
臨時建造業統籌委員會

Provisional Construction Industry Co-ordination Board

基本工種標準自選分包合約指引

GUIDELINES ON STANDARD FORMS OF DOMESTIC SUBCONTRACTS FOR BASIC TRADES

2005年5月
May 2005

Table of Contents

目 錄

	頁數
	Page
1. 引言 Introduction	1
2. 定義 Definitions	2
3. 基本資料 Basic Information	2
4. 分包商的一般責任 General Obligations of the Subcontractor	2
5. 承建商的一般責任 General Obligations of the Contractor	3
6. 動工與完工 Commencement and Completion	4
7. 延長竣工期 Extension of Time	5
8. 工程延誤 Delay	5
9. 指示與變更 Instructions and Variations	6
10. 通知與索償 Notices and Claims	6
11. 物料與機械的產權 Property in Material and Plant	7
12. 彌償 Indemnity	7
13. 保養與保修 Maintenance and Defect Liability	7
14. 保險 Insurance	8
15. 付款 Payment	8
16. 終止總承包合約 Determination of the Main Contract	9
17. 承建商終止合約 Determination by the Contractor	9
18. 分包商終止合約 Determination by the Subcontractor	10
19. 爭議 Disputes	11
20. 履約保證 Bond	11
21. 證明書 Certificates	12
22. 規管法例 Governing Law	12

1. 引言

1.1. 臨時建造業統籌委員會在 2003 年 3 月頒布《工程分判指引》，臚列良好工程分判作業所應有的基本原則，並獲業界廣泛支持。為進一步推廣上述原則，我們編寫了這份指引，鼓勵業界訂立標準自選分包合約，供建造業基本工種使用。標準合約的出現，將有助改善現時在訂立分包合約時只採用不完備的書面合約或不採用書面合約的一般做法。

1.2. 與基本工種不同，在專門工種採用書面分包合約已是標準的做法。例如，建築署的建築合約內負責機電工程的專門承建商，便是透過香港建造商會出版的《標準自選分包合約》約聘用。我們希望如現有的標準合約在將來作出修改時，本指引可以作為業界公認的公平合約條款的基準。

1.3. 以下段落列出建議在基本工種標準自選分包合約內加入的各項基本條文。在以下段落：

- (a) “承建商”指總承建商或把其工程再行分判的分包商(主要分包商)；
- (b) “總承包合約”指聘用人與總承建商所簽訂的合約；
- (c) “分包合約”指把總承包合約或另一分包合約(主要分包合約)中的工程再度分判的合約。而“分包商”一詞須根據這定義闡釋；以及
- (d) “分包工程”指包括在分包合約內的工程。

1. Introduction

1.1. There is general industry support for the Guidelines on Subcontracting Practice, promulgated by the Provisional Construction Industry Co-ordination Board in March 2003 to document basic principles of good subcontracting practices. To promote wider adoption of these principles, these guidelines are compiled to encourage the development of standard forms of subcontracts for basic trades. The availability of standard forms will help improve the common practice of entering into subcontracts with rudimentary or no written contract documents.

1.2. Unlike basic trades, the use of written subcontracts for specialist trades is a standard practice. For instance, the Standard Form of Domestic Sub-contract published by the Hong Kong Construction Association is used for engaging specialist subcontractors for executing E&M works in the building contracts of Architectural Services Department. We hope that, if the existing standard forms are revised in future, the guidelines will serve as the benchmark of fair contract terms recognized by the industry.

1.3. A list of fundamental provisions recommended for inclusion in the standard forms of domestic subcontracts for basic trades is set out in the following sections, in which –

- (a) “Contractor” means the Main Contractor or a subcontractor who further subcontract his works (the Principal Subcontractor);
- (b) “Main Contract” means the contract between the Employer and the Main Contractor;
- (c) “Subcontract” means a domestic contract for subcontracting the works of a Main Contract or another subcontract (the Principal Subcontract). The term “Subcontractor” should be interpreted accordingly; and
- (d) “Subcontract Works” means works included in a subcontract.

2. 定義

2.1. 分包合約內重要的措辭用語，須與總承包合約一致，並應予明確的定義，以盡量避免含糊不清。重要詞語可包括承建商、聘用人、總承包合約、總承建商、工期、工地、分包合約、分包商及分包工程。

3. 基本資料

3.1. 分包合約所包括的文件，須予清楚界定。分包合約應載有基本資料，協助分包商了解各分包合約的連鎖關係，並可追溯至總承包合約，從而使分包商更好地了解整項工程。這些資料應包括：

- (a) 締約各方的名稱及角色(例如：承建商、分包商等)；
- (b) 總承包合約的相關資料，並在可行情況下包括圖則、規格及與分包合約相關的條款；以及
- (c) 聘用人及總承建商的詳情和名稱。

4. 分包商的一般責任

4.1. 為確保良好表現並且避免無增值作用的分判，須讓分包商充分了解他們在以下各主要範疇的一般責任：

- (a) 在進行、完成及保養分包工程三方面，所須承擔的責任和工作範圍；

2. Definitions

2.1. The meanings of essential words and expressions used in a Subcontract should be consistent with the terminology of the Main Contract and should be clearly defined to avoid unnecessary ambiguities. Essential terms may include Contractor, Employer, Main Contract, Main Contractor, Period for Completion, Site, Subcontract, Subcontractor and Subcontract Works.

3. Basic Information

3.1. The documents forming a Subcontract should be clearly defined. Furthermore, the Subcontract should contain basic information that may help trace the chain of subcontracts up to the Main Contract and enable the Subcontractor to have a better understanding of the project. Such information should include –

- (a) names of contracting parties and their positions (e.g. Contractor, Subcontractor, etc.);
- (b) relevant information on the Main Contract, including drawings, specifications and provisions of relevance to the Subcontract wherever practicable; and
- (c) names and details of Employer and Main Contractor.

4. General Obligations of the Subcontractor

4.1. To ensure good performance and to eliminate non value-adding subcontracting, the Subcontractor should be made fully aware of its general obligations covering the following major aspects –

- (a) scope and responsibility for execution, completion and maintenance of the Subcontract Works;

- | | |
|---|---|
| (b) 設計上的規定(如有的話)； | (b) design requirements (if any); |
| (c) 禁止將整項分包工程轉判； | (c) prohibition of total subletting of the Subcontract Works; |
| (d) 事前須獲批准或書面同意(但承建商不得無理拒絕批准)，才能轉讓合約或進一步大量轉判分包工程； | (d) need to obtain prior approval or written consent (which should not be unreasonably withheld) for assignment of the Subcontract and further substantial subletting of the Subcontract Works; |
| (e) 總承包合約內適用於分包合約的相關條款； | (e) relevant terms of the Main Contract applicable to the Subcontract; |
| (f) 備存準確齊全的出勤和工資記錄，包括確認已支付工資的記錄，如發薪記錄及收據等； | (f) making available a complete set of accurate attendance and wage records including relevant records confirming payment of wages to workers (such as payroll records and receipts); |
| (g) 遵守適用於分包工程的法定規定，包括向承建商提供必需的支援及繳交法定徵款和收費的責任； | (g) compliance with statutory requirements applicable to the Subcontract Works, including giving necessary support to the Contractor in this regard and responsibilities for paying levies and statutory charges; |
| (h) 遵守獲業界認可的行為操守(例如香港建造商會所出版的專業操守)的責任； | (h) obligation to follow ethical practices recognized by the industry such as the Code of Ethics published by the Hong Kong Construction Association; |
| (i) 使用承建商所提供的工地設施須付的款項； | (i) paying for the use of site facilities provided by the Contractor; |
| (j) 遵守承建商的工地安全及環保政策；以及 | (j) complying with the Contractor's safety and environmental policies; and |
| (k) 從速提供每日完成工程的記錄。 | (k) providing prompt daily records of works carried out. |

5. 承建商的一般責任

5.1. 為免出現不必要的誤會和合約糾紛，分包合約應清楚列明承建商在以下各主要範疇的一般責任：

5. General Obligations of the Contractor

5.1. To help avoid unnecessary misunderstanding and contractual disputes, the general obligations of the Contractor should also be clearly listed covering the following aspects –

- | | |
|---|---|
| <p>(a) 承建商對分包工程所須承擔的義務和法律責任；</p> <p>(b) 承建商向分包商提供或與分包商共用的工地、出入口、建築機械、設施及一般支援；</p> <p>(c) 承建商對分包工程的照管(因分包商疏忽或違約所引致的責任除外)；</p> <p>(d) 向分包商適時提供資料以便施工；以及</p> <p>(e) 為分包商提供物料，包括供應的範圍，可以容許的損耗及運送時間。</p> | <p>(a) obligations and liabilities assumed by the Contractor with respect to any of the Subcontract Works;</p> <p>(b) working site, access, construction plant, facilities, and general attendance to be provided for or shared with the Subcontractor;</p> <p>(c) care of the Subcontract Works except for those caused by acts of neglect or default on the part of the Subcontractor;</p> <p>(d) providing timely information to the Subcontractor to facilitate execution of works; and</p> <p>(e) supplying of materials for use of the Subcontractor including the scope of the supply, allowance for wastage and schedule of delivery.</p> |
|---|---|

6. 動工與完工

6.1. 為求清楚明確，分包合約應註明分包工程的動工日期，並由承建商以書面確認。

6.2. 也可另訂條文規定分包商如接到承建商的書面指示，便須在指定的合理時間內，進入工地並開始進行分包工程。

6.3. 分包合約亦應註明分包工程的完工日期或工期，並由承建商以書面確認。

6. Commencement and Completion

6.1. For the sake of clarity, the date for commencement for execution of the Subcontract Works should be stipulated and confirmed in writing by the Contractor.

6.2. Alternatively, there may be provisions that upon receipt of the Contractor's written instructions, the Subcontractor should, within a reasonable period as specified, enter the Site and commence the Subcontract Works.

6.3. The date for completion, or the Period for Completion, for the Subcontract Works should also be stated and confirmed in writing by the Contractor.

7. 延長竣工期

7.1. 分包商如在訂明的合理時間內給予書面通知，應有權在分包合約列明的情況下獲延長竣工期，例如：

- (a) 任何導致分包工程延誤，而可以在總承包合約下獲得延長竣工期的原因；
- (b) 承建商以書面指示將分包工程變更、暫停或修改施工時間表；或
- (c) 承建商違反分包合約內所臚列的事項，以致工程延誤。

7.2. 應按照分包商提出或締約雙方同意的理據，在合理時間內就延長竣工期作出評估。

8. 工程延誤

8.1. 分包合約應清楚註明會導致分包商被扣減預先算定損害賠償金額的情況，及估計該項金額的方法。

8.2. 如分包工程出現延誤，承辦商應盡快以書面確認分包商須支付的算定損害賠償金額。

8.3. 分包合約亦可訂明，如分包商能提前完成分包工程，則可獲發獎金。

7. Extension of Time

7.1. Provided that written notice is given within a reasonable period to be specified, the Subcontractor should be entitled to extension of time under the circumstances as defined in Subcontract, such as –

- (a) any cause of delay to the execution of the Subcontract Works for which an extension of time for completion is permitted under the Main Contract;
- (b) variation, suspension or revised programming of the Subcontract Works ordered in writing by the Contractor; or
- (c) delay caused by breach of the Contractor as detailed in the Subcontract.

7.2. Assessment of extension of time should be made within reasonable time and subject to justifications to be provided by the Subcontractor or agreed by both contracting parties.

8. Delay

8.1. The circumstances under which the Subcontractor may be liable to deduction of liquidated damages, and the method for assessment of liquidated damages, should be clearly stated.

8.2. The Contractor should confirm in writing as soon as possible the amount of liquidated damages payable by the Subcontractor in the event of delay to the completion of the Subcontract Works.

8.3. A Subcontract may also include provisions for awarding bonus to the Subcontractor for early completion of the Subcontract Works.

9. 指示與變更

9.1. 承建商可在合乎分包合約的規限下，發出書面指示或被承建商或分包商在其後以書面確認的口頭指示，指令分包商更改分包工程，包括增加、修改及刪除有關的工程。分包商須在合理時間內遵守承建商的指示，並只可以按其授權對分包工程作出變更。

9.2. 分包合約應訂明評估工程變更的造價的基本規則及時限（如適用）。評估變更工程時可以：

- (a) 對被刪除或性質相類的工程，可參考分包合約上分項的單價及價格；
- (b) 在合理情況下，根據分包合約所列的單價及價格作出公平的估價；或
- (c) 按承建商發出的書面指令，以日工計算。

9.3. 在可行情況下，承建商應在合理時間內確定變更工程的估價，或應預先支付部份款項，待作出最終訂價後再作出所需的調整。

10. 通知與索償

10.1. 分包商應在合理時間內以書面發出申索通知書，記錄存案，及提供詳細資料以便評估申索。提交申索通知的時限及因未能及時提交通知而喪失申索的權利的細則，應按總承包合約相關條文清晰訂明。

9. Instructions and Variations

9.1. Subject to any limitations in the Subcontract, the Contractor may instruct variations to the Subcontract Works including addition, modification or omissions through written instructions or oral instructions confirmed subsequently in writing either by the Contractor or Subcontractor. The Subcontractor should comply with these instructions within reasonable time and should only make variations authorized by the Contractor.

9.2. Basic rules as well as timeframe (if applicable) for valuation of variations should be given. Variations may be assessed –

- (a) by reference to the rates and prices in the Subcontract for work omitted or of similar character;
- (b) by fair valuation using the rates and prices in the Subcontract as the basis for determination so far as may be reasonable; or
- (c) on a daywork basis if so ordered in writing by the Contractor.

9.3. Wherever practicable, the Contractor should confirm the valuation of variations within a reasonable period. Alternatively, on-account payment should be made subject to adjustment (if any) in final valuation.

10. Notices and Claims

10.1. The Subcontractor should give written notice of claims, keep records and submit particulars within a reasonable period to facilitate claim assessment. The timeframe for submitting notices for claims and any time-bars resulting from late submissions should be clearly defined with reference to similar provisions in the Main Contract.

10.2. 承建商須在收到分包商所提交的理據和詳情後，在合理時間內就申索作出回應。

10.2. The Contractor should respond to claims within reasonable time after receiving the justifications and particulars from the Subcontractor.

11. 物料與機械的產權

11. Property in Material and Plant

11.1. 分包合約應參照總承包合約的同類條文，就分包商為分包工程所提供的建築機械、臨時工程、物料及物件等的產權移交作出清晰的規定。

11.1. The transfer of property in any construction plant, temporary works, materials or things provided by the Subcontractor in connection with the Subcontract Works should be clearly stated with reference to similar provisions in the Main Contract.

12. 彌償

12. Indemnity

12.1. 分包合約應說明承建商與分包商各自的彌償範圍。作為一般原則，個別分包商所提供的彌償範圍應顧及其分包合約造價和工程性質，而所有相關分包商的彌償責任總和應與總承包合約或主要分包合約內所規定的承建商彌償責任相稱，並應顧及承建商所涉的行政開支。

12.1. The extent of indemnity to be provided by the Contractor and the Subcontractor respectively should be specified. As a general rule, the extent of the indemnities to be provided by individual Subcontractors should take into account the value of their Subcontracts and the nature of the works, while the total liabilities of all concerned Subcontractors should be commensurate with that imposed on the Contractor under the Main Contract or Principal Subcontract taking into account relevant administrative expenses incurred by the Contractor.

13. 保養與保修

13. Maintenance and Defects Liability

13.1. 分包合約須訂明如何確定保養期的開始日期及其期限。於保養期內，分包商須就分包工程進行保養及矯正建造缺陷（正常損耗除外）。在可行情況下，有關期限應合乎分包工程的的類別。

13.1. The Subcontract should specify the duration and the method of ascertaining the commencement date of the maintenance or defects liability period during which the Subcontractor is required to maintain and rectify defects in the Subcontract Works (fair wear and tear excepted). Wherever practicable, the periods should be appropriate for the type of Subcontract Works.

14. 保險

14.1. 分包合約應清楚界定購買保險的責任，特別是僱員補償保險及第三者保險。

14.2. 以下各項尤須具體說明：

- (a) 由分包商購買保險予以保障的範疇；
- (b) 由承建商負責投保的保單；以及
- (c) 保險單內列明的協定免賠額。

15. 付款

15.1. 為確保公平和準時發放工程款項，應就支付已完成工程的款項、退還工程累積保證金、以及因欠款或延遲付款而須採取的補救措施等事項訂定清晰條文。這些條文應包括：

- (a) 確定中期和最終結算付款的方法；
- (b) 付款期限；
- (c) 扣發、暫緩支付或扣減應付款項的公平準則；
- (d) 發放工程累積保證金的期限；
- (e) 最終結算期限；
- (f) 以書面通知分包商扣發任何應付款項的理據；以及
- (g) 在接到分包商的書面申索後，須向分包商支付逾期款項的利息；

14. Insurance

14.1. The responsibility for taking out insurance coverage particularly on employees' compensation and third party liability should be clearly demarcated.

14.2. In particular, the following items should be specified –

- (a) risks against which the Subcontractor must insure;
- (b) insurance policy maintained by the Contractor; and
- (c) any agreed amounts of excess or deductibles under insurance policy.

15. Payment

15.1. To ensure fair and timely payments, clear provisions on payment for works completed, return of retention money and remedy in the event of non-payment or late payment, should be provided covering –

- (a) methods for ascertaining interim and final payments;
- (b) time limits for making payments due;
- (c) equitable criteria for withholding, deferring or deduction of payments;
- (d) period for releasing retention money;
- (e) period for settlement of final account;
- (f) written notice to the Subcontractor of the reasons for withholding any payment;
- (g) payment of interest on any overdue sum upon receipt of a written claim from the Subcontractor;

(h) 分包商可因過期付款而暫停施工的情況；以及

(i) 確保分包商屬下工人獲發工資後才向分包商發放工程款項。

(h) circumstances under which the Subcontractor may suspend the execution of works for delays in payment; and

(i) ensuring payment of wages to the Subcontractor's workers before releasing payment to the Subcontractor

16. 終止總承包合約

16.1. 承建商如被終止聘用，不論原因為何，須立即終止聘用分包商，並以書面作出通知。

16.2. 分包合約應清楚列出分包商被終止聘用時有權獲得的款項。

16.3. 在扣除臨時支付的款項後，分包商有權獲得的款項應包括：

(a) 分包商已妥為完成的各項工程(包括臨時工程)的費用；

(b) 分包商妥善購置並留在工地的所有材料費用；

(c) 應承建商要求而運離工地內建築機械的合理費用；以及

(d) 已用於預訂物料的合理費用。

16. Determination of the Main Contract

16.1. If employment of the Contractor is determined for any reason, then the Contractor shall forthwith determine the Subcontractor's employment by written notice to the Subcontractor.

16.2. Upon such a determination, the Subcontractor's entitlement to receive payment should be clearly specified.

16.3. After deducting on-account payment, the Subcontractor's entitlement should include –

(a) value of all work (including any temporary works) properly done by the Subcontractor;

(b) value of all materials properly bought and left on the Site by the Subcontractor;

(c) reasonable costs of removing construction plant from the Site if so required by the Contractor; and

(d) reasonable costs committed in ordering materials.

17. 承建商終止合約

17.1. 分包合約應訂明在哪些情況下，承建商可因分包商的違約事項，在發出合理的書面通知後，終止分包合約。分包商違約的典型例子如下：

17. Determination by the Contractor

17.1. The Subcontract should define the circumstances under which the Contractor may determine the Subcontract for the Subcontractor's default through reasonable written notice. Typical examples of the Subcontractor's default are –

- (a) 放棄承辦分包合約；
- (b) 在沒有合理原因下未能展開分包合約；
- (c) 在沒有合理原因下暫停進行分包工程，歷時超越指定的時間，及在接獲承建商的合理書面通後，仍然拒絕恢復施工；
- (d) 未有按照承建商書面確認的指令，拆除或移走不符合分包合約規定的工程或材料；
- (e) 未有盡力進行分包工程；
- (f) 持續違反分包合約所訂明的責任；
- (g) 把分包工程全部轉判；
- (h) 在未獲事先批准的情況下大量轉判分包工程；以及
- (i) 破產或無力償債。

17.2. 應清楚列出在終止聘用時承建商及分包商的權利和責任。

18. 分包商終止合約

18.1. 分包合約應訂明在哪些情況下，分包商可因承建商的違約事項，在發出合理的書面通知後，終止分包合約。承建商違約的典型例子如下：

- (a) 放棄承辦總承包合約或與上一層承建商的分包合約；

- (a) abandoning the Subcontract;
- (b) failing to commence the Subcontract without reasonable excuse;
- (c) suspending the execution of the Subcontract Works without reasonable excuse beyond a specified period and refusing to resume after receiving the Contractor's reasonable written notice;
- (d) failing to comply with an order confirmed in writing by the Contractor to remove work and materials not in accordance with the Subcontract;
- (e) failing to proceed with the Subcontract Works with due diligence;
- (f) persistent breaches of any obligations under the Subcontract;
- (g) subletting the whole of the Subcontract Works;
- (h) further substantial subletting of the Subcontract Works without prior approval; and
- (i) becoming bankrupt or insolvent.

17.2. The rights and liabilities of both the Contractor and the Subcontractor upon notice of determination should be clearly listed.

18. Determination by the Subcontractor

18.1. The Subcontract should define the circumstances under which the Subcontractor may determine the Subcontract for the Contractor's default after giving reasonable written notice. Typical examples of the Contractor's default are –

- (a) abandoning the Main Contract or his subcontract with a contractor in the next higher tier;

- (b) 在沒有合理原因下未能如期展開總承包合約或與上一層承建商的分包合約；
- (c) 在沒有合理原因下拖欠分包商款項；以及
- (d) 破產或無力償債。

18.2. 應清楚列出終止聘用時承建商及分包商的權利和責任。

19. 爭議

19.1. 分包合約應訂有條款，以便在締約任何一方提出要求時，可以盡早展開迅速解決爭議的機制。

19.2. 除仲裁外，分包合約亦可包括其他排解爭議的安排，例如專家裁決，調解和審裁等。

20. 履約保證

20.1. 應視乎分包工程的性質、規模及價值，以及所涉及的風險，才決定是否需要設立履約保證。如有需要，分包合約須訂出購買履約保證的條款，並應避免對分包商造成不必要的沉重經濟負擔。當分包工程完滿竣工時，應視乎已扣減的工程累積保證金，註銷履約保證。

- (b) failing to commence the Main Contract or his subcontract with a contractor in the next higher tier without reasonable excuse;
- (c) not paying the Subcontractor without good cause; and
- (d) becoming bankrupt or insolvent.

18.2. The rights and liabilities of both the Contractor and the Subcontractor upon notice of determination should be clearly listed.

19. Disputes

19.1. Provisions should be available to facilitate early commencement of speedy dispute resolution arrangements upon request by either contracting party.

19.2. Apart from arbitration, alternative dispute resolution arrangements such as expert determination, mediation and adjudication may be included.

20. Bond

20.1. The need of placing performance bonds should only be optional depending on the nature, scope and value of the Subcontract Works and the risks involved. The terms for placing performance bonds, if deemed necessary, should be clearly spelt out and avoid unduly imposing an excessive financial burden on the Subcontractor. Such bonds should be released upon satisfactory completion of the Subcontract Works taking into account the availability of retention money.

21. 證明書

21.1. 分包合約應訂定條文，規定承建商須就分包商應得工程款項及完成履行主要合約責任(包括完成工程及矯正建造缺陷)發出證明書。

22. 規管法例

22.1. 一如總承包合約和其他各種合約，分包合約須受香港特別行政區法例規管和按這些法例詮釋。

21. Certificates

21.1. The Subcontract should make provisions requiring the Contractor to issue certificate for the Subcontractor's entitlement to payments and fulfillment of major contractual obligations including the completion of works and rectification of defects.

22. Governing Law

22.1. Similar to the Main Contract and all other contracts, the Subcontract should be governed and construed in accordance with the laws of Hong Kong Special Administration Region.