Clause 35.5 for any delay caused by any other event for which payment of extra costs for delay and disruption is provided for in the Annexure or elsewhere in the Subcontract, the Main Contractor shall pay to the Subcontractor such extra costs as are necessarily incurred by the Contractor by reason of the delay.¶  
Nothing in Clause 36 shall—¶  
<#>oblige the Main Contractor to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Subcontract; or¶  
<#>limit the Main Contractor's liability for damages for breach of contract.¶  
Notwithstanding anything hereinbefore provided in Clause 36, the Main Contractor's liability to pay extra costs for delay or disruption caused by the Principal, the Superintendent or the [... ] [9]

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At any time prior to the 21st day after the expiration of the Defects Liability Period, Perle may direct the Subcontractor to rectify any omission or defect in the work under the Subcontract existing at the Date of Substantial Completion which becomes apparent prior to the expiration of the Defects Liability Period. The direction shall identify the omission or defect and state a date by which the Subcontractor shall complete the work of rectification and may state a date by which the work of rectification shall commence and, if no date is specified within which the Subcontractor shall complete the work of rectification then the Subcontractor shall complete the works of rectification within 6 days from the date the direction was given. In respect of such work of rectification, if the Superintendent directs pursuant to the Main Contract, a separate Defects Liability Period of a stated duration, there shall be a corresponding Defects Liability Period under the Subcontract. The separate Defects Liability Period shall commence on the date Perle completes the work of rectification pursuant to the Main Contract. Clause 37 shall apply in respect of the work of rectification and the Defects Liability Period for that work of rectification.

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If the Subcontractor's work of rectification is not commenced or completed by the stated dates, Perle may have the work of rectification carried out at the Subcontractor's expense, but without prejudice to any other rights that Perle may have against the Subcontractor with respect to such omission or defect, and the cost of the work of rectification incurred by Perle shall be a debt due from the Subcontractor.

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If it is necessary for the Subcontractor to carry out work of rectification, the Subcontractor shall do so at times and in a manner which cause as little inconvenience as is reasonably possible to the work under the Main Contract and to the occupants and users of the Works.

### 38 CLEANING UP

The Subcontractor shall keep the Site and the work clean and tidy. The Subcontractor shall regularly remove rubbish and surplus material.

Within 14 days after the Date of Substantial Completion the Subcontractor shall remove Temporary Works and Constructional Plant.

Perle may extend the time for removal of Temporary Works or Constructional Plant necessary to enable the Subcontractor to perform remaining obligations.

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Notwithstanding the provisions of Clause 44, if the Subcontractor fails to comply with any obligation imposed on the Subcontractor by Clause 38, Perle may, after Perle has given reasonable notice in writing to the Subcontractor, have the work of cleaning and tidying up carried out by other persons and the reasonable cost incurred by Perle in having the work so carried out may be recovered by Perle as a debt due from the Subcontractor to Perle. The rights given by this paragraph are in addition to any other right.

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### 39 URGENT PROTECTION

If urgent action is necessary to protect the work under the Subcontract, other property or people and the Subcontractor fails to take the action, Perle may take the necessary action. If the action was action which the Subcontractor should have taken at the Subcontractor's cost, the cost incurred by Perle shall be a debt due from the Subcontractor.

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If time permits, Perle shall give the Subcontractor prior written notice of Perle's intention to take action under Clause 39.

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## 40 VARIATIONS

### 40.1 Variations to the Work

Perle may direct the Subcontractor to —

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- (a) increase, decrease or omit any part of the work under the Subcontract;
- (b) change the character or quality of any material or work;
- (c) change the levels, lines, positions or dimensions of any part of the work under the Subcontract;
- (d) execute additional work; and/or
- (e) demolish or remove material or work no longer required by Perle.

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The Subcontractor shall not vary the work under the Subcontract except as directed by Perle or approved in writing by Perle under Clause 40.

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The Subcontractor is bound only to execute a variation which is within the general scope of the Subcontract.

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The Subcontractor shall not be bound to execute a variation directed after Substantial Completion unless the variation is in respect of rectification work referred to in Clause 37.

### 40.2 Proposed Variations

Upon receipt of a notice in writing from Perle advising the Subcontractor of a proposed variation under Clause 40, the Subcontractor shall advise Perle whether the proposed variation can be effected. If the variation can be effected, the Subcontractor shall —

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- (a) advise Perle of the effect which the Subcontractor anticipates that the variation will have on the construction program and time for Substantial Completion; and
- (b) provide an estimate of the cost (including delay costs, if any) of the proposed variation.

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Perle shall reimburse the Subcontractor for the reasonable costs of complying with the requirements of Clause 40.2.

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### 40.3 Pricing the Variation

Unless Perle and the Subcontractor agree upon the price for a variation, the variation directed or approved by Perle under Clause 40.1 shall be valued under Clause 40.5.

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Perle may direct the Subcontractor to provide a detailed quotation for the work of a variation supported by measurements or other evidence of cost.

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### 40.4 Variations for the Convenience of the Subcontractor

If the Subcontractor requests Perle to approve a variation for the convenience of the Subcontractor, Perle may do so in writing but if no written approval is received, the Subcontractor cannot vary the Works. The approval may be conditional.

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Unless Perle otherwise directs in the notice approving the variation, the Subcontractor shall not be entitled to—

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- (a) an extension of time for Substantial Completion; or
- (b) extra payment,

in respect of the variation or anything arising out of the variation which would not have arisen had the variation not been approved.



Perle shall not be obliged to approve a variation for the convenience of the Subcontractor.

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#### 40.5 Valuation

Where the Subcontract provides that a valuation shall be made under Clause 40.5, Perle shall pay or allow the Subcontractor, or the Subcontractor shall pay or allow Perle, as the case may require, an amount ascertained by Perle, as follows —

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- (a) if the Subcontract prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used;
- (b) if Clause 40.5(a) does not apply, the rates or prices in a Priced Bill of Quantities or Schedule of Rates shall be used to the extent that it is reasonable to use them;
- (c) to the extent that neither Clause 40.5(a) or 40.5(b) apply, reasonable rates or prices shall be used in any valuation made by Perle;
- (d) in determining the deduction to be made for work which is taken out of the Subcontract, the deduction shall include a reasonable amount for profit and overheads;
- (e) if the valuation is of an increase or decrease in a fee or charge or is a new fee or charge under Clause 14.3, the value shall be the actual increase or decrease or the actual amount of the new fee or charge without regard to overheads or profit;
- (f) if the valuation relates to extra costs incurred by the Subcontractor for delay or disruption, the valuation shall include a reasonable amount for overheads but shall not include profit or loss of profit;
- (g) if Clause 11(b) applies, the percentage referred to in Clause 11(b) shall be used for valuing the Subcontractor's profit and attendance; and
- (h) daywork shall be valued in accordance with Clause 41.

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When under Clause 40.3 Perle directs the Subcontractor to support a variation with measurements and other evidence of cost, Perle shall allow the Subcontractor the reasonable cost of preparing the measurements or other evidence of cost that has been incurred over and above normal overhead cost.

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#### 41 DAYWORK

Perle may direct that—

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- (i) quantities greater than the upper limit of accuracy referred to in Clause 3.3 shall be carried out as Daywork;
- (ii) work under the Subcontract forming part of a variation directed by the Superintendent to be carried out as daywork under the Main Contract; or
- (iii) a variation due to defective work or materials directed by Perle under Clause 30.4, shall be carried out as Daywork.

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The Subcontractor shall thereafter each day record particulars of all resources used by the Subcontractor for the execution of the Daywork and each day furnish to Perle the particulars and copies of time sheets, wages sheets, invoices, receipts and other documents evidencing the cost of the Daywork. Perle may direct the manner in which matters are to be recorded.

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In determining the value of Daywork regard shall be had to—

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- (a) the amount of wages and allowances paid or payable by the Subcontractor at the rates obtaining on the Site at the time as established by the Subcontractor to the satisfaction of Perle or at such other rates as may be approved by Perle;
- (b) the amount paid or payable by the Subcontractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under Clause 41(a);
- (c) the amount of hire charges in respect of Constructional Plant approved by Perle for use on the work in accordance with such hiring rates and conditions as may be agreed between Perle and the Subcontractor or, in the absence of agreement, in accordance with such rates and conditions as may be determined by Perle;
- (d) the amounts paid for services, secondary subcontracts and professional fees;
- (e) the actual cost to the Subcontractor at the Site of all materials supplied and required for the work; and
- (f) the charge stated in the Annexure or, if no charge is stated, a charge agreed between Perle and the Subcontractor to cover overheads, administrative costs, site supervision, establishment costs, attendance and profit, or, in the absence of agreement, a reasonable charge determined by Perle.

Amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs notwithstanding that the Subcontract may provide for adjustment for rise and fall in costs.

## 42 CERTIFICATES AND PAYMENTS

### 42.1 Payment Claims, Certificates, Calculations and Time for Payment

At least five (5) days prior to the times for payment claims set out in Annexure Part A the Subcontractor's and Perle shall meet and together inspect the Works and shall review the value of the Works complete since the last progress claim, or if it be the first progress claim since the commencement of the Works.

At the times for payment claims or upon completion of the stages of the Work stated in Annexure Part A and upon the issue of a Certificate of Practical Completion and within the time prescribed by Clause 42.5, the Subcontractor shall deliver to Perle claims for payment supported by evidence of the amount due to the Subcontractor, the documentation required by this Contract to be included with or annexed to each payment claim and such information as Perle may reasonably require. The progress claim made in accordance with this clause 42.1 shall be in the form of a tax invoice under the Goods and Services Tax legislation and pursuant to clause 42.10 of this Contract. Claims for payment shall include the value of Work carried out by the Subcontractor in the performance of the Contract, excluding variations other than approved variations to that Contract, delay cost claims and claims for any other moneys due pursuant to the Contract and shall include only amounts relative to the contract sum payable as a progress payment. Each such payment claim shall comply with the provision of the Building and Construction Industry Security of Payment Act 1999 for such payment claims.

If the time for any payment claim under the preceding paragraph falls due on a day which is Saturday or Sunday, Statutory or Public Holiday the Subcontractor shall submit the claim either on the day before or next day following that date which itself is not a Saturday, Sunday, Statutory or Public Holiday.

If the Subcontractor submits a payment claim before the time for lodgement of that payment claim, such early lodgement shall not require Perle to issue the payment schedule in respect of that payment claim earlier than would have been the case had the Subcontractor submitted the payment claim in accordance with this Contract.

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**Deleted:** At the times for payment claims stated in the Annexure and upon issue of a Certificate of Substantial Completion and within the time prescribed by Clause 42.7, the Subcontractor shall deliver to the Main Contractor's Representative claims for payment supported by evidence of the amount due to the Subcontractor and such information as the Main Contractor's Representative may reasonably require. Claims for payment shall include the value of work carried out by the Subcontractor in the performance of the Subcontract to that time together with all amounts then due to the Subcontractor arising out of or in connection with the Subcontract or for any alleged breach thereof.¶  
 Within 21 days after receipt of a claim for payment, the Main Contractor's Representative shall issue to the Main Contractor and to the Subcontractor a payment certificate stating the payment which, in the opinion of the Main Contractor's Representative, is to be made by the Main Contractor to the Subcontractor or by the Subcontractor to the Main Contractor. The Main Contractor's Representative shall set out in the certificate the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Subcontractor, the reasons for the difference. The Main Contractor's Representative shall allow in any payment certificate issued pursuant to this Clause 42.1 or any Final Certificate issued pursuant to Clause 42.8 or a Certificate issued pursuant to Clause 44.6, amounts paid under the Subcontract and amounts otherwise due from the Main Contractor to the Subcontractor and/or due from the Subcontractor to the Main Contractor arising out of (... [10])

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Perle shall assess the claim and within ten (10) business days of service of the payment claim. Perle shall provide a payment schedule to the Subcontractor stating in accordance with the Building and Construction Industry Security of Payment Act, 1999 the amount of the payment which, in Perle's opinion is to be made by Perle to the Subcontractor or by the Subcontractor to Perle. Perle shall set out in the payment schedule the calculations employed to arrive at the amount, and if the amount is more or less than the amount claimed by the Subcontractor, the reasons for the difference. In addition to setting out the reasons for the difference in the payment schedule from any amount claimed in a payment claim by the Subcontractor, the Superintendent shall indicate in the payment schedule the adjusted contract sum having regard to any approved variations separately made pursuant to this Contract. The amount previously paid by Perle to the Subcontractor and amounts of retention moneys retained shall also be indicated in the payment schedule.

If the Subcontractor fails to make a claim for payment under this Clause 42.1 Perle may nevertheless assess an amount owing by Perle to the Subcontractor or the Subcontractor to Perle as the case may be and Perle shall issue a document in the form of a payment schedule and Perle and the Subcontractor as the case may be shall pay the amount certified for payment in that schedule within ten (10) business days of that Schedule.

Subject to the provision of the Contract Perle shall pay to the Subcontractor or the Subcontractor shall pay to Perle as the case may be, an amount not less than the amount shown in the payment schedule as due to the Subcontractor or to Perle as the case may be by the later of:

- (a) 10 days after the issue of the Payment Schedule;
- (b) If no Payment Schedule is issued, within 20 days of receipt by Perle of the Payment Claim.
- (c) The date upon which Perle receives the Subcontractors Statement in the form annexed, a payment statutory declaration in the form annexed and any evidence reasonably required by Perle as to the currency of all applicable insurances.
- (d) The date upon which Perle receives from the Subcontractor a valid tax invoice for the amount specified in the Payment Schedule.
- (e) In the case of the Final Payment Claim the date upon which Perle receives the Deed of Release executed by the Subcontractor.

A payment made pursuant to this clause 42.1 shall not prejudice the right of either party to an adjudication under the Building and Construction Industry Security of Payment Act 1999 or to dispute under Clause 47 whether the amount so paid is the amount properly due and payable and on determination (whether under Clause 47 or as otherwise agreed) of the amount so properly due and payable, Perle or the Subcontractor, as the case may be, shall be liable to pay the difference between the amount of such payment and the amount so properly due and payable.

Payments of moneys shall not be evidence or the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided under Clause 42.6.

In addition to including all the information required by the Building and Construction Industry Security of Payment Act 1999, a payment schedule may also indicate an amount, if any owing by the Subcontractor to Perle.

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Where in this clause or elsewhere throughout the Contract, terms such as 'payment claim' and 'payment schedule' and 'business days' are used, except where the context indicates otherwise, these terms shall have the same meaning as they bear in the Building and Construction Industry Security of Payment Act 1999.

Perle reserves the right to vary the payment terms without notice to the Subcontractor.

#### \* 42.2 Not Used Correction of Payment Certificates

At any time, and from time to time, Perle may by a further certificate correct any error which has been discovered in any previous certificate, other than a Certificate of Substantial Completion or Final Certificate.

#### 42.3 Retention Moneys

Perle may deduct from moneys otherwise due to the Subcontractor amounts up to the limit of the percentages, if any, stated in the Annexure of so much of the value of the respective items stated in the Annexure as is included in the calculation of a payment.

#### 42.4 Unfixed Plant and Materials

##### Alternative 1

If the Subcontractor claims payment for plant or materials intended for incorporation in the Works but not incorporated, Perle shall not be obliged to make payment for the plant or materials unless the Subcontractor provides additional security in one of the forms provided by Clause 5.3 in an amount equal to the payment claimed for the plant or materials.

#### 42.5 Certificate of Substantial Completion

The Subcontractor shall give Perle at least 14 days' notice of the date upon which the Subcontractor anticipates that Substantial Completion will be reached.

When the Subcontractor is of the opinion that Substantial Completion has been reached, the Subcontractor shall in writing request Perle to issue a Certificate of Substantial Completion. Within 14 days of the receipt of the request, Perle shall give to the Subcontractor and to Perle a Certificate of Substantial Completion stating the Date of Substantial Completion or give the Subcontractor in writing the reasons for not issuing the Certificate.

When Perle is of the opinion that Substantial Completion has been reached, Perle may issue a Certificate of Substantial Completion, whether or not the Subcontractor has made a request for its issue.

#### 42.6 Effect of Certificates

The issue of a payment certificate or a Certificate of Substantial Completion shall not constitute approval of any work or other matter nor shall it prejudice any claim by Perle or the Subcontractor.

#### 42.7 Final Payment Claim

Within 21 days after the expiration of the Defects Liability Period, or where there is more than one, the last to expire, the Subcontractor shall lodge with Perle a final payment claim and endorse it 'Final Payment Claim'.

The Subcontractor shall include in that claim all moneys which the Subcontractor considers to be due from Perle under or arising out of the Subcontract or any alleged breach thereof.

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Notwithstanding Clause 42.1, if the Subcontractor is a Nominated Subcontractor to whom the Main Contractor is directed by the Superintendent to subcontract Nominated Subcontract Work pursuant to the first paragraph of Clause 10.3 of the Main Contract, the Main Contractor shall not be obliged to make a progress payment to the Subcontractor in respect of the value of any work performed by the Subcontractor—¶  
<#>until 7 days after the Main Contractor has been paid by the Principal in respect of the work; and¶  
<#>greater than the Main Contractor has been paid by the Principal in respect of the work.¶  
Clause 42.1A does not apply if the reason for delay or failure by the Principal to make payment to the Main Contractor is a default of the Main Contractor.¶

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If the Subcontractor claims payment for plant or materials intended for incorporation in the Works but not incorporated the Main Contractor shall not be obliged to make payment for such plant or materials but the Main Contractor may make payment, if the Subcontractor establishes to the satisfaction of the Main Contractor's Representative that—¶  
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After the expiration of the period for lodging a Final Payment Claim, any claim which the Subcontractor could have made against Perle and has not made shall be barred.

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#### 42.8 Final Certificate

Within 28 days after receipt of the Subcontractor's Final Payment Claim or, where the Subcontractor fails to lodge such a claim, the expiration of the period specified in Clause 42.7 for lodgement of the Final Payment Claim by the Subcontractor, Perle shall issue to the Subcontractor and to Perle a final payment certificate endorsed 'Final Certificate'. In the certificate Perle shall certify the amount which in Perle's opinion is finally due from Perle to the Subcontractor or from the Subcontractor to Perle under or arising out of the Subcontract or any alleged breach thereof.

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Unless either party, either before the Final Certificate has been issued or not later than 8 days after the issue thereof, serves a notice of dispute under Clause 47, the Final Certificate shall be evidence in any proceedings of whatsoever nature and whether under the Subcontract or otherwise between the parties arising out of the Subcontract, that the Works have been completed in accordance with the terms of the Subcontract and that any necessary effect has been given to all the terms of the Subcontract which require additions or deductions to be made pursuant to the Subcontract, except in the case of—

- (a) fraud, dishonesty or fraudulent concealment relating to the Works or any part thereof or to any matter dealt with in the said Certificate;
- (b) any defect (including omission) in the Works or any part thereof which was not apparent at the end of the Defects Liability Period, or would not have been disclosed upon reasonable inspection at the time of the issue of the Final Certificate; or
- (c) any accidental or erroneous inclusion or exclusion of any work, plant, materials or figures in any computation or any arithmetical error in any computation.

Within 14 days after the issue of the Final Certificate which certifies a balance owing by Perle to the Subcontractor, Perle shall release to the Subcontractor any retention moneys or security then held by Perle.

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#### 42.9 Interest on Overdue Payments

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid then interest shall be payable thereon from but excluding the date upon which, or the expiration of the period within which they should have been paid, to and including the date upon which the moneys are paid. The rate of interest shall be the rate stated in the Annexure and if no rate is stated the rate shall be 18 percent per annum. Interest shall be compounded at six monthly intervals.

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#### 42.10 Set Offs by Perle

Perle may deduct from moneys due to the Subcontractor any money due from the Subcontractor to Perle otherwise than under the Subcontract and if those moneys are insufficient, Perle may, subject to Clause 5.5, have recourse to retention moneys and, if they are insufficient, then to security under the Subcontract.

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#### 42.11 Recourse for Unpaid Moneys

Where, within the time provided by the Subcontract, a party fails to pay the other party an amount due and payable under the Subcontract, the other party may, subject to Clause 5.5, have recourse to retention moneys, if any, and, if those moneys are insufficient, then to

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security under the Subcontract and any deficiency remaining may be recovered by the other party as a debt due and payable.

#### 42.12 GST

- (a) Other than terms defined in this Subcontract, capitalised expressions set out in this Clause 42.12 have the same meaning as those expressions in this GST Act.
- (b) Except where express provision is made to the contrary, and subject to this Clause 42.12, any amount that may be payable under the Subcontract is exclusive of any GST.
- (c) If the one party ('Payee') makes a Taxable Supply in connection with the Subcontract, then the other party ('Payor') must also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply.
- (d) The Payee's right to payment under this Clause **Error! Reference source not found.** is subject to a valid Tax Invoice (or an adjustment note as appropriate) being delivered to the Payor.

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#### 43 PAYMENT OF WORKERS AND SECONDARY SUBCONTRACTORS

- (a) Before Perle makes each payment to the Subcontractor, Perle may, not less than five days before a payment certificate is due, in writing request the Subcontractor—
  - (i) to give Perle a statutory declaration by the Subcontractor or, where the Subcontractor is a corporation, by a representative of the Subcontractor who is in a position to know the facts declared, that all workers who have at any time been employed by the Subcontractor on work under the Subcontract have at the date of the request been paid all moneys due and payable to them in respect of their employment on the work under the Subcontract; and
  - (ii) to provide documentary evidence to Perle that at the date of the request all workers who have been employed by a secondary subcontractor of the Subcontractor have been paid all moneys due and payable to them in respect of their employment on the work under the Subcontract.
- (b) Not earlier than 14 days after the Subcontractor has made a claim for payment under Clause 42.1, and before Perle makes that payment to the Subcontractor, the Subcontractor shall give to Perle a statutory declaration by the Subcontractor or, where the Subcontractor is a corporation, by a representative of the Subcontractor who is in a position to know the facts declared, that all secondary subcontractors of the Subcontractor have been paid all moneys due and payable to them in respect of work under the Subcontract.
- (c) If the Subcontractor fails—
  - (i) within five days after a request by Perle under Clause 43(a), to provide the statutory declaration, or the documentary evidence (as the case may be) required pursuant to Clause 43; or
  - (ii) to comply with Clause 43(b),notwithstanding Clause 42.1, Perle may withhold payment of moneys due to the Subcontractor until the statutory declaration or documentary evidence (as the case may be) is received by Perle.

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If the Subcontractor provides to Perle satisfactory proof of the maximum amount due and payable to workers and secondary subcontractors of the Subcontractor by the Subcontractor, Perle shall not be entitled to withhold any amount in excess of the maximum amount.

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At the written request of the Subcontractor and out of moneys payable to the Subcontractor, Perle may on behalf of the Subcontractor make payments directly to any worker or secondary subcontractor of the Subcontractor.

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If a worker or secondary subcontractor of the Subcontractor obtains a court order in respect of moneys referred to in Clause 43(a) or (b) and produces to Perle the court order and a statutory declaration that it remains unpaid, Perle may pay the amount of the order, and costs included in the order, to the worker or secondary subcontractor and the amount paid shall be a debt due from the Subcontractor to Perle.

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After the making of a sequestration order or a winding up order in respect of the Subcontractor, Perle shall not make any payment to a worker or secondary subcontractor of the Subcontractor without the concurrence of the official receiver or trustee of the estate of the bankrupt or the liquidator as the case may be.

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## 44 DEFAULT OR INSOLVENCY

### 44.1 Preservation of Other Rights

If a party breaches or repudiates the Subcontract, nothing in Clause 44 shall prejudice the right of the other party to recover damages or exercise any other right.

### 44.2 Default by the Subcontractor

If the Subcontractor commits a substantial breach of contract and Perle considers that damages may not be adequate remedy, Perle may give the Subcontractor a written notice to show cause.

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Substantial breaches include but are not limited to—

- (a) suspension of work, in breach of Clause 33.1;
- (b) failing to proceed with due expedition and without delay, in breach of Clause 33.1;
- (c) failing to lodge security, in breach of Clause 5;
- (d) failing to use the materials or standards of workmanship required by the Subcontract, in breach of Clause 30.1;
- (e) failing to comply with a direction of Perle under Clause 30.3, in breach of Clause 23;
- (f) failing to provide evidence of insurance, in breach of Clause 21.1; and/or
- (g) in respect of Clause 43, knowingly providing a statutory declaration or documentary evidence which contains a statement that is untrue.

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### 44.3 Requirements of a Notice by Perle to Show Cause

A notice under Clause 44.2 shall—

- (a) state that it is a notice under Clause 44 of the Subcontract Conditions;
- (b) specify the alleged substantial breach;
- (c) require the Subcontractor to show cause in writing why Perle should not exercise a right referred to in Clause 44.4;

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- (d) specify the time and date by which the Subcontractor must show cause (which time shall not be less than 7 clear days after the notice is given to the Subcontractor); and
- (e) specify the place at which cause must be shown.

**44.4 Rights of Perle**

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If by the time specified in a notice under Clause 44.2, the Subcontractor fails to show reasonable cause why Perle should not exercise a right referred to in Clause 44.4, Perle may by notice in writing to the Subcontractor—

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- (a) take out of the hands of the Subcontractor the whole or part of the work remaining to be completed; or
- (b) terminate the Subcontract.

Upon giving a notice under Clause 44.2, Perle may suspend payments to the Subcontractor until the earlier of—

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- (i) the date upon which the Subcontractor shows reasonable cause;
- (ii) the date upon which Perle takes action under Clause 44.4(a) or (b); or
- (iii) the date which is 7 days after the last day for showing cause in the notice under Clause 44.2.

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If Perle exercises the right under Clause 44.4(a), the Subcontractor shall not be entitled to any further payment in respect of the work taken out of the hands of the Subcontractor unless a payment becomes due to the Subcontractor under Clause 44.6.

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**44.5 Procedure when Perle Takes Over Work**

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If Perle takes work out of the hands of the Subcontractor under Clause 44.4(a) Perle shall complete that work and Perle may without payment of compensation take possession of such of the Constructional Plant and other things on or in the vicinity of the Site as are owned by the Subcontractor and are reasonably required by Perle to facilitate completion of the work.

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If Perle takes possession of Constructional Plant or other things, Perle shall maintain the Constructional Plant and, subject to Clause 44.6, on completion of the work Perle shall return to the Subcontractor the Constructional Plant and any things taken under this Clause which are surplus.

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**44.6 Adjustment on Completion of the Work Taken Out of the Hands of the Subcontractor**

When work taken out of the hands of the Subcontractor under Clause 44.4(a) is completed Perle shall ascertain the cost incurred by Perle in completing the work and shall issue a certificate to Perle and the Subcontractor certifying the amount of that cost.

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If the cost incurred by Perle is greater than the amount which would have been paid to the Subcontractor if the work had been completed by the Subcontractor, the difference shall be a debt due from the Subcontractor to Perle. If the cost incurred by Perle is less than the amount that would have been paid to the Subcontractor if the work had been completed by the Subcontractor, the difference shall be a debt due to the Subcontractor from Perle. Perle shall keep records of the cost in a similar manner to that prescribed in Clause 41.

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If the Subcontractor is indebted to Perle, Perle may retain Constructional Plant or other things taken under Clause 44.5 until the debt is satisfied. If after reasonable notice, the Subcontractor fails to pay the debt, Perle may sell the Constructional Plant or other things

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and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess shall be paid to the Subcontractor.

#### 44.7 Default of Perle

If Perle commits a substantial breach of contract and the Subcontractor considers that damages may not be an adequate remedy, the Subcontractor may give Perle a written notice to show cause.

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Substantial breaches include but are not limited to—

- (a) failing to make a payment, in breach of Clause 42.1;
- (b) failure by Perle to issue a Certificate of Substantial Completion, or give the Subcontractor, in writing, the reasons for not issuing the Certificate within 14 days of receipt of a request by the Subcontractor to issue the Certificate, in breach of Clause 42.5;
- (c) failing to produce evidence of insurance, in breach of Clause 21.1;
- (d) failing to give the Subcontractor access to sufficient of the Site, in breach of Clause 27.1, but only if the failure continues for longer than the period stated in the Annexure; and/or
- (e) failing to lodge security in breach of Clause 5.

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#### 44.8 Requirements of a Notice by the Subcontractor to Show Cause

A notice under Clause 44.7 shall—

- (a) state that it is a notice under Clause 44 of the Subcontract Conditions;
- (b) specify the alleged substantial breach;
- (c) require Perle to show cause in writing why the Subcontractor should not exercise a right referred to in Clause 44.9;
- (d) specify the time and date by which Perle must show cause (which shall not be less than 7 clear days after the notice is given to Perle); and
- (e) specify the place at which cause must be shown.

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#### 44.9 Rights of Subcontractor

If, by the time specified in a notice under Clause 44.7, Perle fails to show reasonable cause why the Subcontractor should not exercise a right referred to in Clause 44.9, the Subcontractor may by notice in writing to Perle suspend the whole or any part of the work under the Subcontract.

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The Subcontractor shall lift the suspension if Perle remedies the breach but if within 28 days after the date of suspension under Clause 44.9, Perle fails to remedy the breach or, if the breach is not capable of remedy, fails to make other arrangements to the reasonable satisfaction of the Subcontractor, the Subcontractor may by notice in writing to Perle terminate the Subcontract.

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The Subcontractor shall be entitled to recover from Perle any damages incurred by the Subcontractor by reason of the suspension.

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#### 44.10 Rights of the Parties on Termination

If the Subcontract is terminated under Clause 44.4(b) or Clause 44.9 the rights and liabilities of the parties shall be the same as they would be at common law had the defaulting party repudiated the Subcontract and the other party had elected to treat the Subcontract as at an end and recover damages.

#### 44.11 Insolvency

If—

- (a) a party informs the other party in writing or creditors generally that the party is insolvent;
- (b) a party commits an act of bankruptcy;
- (c) a bankruptcy petition is presented against a party;
- (d) a party is made bankrupt;
- (e) a meeting of creditors of a party is called with a view to—
  - (i) entering a scheme of arrangement or composition with creditors; or
  - (ii) placing the party under official management;
- (f) a party enters a scheme of arrangement or composition with creditors;
- (g) a resolution is passed at a meeting of creditors to place a party under official management;
- (h) a party is placed under official management;
- (i) receiver of the property or part of the property of a party is appointed;
- (j) an application is made to a court for the winding up of a party and not stayed within 14 days;
- (k) a winding up order is made in respect of a party; and/or
- (l) execution is levied against a party by creditors, debenture holders or trustees or under a floating charge

then—

where the other party is Perle, Perle may, without giving a notice to show cause, exercise the right under Clause 44.4(a); or

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where the other party is the Subcontractor, the Subcontractor may, without giving a notice to show cause, exercise the right under Clause 44.9.

The rights given by Clause 44.11 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of contract.

#### \* 45 TERMINATION BY FRUSTRATION

If, under the law governing the Subcontract, the Subcontract is frustrated, Perle shall pay the Subcontractor—

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- (a) for work executed prior to the date of frustration, the amount which would have been payable if the Subcontract had not been frustrated and the Subcontractor had made a progress claim on the date of frustration;

- (b) the cost of materials reasonably ordered by the Subcontractor for the work under the Subcontract, which the Subcontractor is liable to accept, but only if the materials become the property of Perle upon payment;
- (c) costs reasonably incurred by the Subcontractor in the expectation of completing the whole of the work under the Subcontract and not included in any payment by Perle;
- (d) all retention moneys and security;
- (e) the reasonable cost of removal of Constructional Plant;
- (f) the reasonable cost of returning to their place of recruitment the Subcontractor's employees engaged in the work under the Subcontract at the date of frustration.

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#### **45A TERMINATION FOR CONVENIENCE**

- (a) At any time after the Subcontractor enters into this Subcontract, Perle may give the Subcontractor notice terminating this Subcontract.
- (b) Where a notice is given under clause 45A(a):
  - (i) Perle must pay the Subcontractor the amount determined by it as being:
    - (A) The value of the Work under the Subcontract executed to the date that notice is given;
    - (B) The margin for profit and overheads determined by Perle on the value of the work under the Subcontract which remains to be executed to the date that notice is given;
  - (ii) The Subcontractor must perform the work instructed by Perle;
  - (iii) Perle is entitled to take possession of such of the Subcontractor's equipment to complete the Subcontract Works if necessary, on terms acceptable to the parties.

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#### **46 TIME FOR NOTIFICATION OF CLAIMS**

##### **46.1 Subcontractor's Prescribed Notice**

Perle shall not be liable upon any claim by the Subcontractor in respect of or arising out of a breach of the Subcontract unless within 28 days after the first day upon which the Subcontractor could reasonably have been aware of the breach, the Subcontractor has given to Perle the prescribed notice.

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Perle shall not be liable upon any other claim by the Subcontractor for any extra cost or expense in respect of or arising out of any direction or approval by Perle unless within 42 days after the first day upon which the Subcontractor could reasonably have been aware of the entitlement to make the claim, the Subcontractor has given to Perle the prescribed notice.

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The prescribed notice is a notice in writing which includes particulars of all the following—

- (a) the breach, act, omission, direction, approval or circumstances on which the claim is or will be based;
- (b) the provision of the Subcontract or other basis for the claim or proposed claim; and
- (c) the quantum or likely quantum of the claim.

This Clause 46.1 shall not have any application to—

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- (i) any claim for payment to the Subcontractor of an amount or amounts forming part of the Contract Sum;
- (ii) any claim for payment for a variation directed by Perle, or to be made pursuant to Clause 12.3;
- (iii) any claim for an extension of time for Substantial Completion;
- (iv) the provisions of Clause 46.2; or
- (v) any breach of contract by the Principal or direction of the Superintendent to which Clause 47.4 applies.

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#### 46.2 Time for Disputing Main Contractor's Representative's Direction

If Perle,

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- (a) has given a direction (other than a decision under Clause 47.2) pursuant to the Subcontract; and
- (b) has served a notice in writing on each party that if a party wishes to dispute the direction then that party is required to do so under Clause 47,

the direction shall not be disputed unless a notice of dispute in accordance with Clause 47.1 is given by one party to the other party and Perle within 42 days after the date of service on that party of the notice pursuant to Clause 46.2.(b).

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### 47 DISPUTE RESOLUTION

#### 47.1 Notice of Dispute

If a dispute between the Subcontractor and Perle arises out of or in connection with the Subcontract, including a dispute concerning a direction given by Perle, then either party shall deliver by hand or send by certified mail to the other party and to Perle a notice of dispute in writing adequately identifying and providing details of the dispute.

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Notwithstanding the existence of a dispute, Perle and the Subcontractor shall continue to perform the Subcontract and subject to Clause 44, the Subcontractor shall continue with the work under the Subcontract and Perle and the Subcontractor shall continue to comply with Clause 42.1.

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A claim in tort, under statute or for restitution based on unjust enrichment or for rectification or frustration, may be included in an arbitration.

#### 47.2 Further Steps Required Before Proceedings

Within 14 days after service of a notice of dispute, the parties shall confer at least once, and if the dispute is one to which Clause 47.4 applies, at the option of either party and provided the Superintendent so agrees, in the presence of the Superintendent, to attempt to resolve the dispute and failing resolution of the dispute, to explore and if possible agree on methods of resolving the dispute by other means including (if the dispute is one to which Clause 47.4 applies) whether it is therefore to be resolved pursuant to the dispute resolution procedures of the Main Contract. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.

In the event that the dispute cannot be so resolved or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may by notice in writing delivered by hand or sent by certified mail to the other party, refer such dispute to arbitration or litigation.

### 47.3 Arbitration

Arbitration shall be effected by a single arbitrator who shall be nominated by the person named in the Annexure, or if no person is named, by the Chairperson for the time being of the Chapter of the Institute of Arbitrators Australia in the State or Territory named in the Annexure. Such arbitration shall be held in the State or Territory stated in the Annexure.

Unless the parties agree in writing, any person agreed upon by the parties to resolve the dispute pursuant to Clause 47.2 shall not be appointed as an arbitrator, nor may that person be called as a witness by either party in any proceedings.

Notwithstanding Clause 42.9, the arbitrator may award whatever interest the arbitrator considers reasonable.

If one party has overpaid the other, whether pursuant to a Main Contractor's Representative's certificate or not and whether under a mistake of law or fact, the arbitrator may order repayment together with interest.

### 47.4 Claims or Disputes Affecting the Main Contract Works

When Perle becomes aware of a breach of the Main Contract by the Principal or a direction given by the Superintendent under the Main Contract which breach or direction affects work, material or the performance of work under the Subcontract, and provided that Perle has—

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- (a) promptly served on the Subcontractor a notice setting out adequate details of the breach or sent a written copy of the Superintendent's direction, as the case may be; and
- (b) when complying with Clause 47.4(a) or previously, provided to the Subcontractor a written copy of the relevant provisions of the Main Contract relating to the notification of claims and resolution of disputes,

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Perle, by notice promptly given in writing by Perle to the Subcontractor, may require any claim or dispute to be made by the Subcontractor arising out of the breach or direction to proceed under or be resolved pursuant to the provisions of the Main Contract.

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The Subcontractor, on receipt of the latter notice given by Perle, shall—

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- (i) promptly acknowledge in writing the receipt of Perle's said notice; and
- (ii) if the Subcontractor requires Perle, on behalf of the Subcontractor, to make a claim or to serve a notice of dispute on the Principal in respect of the breach or direction, the Subcontractor shall, in writing and within a reasonable time to enable Perle to comply with the provisions of the Main Contract, request Perle either to give a prescribed notice, a copy of which shall be served either with the Subcontractor's request or within a reasonable time thereafter to enable Perle to comply with the provisions of the Main Contract relating to service thereof on the Superintendent, or, where appropriate, to serve a notice of dispute in respect of the breach or direction.

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Upon the receipt of the Subcontractor's written request given under Clause 47.4(ii), Perle shall take such steps as are reasonably necessary to proceed in accordance with the Main Contract with the Subcontractor's claim or dispute. The Subcontractor shall comply with Perle's reasonable requirements in respect to providing details of the claim or dispute.

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Deleted: the Main Contractor

The Subcontractor shall indemnify Perle, to the extent of the Subcontractor's interest in respect of the claim or dispute, against all costs and expenses that may reasonably be incurred by Perle by reason of complying with the request of the Subcontractor given under

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Clause 47.4(ii). The Subcontractor shall, with the request, lodge with Perle, reasonable cash or other security against such costs and expenses and any moneys Perle may recover shall be for the benefit of the Subcontractor to the extent of the Subcontractor's interest in the claim or dispute.

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If Perle is in breach of any provision of the Main Contract or of this Clause 47.4 relating to the notification of the claim or in proceeding with the dispute and the breach was not due to any act or omission of the Subcontractor, nothing in Clause 47.4 shall prevent the Subcontractor from thereafter proceeding pursuant to Clause 47.1 and 47.2 as if the dispute was not a dispute to which the provisions of Clause 47.4 apply.

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#### **47.5 Summary or Urgent Relief**

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under Clause 42 or to seek urgent injunctive or declaratory relief in respect of a dispute under Clause 47 or any matter arising under the Subcontract.

#### **48 WAIVER OF CONDITIONS**

Except as provided at law or in equity or elsewhere in the Subcontract, none of the terms of the Subcontract shall be varied, waived, discharged or released, except with the prior consent in writing of Perle in each instance.

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#### **49 SERVICES AND FACILITIES**

Services and facilities shall be provided as stated in the Annexure.

ANNEXURE to the Australian Standard  
Subcontract conditions

# PART A

This Annexure shall be issued as part of the tender documents for the Subcontract and is to be attached to the Subcontract Conditions and shall be read as part of the Subcontract.

The law applicable is that of the State or Territory of:  
(Clause 1)

NEW SOUTH WALES

Payments under the Contract shall be made at:  
(Clause 1)

The Principal:  
(Clause 2)

(A.C.N. )

The address of the Principal:

The Superintendent:  
(Clause 2)

The address of the Superintendent:

The Date or period for Substantial Completion:  
(Clause 2 and Clause 35.2)

Limits of accuracy applying to quantities for which Perle accepted a rate or rates in the Subcontract:  
(Clause 3.3(b))

Deleted: The Main Contractor:¶  
(Clause 2)¶

Deleted: . . .  
(A.C.N. )

Deleted: The address of the Main Contractor:

Deleted: . . .

Deleted: The Main Contractor's Representative:¶  
(Clause 2)¶

Deleted: . . .

Deleted: The address of the Main Contractor's Representative:

Deleted: . . .

Deleted: the Main Contractor

Deleted: Bill of Quantities—the alternative applying:¶  
(Clause 4.1)

Deleted: . . .

Deleted: The time for lodgment of the priced copy of the Bill of Quantities:¶  
(Clause 4.2)

Deleted: . . .

Deleted: 1091446/v1

# Subcontractor shall provide security in the amount of: .....  
(Clause 5.2)

**Deleted:** # . Main Contractor shall provide security in the amount of:¶  
(Clause 5.2)

**Deleted:** .

# The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security: .....  
(Clause 5.5)

The percentage to which the entitlement to security and retention moneys is reduced: .....  
(Clause 5.7)

**Deleted:** Interest on retention moneys and security—the alternative applying:¶  
(Clause 5.9)

**Deleted:** .

The number of copies to be supplied by Perle: .....  
(Clause 8.3)

The number of copies to be supplied by the Subcontractor: .....  
(Clause 8.4)

**Deleted:** the Main Contractor

The time within which Perle's Representative must give a direction as to the suitability of documents: .....  
(Clause 8.4(c))

**Deleted:** the Main Contractor

---

# Where there are Separable Portions, these items shall be deleted.



Work which cannot be subcontracted without approval: (Clause 9.2) .....

The amount or percentage for profit and attendance: (Clause 11(b)) .....

The amount or percentage for profit and attendance: (Clause 11(c)) .....

The amount of Public Liability Insurance under alternative 2 shall be not less than: \$20,000,000.00 (twenty million dollars) (Clause 19)

Deleted: Public Liability insurance—the alternative applying: (Clause 19) Deleted:

The time for giving access to the Site: (Clause 27.1) .....

# Liquidated Damages per day: (Clause 35.6(a)) .....

# Limit on Liquidated Damages under Clause 35.6(a) (Clause 35.7) .....

# Limit on Damages under Clause 35.6(b): (Clause 35.7) .....

Deleted: # Bonus per day for early Substantial Completion: (Clause 35.8) Deleted: Deleted: # Limit of bonus: (Clause 35.8) Deleted:

# Where there are Separable Portions, these items shall be deleted.

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# Extra costs for Delay or Disruption:  
(Clause 36)

Event

.....  
.....  
.....  
.....  
.....

# The Defects Liability Period:  
(This entry is to be completed only if the date  
of expiry of the Defects Liability Period is to  
be different from that contained in the Main  
Contract)  
(Clause 37)

.....

The charge for overheads, profit, etc. for  
Daywork:  
(Clause 41(f))

.....

Times for payment claims:  
(Clause 42.1)

.....

Unfixed plant and materials for which payment  
claims may be made notwithstanding that they are  
not incorporated in the Works  
(Clause 42.1(ii)).

.....  
.....  
.....

Retention Moneys on:  
(Clause 42.3)

- (a) work incorporated in the Works and any work or items for which a different amount of retention is not provided .....% of the value until .....% of the Subcontract Sum is held;
- (b) items on Site but not yet incorporated in the Works .....%;
- (c) items off Site but in Australia .....%;
- (d) items not in Australia .....%;
- (e) disbursements incurred by the Subcontractor for customs duties, freight, marine insurance, primage, landing and transport in respect of the work under the Subcontract .....%;

---

# Where there are Separable Portions, these items shall be deleted.

The rate of interest on overdue payments:  
(Clause 42.9) .....

The person to nominate an arbitrator:  
(Clause 47.3) .....

Location of arbitration: NEW SOUTH WALES

**Deleted:** Unfixed Plant and Materials—the alternative applying:¶  
(Clause 42.4)¶

**Deleted:** .

**Deleted:** The delay in giving access to sufficient of the Site which shall be a substantial breach:¶  
(Clause 44.7(d))

**Deleted:** .

**Deleted:** 1091446/v1

SERVICES AND FACILITIES ON SITE  
(Clause 49)

A. ELECTRICITY

(i) Installation of 240 Volts <sup>will</sup> ~~will not~~ be supplied on Site by Perle at the following points: ..... **Deleted:** the Main Contractor

(ii) Installation of 415 Volts <sup>will</sup> ~~will not~~ be supplied on Site by Perle at the following points: ..... **Deleted:** the Main Contractor

(iii) Cost of Electricity supplied will be borne by the \*Main Contractor  
\*Subcontractor

(iv) Cost of connection to the power supply shall be borne by the \*Main Contractor  
\*Subcontractor

(v) Supply of leads will be by \*Main Contractor  
\*Subcontractor

C. SCAFFOLDING

(i) Initial supply and erection and final removal of scaffold will be carried out by the \*Main Contractor  
\*Subcontractor

(ii) Adjustment and moving of scaffold and/or planks will be carried out by the \*Main Contractor  
\*Subcontractor

(iii) Cost of hire of scaffolding will be borne by the \*Main Contractor  
\*Subcontractor

C. HOISTING (INCLUDING CRANAGE)

(i) Hoisting facilities including services by necessary operators will be provided by the \*Subcontractor **Deleted:** \*Main Contractor

(ii) Labour to handle materials to be hoisted or lifted will be supplied by the \*Subcontractor **Deleted:** \*Main Contractor

..... **Deleted:** (iii)  
**Deleted:** If by Main Contractor materials shall be handled from .....  
 ..... to .....  
 ..... **Deleted:** (iv)  
**Deleted:** Charge for hoisting and crange facilities (if any) to be at following rates: .....

\* Delete as appropriate.

D. Constructional plant to be supplied or made available by main contractor for use by subcontractor as follows: .....

.....

.....

This plant will be supplied or made available in good order and condition for use by the Subcontractor in carrying out the work under the Subcontract and, if supplied, shall be returned on the following date or dates: .....

.....

.....

NOTE: The cost of cleaning and/or repair other than due to normal wear and tear will be charged to the Subcontractor.

E. TELEPHONES

If a telephone service is installed by Perle it will be available for the Subcontractor who will be charged for outward calls. Deleted: the Main Contractor

F. GENERAL

- (i) Space for erection of Subcontractor's sheds will be provided by Main Contractor
- (ii) Lavatory accommodation and washing facilities will be provided by Main Contractor
- (iii) Water and Boiling Water for all reasonable purposes necessary under the Subcontract will be provided by Main Contractor

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### ¶ Separable Portions

- 1. Separable Portion: .....
- 2. Subcontractor shall provide security in the amount of: .....
- (Clause 5.2)
- Main Contractor shall provide security in the amount of: .....
- (Clause 5.2)
- The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security: .....
- (Clause 5.5)
- 3. The Date for Substantial Completion: .....
- (Clause 35.2)
- 4. Liquidated Damages per day: .....
- (Clause 35.6)
- 5. Limit on: .....
- (b) Liquidated Damages under Clause 35.6(a): .....
- (c) Damages under Clause 35.6(b): .....
- (Clause 35.7)

- 8. Extra Costs for Delay or Disruption: .....
- (Clause 36)
- ..... Event .....
- .....
- .....
- .....
- 9. Defects Liability Period (This entry is to be completed only if the date of expiry of the Defects Liability Period is to be different from that contained in the Main Contract): .....
- (Clause 37)

**Deleted: 6.**

**Deleted:** Bonus per day for early Substantial Completion:¶ (Clause 35.8)

**Deleted:** .

**Deleted: 7.**

**Deleted:** Limit of bonus: . (Clause 35.8)

**Deleted:** .

¶ Use this part of the Annexure where there are Separable Portions and ensure that the description of the Separable Portions covers all the work under the Subcontract. Make a separate column for each Separable Portion.

APPROVED FORM OF UNCONDITIONAL UNDERTAKING

(Clause 5.3)

At the request of ..... ('the Subcontractor') and in consideration of ..... ('Perle') accepting this undertaking in respect of the contract for ..... (Identification of Work)

Deleted: the Main Contractor

('the Financial Institution') unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Perle to a maximum aggregate sum of \$ .....

Deleted: the Main Contractor

The undertaking is to continue until notification has been received from Perle that the sum is no longer required by Perle or until this undertaking is returned to the Financial Institution or until payment to Perle by the Financial Institution of the whole of the sum or such part as Perle may require.

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Deleted: the Main Contractor

Deleted: the Main Contractor

Deleted: the Main Contractor

Should the Financial Institution be notified in writing, purporting to be signed by ..... for and on behalf of Perle that Perle desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to Perle forthwith without reference to the Subcontractor and notwithstanding any notice given by the Subcontractor not to pay same.

Deleted: the Main Contractor

Deleted: the Main Contractor

Deleted: the Main Contractor

Provided always that the Financial Institution may at any time without being required so to do pay to Perle the sum of \$ ..... (.....)

Deleted: the Main Contractor

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by Perle and thereupon the liability of the Financial Institution hereunder shall immediately cease.

Deleted: the Main Contractor

DATED at.....this.....day of.....19.....

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**ANNEXURE to the Australian Standard  
Subcontract conditions**

# PART B

NOTE: This table is intended for easy reference to clauses that may have been deleted, amended added to Australian Standard 2545—1993.

1. The following Clauses have been deleted from the Subcontract Conditions in AS 2545—1993:

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

2. The following Clauses have been amended and differ from the corresponding Clauses in AS 2545—1993:

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

3. The following Clauses have been added to those of AS 2545—1993:

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

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## CERTIFICATE OF SUBSTANTIAL COMPLETION

(Clause 42.5)

**Title of Subcontract:**

.....  
.....  
.....  
.....

I am of the opinion that Substantial Completion of\* .....

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

was reached on .....  
..... (Date of Substantial Completion)

Signed: .....  
Main Contractor's Representative

Date .....

---

\* Insert 'the Works' or, where there are Separable Portions, the description of the Separable Portion.

# AUSTRALIAN STANDARD GENERAL CONDITIONS OF TENDERING AND FORM OF TENDER

1 Tender documents, upon which the tenderer is to tender are:

.....  
.....  
.....  
.....  
.....  
.....  
.....

The tender documents should be specifically listed in each case.)

2 Tenderers must complete the Tender Form provided and lodge it with any accompanying schedules or information in a sealed envelope endorsed with the Subcontract number at the place and by the time stated in the invitation to tender.

3 Perle is not bound to accept the lowest or any tender.

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**TENDER FORM**

Name of person,  
firm or company  
tendering  
USE  
BLOCK  
LETTERS

.....  
(A.C.N. .... )  
.....

address

of .....  
hereby tender(s) to perform the work for:

Description  
of works

.....  
.....  
..... (Contract No. ....) in  
accordance with the following Documents:

List Documents:

.....  
.....  
.....  
.....  
.....  
.....  
.....

(The documents on  
which the tender is  
based should be  
specifically listed)

When the tender documents  
provide that the tender is  
to a lump sum only, (2)  
does not apply.  
When the tender documents  
provide that the tender is  
to be a Schedule of Rates  
only, (1) does not apply.

- 1 For the lump sum of .....  
(\$ .....); and .....
- 2 At the rates in the attached Schedule of Rates

If the tenderer is a firm the  
full names of the individual  
members of the firm must  
be stated here.

.....  
DATED this ..... day of ..... 19 .....  
.....

Insert date.

Signature of Tenderer

FORM OF FORMAL INSTRUMENT OF AGREEMENT FOR SUBCONTRACT

AGREEMENT made the ... day of ... 19

BETWEEN ... of (address) ... (A.C.N. ...) (called the Subcontractor)

AND ... of (address) ... (A.C.N. ...) (called Perle)

Deleted: the Main Contractor

IT IS AGREED that the annexed documents marked as follows:

Table with 2 columns: TITLE, MARK. Rows include Tender, Letter of acceptance, AS 2545—1993 Subcontract conditions and Annexure, Specification, Drawing Numbers, and Other Documents.

(Use extra sheets if necessary to list all documents and drawings)

...shall together comprise the contract between the parties AND if the Subcontractor or Perle is two or more persons then they shall be bound jointly and severally.

Deleted: the Main Contractor

Signed by the Subcontractor

Deleted: the Main Contractor

Signed by Perle

Deleted: 1091446/v1

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<i>Clause</i>	<i>Clause</i>
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### **Standards Australia**

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The Main Contractor shall ensure that at all times there is a Main Contractor's Representative and that in the exercise of the functions of the Main Contractor's Representative under the Subcontract, the Main Contractor's Representative—

acts honestly and fairly;

acts within the time prescribed under the Subcontract or where no time is prescribed, within a reasonable time; and

arrives at a reasonable measure or value of work, quantities or time.

If, pursuant to a provision of the Subcontract enabling the Main Contractor's Representative to give directions, the Main Contractor's Representative gives a direction, the Subcontractor shall comply with the direction.

In Clause 23 'direction' includes agreement, approval, authorization, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

Except where the Subcontract otherwise provides, a direction may be given orally but the Main Contractor's Representative shall as soon as practicable confirm it in writing.

If the Subcontractor in writing requests the Main Contractor's Representative to confirm an oral direction, the Subcontractor shall not be bound to comply with the direction until the Main Contractor's Representative confirms it in writing.

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The Subcontractor shall personally superintend the execution of the work under the Subcontract or, at all times during which any activities relating to the execution of the work under the Subcontract are taking place, have a competent representative present on the Site and, if required by the Main Contractor's Representative, at other places at which activities relating to the execution of the work under the Subcontract are taking place.

The Subcontractor shall forthwith notify the Main Contractor's Representative in writing of the name of the representative and of any subsequent changes. Any direction defined in Clause 23 shall—

if it relates to the execution of work on the Site and is given to the representative on the Site; or

if it relates to the execution of work at any other place and is given to the representative at the other place,

be deemed to have been given to the Subcontractor.

Matters within the knowledge of a representative of the Subcontractor shall be deemed to be within the knowledge of the Subcontractor.

If the Main Contractor's Representative makes a reasonable objection to the appointment of a representative, the Subcontractor shall terminate the appointment and appoint another representative.

## CONTROL OF SUBCONTRACTOR'S EMPLOYEES AND SECONDARY SUBCONTRACTORS

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The Main Contractor's Representative may direct the Subcontractor to have removed from the Site or from any activity connected with the work under the Subcontract, within such time as the Main Contractor's Representative directs, any person employed in connection with the work under the Subcontract who, in the opinion of the Main Contractor's Representative, is guilty of misconduct or is incompetent or negligent. The person shall not thereafter be employed on the Site or on activities connected with the work under the Subcontract without the prior written approval of the Main Contractor's Representative.

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the Main Contractor, to the Main Contractor's Representative

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For the purposes of Clause 33, a 'construction program' is a statement in writing showing the dates by which, or the times within which, the various stages or parts of the work under the Subcontract are to be executed or completed.

A construction program shall not affect rights or obligations in Clause 33.1.

The Subcontractor may voluntarily furnish to the Main Contractor's Representative a construction program.

The Main Contractor's Representative may direct the Subcontractor to furnish to the Main Contractor's Representative a construction program within the time and in the form directed by the Main Contractor's Representative.

The Subcontractor shall not, without reasonable cause, depart from—

a construction program included in the Subcontract; or

a construction program furnished to the Main Contractor's Representative.

The furnishing of a construction program or of a further construction program shall not relieve the Subcontractor of any obligations under the Subcontract including the obligation to not, without reasonable cause, depart from an earlier construction program.

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Where the Subcontractor has been granted an extension of time under Clause 35.5 for any delay caused by any of the events referred to in Clause 35.5 (b)(i), the Main Contractor shall pay to the Subcontractor such extra costs as are necessarily incurred by the Subcontractor by reason of the delay.

Where the Subcontractor has been granted an extension of time under Clause 35.5 for any delay caused by any other event for which payment of extra costs for delay and disruption is provided for in the Annexure or elsewhere in the Subcontract, the Main Contractor shall

pay to the Subcontractor such extra costs as are necessarily incurred by the Contractor by reason of the delay.

Nothing in Clause 36 shall—

oblige the Main Contractor to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Subcontract;  
or

limit the Main Contractor's liability for damages for breach of contract.

Notwithstanding anything hereinbefore provided in Clause 36, the Main Contractor's liability to pay extra costs for delay or disruption caused by the Principal, the Superintendent or the employees, consultants, other contractors or agents of either of them or to pay damages for breach of contract where such breach is caused by breach of the Main Contract by the Principal shall only be to the extent to which the extra costs incurred or damages suffered by the Subcontractor have been recovered by the Main Contractor from the Principal or included in the reimbursement to the Main Contractor by the Principal by reason of delay in the progress of the Main Contract Works.

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At the times for payment claims stated in the Annexure and upon issue of a Certificate of Substantial Completion and within the time prescribed by Clause 42.7, the Subcontractor shall deliver to the Main Contractor's Representative claims for payment supported by evidence of the amount due to the Subcontractor and such information as the Main Contractor's Representative may reasonably require. Claims for payment shall include the value of work carried out by the Subcontractor in the performance of the Subcontract to that time together with all amounts then due to the Subcontractor arising out of or in connection with the Subcontract or for any alleged breach thereof.

Within 21 days after receipt of a claim for payment, the Main Contractor's Representative shall issue to the Main Contractor and to the Subcontractor a payment certificate stating the payment which, in the opinion of the Main Contractor's Representative, is to be made by the Main Contractor to the Subcontractor or by the Subcontractor to the Main Contractor. The Main Contractor's Representative shall set out in the certificate the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Subcontractor, the reasons for the difference. The Main Contractor's Representative shall allow in any payment certificate issued pursuant to this Clause 42.1 or any Final Certificate issued pursuant to Clause 42.8 or a Certificate issued pursuant to Clause 44.6, amounts paid under the Subcontract and amounts otherwise due from the Main Contractor to the Subcontractor and/or due from the Subcontractor to the Main Contractor arising out of or in connection with the Subcontract including but not limited to any amount due or to be credited under any other provisions of the Subcontract.

If the Subcontractor fails to make a claim for payment under Clause 42.1, the Main Contractor's Representative may nevertheless issue a payment certificate.

Subject to the provisions of the Subcontract, within 35 days after receipt by the Main Contractor's Representative of a claim for payment or within 14 days of issue by the Main Contractor's Representative of the Main Contractor's Representative's payment certificate, whichever is the earlier, the Main Contractor shall pay to the Subcontractor or the Subcontractor shall pay to the Main Contractor, as the case may be, an amount not less than the amount shown in the Certificate as due to the Subcontractor or to the Main Contractor

as the case may be, or if no payment certificate has been issued, the Main Contractor shall pay the amount of the Subcontractor's claim. A payment made pursuant to this Clause shall not prejudice the right of either party to dispute under Clause 47 whether the amount so paid is the amount properly due and payable and on determination (whether under Clause 47 or as otherwise agreed) of the amount so properly due and payable, the Main Contractor or Subcontractor, as the case may be, shall be liable to pay the difference between the amount of such payment and the amount so properly due and payable.

Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided by Clause 42.8.

Notwithstanding Clause 42.4, the Main Contractor shall be obliged to pay for an item of unfixed plant and materials where that item is—

- (i) to be imported into Australia, provided the Subcontractor has given the Main Contractor a clean on board bill of lading or its equivalent, drawn or endorsed to the order of the Main Contractor and, where appropriate, a customs invoice for the item; or
- (ii) listed in the Annexure and which is not an item to be imported into Australia, provided the Subcontractor establishes to the satisfaction of the Main Contractor's Representative that the Subcontractor has paid for the item, and the item is properly stored, labelled the property of the Main Contractor and adequately protected.

Upon payment to the Subcontractor of the amount which includes the value of the item, the item shall be the property of the Main Contractor free of any lien or charge.

**Except as provided in the Subcontract, the Main Contractor shall not be obliged to pay for any item of unfixed plant and materials which is not incorporated in the Works.**

#### *Alternative 2*

If the Subcontractor claims payment for plant or materials intended for incorporation in the Works but not incorporated the Main Contractor shall not be obliged to make payment for such plant or materials but the Main Contractor may make payment, if the Subcontractor establishes to the satisfaction of the Main Contractor's Representative that—

such plant or materials have reasonably but not prematurely been delivered to or adjacent to the Site;

ownership of the plant and materials will pass to the Main Contractor upon the making of the payment claimed; and

such plant or materials are properly stored, labelled the property of the Main Contractor and adequately protected.

Upon payment to the Subcontractor of the amount claimed, the plant or materials the subject of the claim shall be the property of the Main Contractor free of any lien or charge.

#### *Alternative 3*

The Subcontractor shall not be entitled to payment for plant or materials not incorporated in the Works.