

# **GOVERNMENT OF MALAYSIA**

## **STANDARD FORM OF CONTRACT PWD FORM 203P (Revised 2007)**

**For Nominated Suppliers  
Where The Main Contract Is Based Upon  
PWD Form 203 Or 203A**

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**STANDARD FORM OF SUB-CONTRACT FOR NOMINATED SUPPLIER  
(PWD 203P)**

**THIS SUB-CONTRACT** is made the ..... day of 20....

**BETWEEN** .....of (or whose registered office is situated at)  
.....

(hereinafter referred to as "Contractor") of the one part;

**AND**

.....of (or whose registered office is situated at)  
.....

(hereinafter referred to as "Nominated Supplier") of the other part;

The Contractor and the Nominated Supplier may individually be referred to as "Party" or collectively as "Parties".

**WHEREAS:**

- A. The Contractor has entered into a Contract No: ..... made the ..... day of ..... 20.... (hereinafter referred to as "Main Contract") between the Government of Malaysia (hereinafter referred to as "Government") of the one part and the ..... (*insert Contractor's name and registration no.*)(hereinafter referred to as "Contractor") of the other part for the .....  
.....(hereinafter referred to as "the Main Contract Works") and particulars of which are as set out in **Schedule I** hereto.
- B. The Contractor is desirous of purchasing various materials, articles or goods (hereinafter referred to as "Articles") for use in the Main Contract Works and particulars of which are set out in **Schedule II** hereto.
- C. The Nominated Supplier has had reasonable opportunity to examine and have full knowledge of all the provisions of the Main Contract (except the details of the prices included therein).

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1.0 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Sub-Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them below except where the context otherwise requires:

“Articles” means the materials, articles or goods set out in **Schedule II** hereto, to be supplied and delivered under this Sub-Contract;

“Contractor” means ..... (\*To insert name of the Contractor signing the Main Contract (Co. No.)) and includes its heirs, executors, administrators, successors and permitted assignees;

“Drawing” means the drawings for the purposes of the Sub-Contract Works as attached to this Sub-Contract;

“Main Contract” means the Contract entered into between the Government and the Contractor, particulars of which are set out in **Schedule I** hereto;

“Main Contract Works” means the Works as defined by the Main Contract;

“Nominated Supplier” means ..... (\* to insert name of the Nominated Supplier signing this Sub-Contract (Co. No.....)) and includes its heirs, executors, administrators, successors and permitted assignees;

“Sub-Contract” means -

- (i) this Sub-Contract (including its Schedules)
- (ii) Form of Tender (PWD203P1);
- (iii) Conditions of Tendering and General Information (PWD203P2);
- (iv) Letter of Acceptance of Tender (PWD203P4);
- (v) Drawings;
- (vi) Specification;
- (vii) Letter of Indemnity (PWD 203P6 and PWD 203P7) to the Government; and
- (viii) Bill of Quantities/Schedules of Prices/Summary of Tender\*.

(\* to delete if not applicable.)

“S.O.” means the Superintending Officer who shall be.....  
.....(insert the official designation) and his successors in office;

“S.O.’s Representative” means any person or persons delegated or authorized in writing by the S.O. to perform any of the duties of the S.O. as may be from time to time in writing to act on his behalf for the purpose of the supervision of the Sub-Contract;

“Site” means the land and other places on, above, under, in or through which the Works are to be executed and any other lands or places provided or approved by the Government for working space or any other purposes as may be specifically designated in this Contract;

“Specification” means the specifications for the purposes of the Sub-Contract Works as attached to this Sub-Contract;

“Sub-Contract Sum” means the sum of Ringgit Malaysia  
.....  
(RM.....).

## 1.2 Interpretation

- (a) The terms “approved” or “approval” and “directed” or “direction” wherever used in this Sub-Contract shall be in writing.
- (b) Words importing the singular only also include the plural and vice versa where the context requires.
- (c) The shoulder notes in this Sub-Contract shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction of this Sub-Contract.
- (d) The schedules hereto and any document herein referred to shall be taken, read and construed as an essential and integral part of this Sub-Contract and in the event of conflict between the terms of any of the schedules and the terms of this Sub-Contract, the terms of this Sub-Contract shall prevail over those of the schedules.

## 2.0 SUB-CONTRACT DOCUMENTS

The following documents shall be deemed to form and be read and construed as part of this Sub-Contract:

- (a) this Sub-Contract (including its schedules);
- (b) Form of Tender (PWD203P1);
- (c) Conditions of Tendering and General Information (PWD203P2);
- (d) Letter of Acceptance of Tender (PWD203P4);
- (e) Drawings;
- (f) Specification;
- (g) Letter of Indemnity (PWD203P6 and PWD203P7) to the Government; and
- (h) Bill of Quantities/Schedules of Prices/Summary of Tender\*.

*(\*delete if not applicable)*

## 3.0 CONSIDERATION

- (a) In consideration of the payments to be made by the Contractor to the Nominated Supplier as hereinafter mentioned, the Nominated Supplier hereby covenants with the Contractor to supply and deliver the Articles in conformity in all respects with the provisions of this Sub-Contract.
- (b) The Contractor hereby covenants to pay the Nominated Suppliers, in consideration of the supply and delivery of the Articles, the sum to be ascertained at the rates and prices specified in **Schedule II** of this Sub-Contract.

#### **4.0 MAIN CONTRACT**

The Nominated Supplier shall be deemed to have examined the Main Contract and a copy thereof and to have full knowledge of all the provisions of the Main Contract, except the details of the prices included therein.

#### **5.0 NOMINATED SUPPLIER'S LIABILITIES**

##### **5.1 Compliance with the Provision of Main Contract**

The Nominated Supplier shall observe, perform and comply with all the provisions of the Main Contract on the part of the Contractor to be observed, performed and complied with, in so far as they relate and apply to this Sub-Contract and are not repugnant to or inconsistent with the express provisions of this Sub-Contract as if all the same were severally set out herein.

##### **5.2 Indemnity to the Contractor**

The Nominated Supplier shall indemnify and save harmless the Contractor, against and from

- (a) any breach, non-observance or non-performance by the Nominated Supplier, his servants or agents of the said provisions of the Main Contract or any of them;
- (b) any act or omission of the Nominated Supplier, his servants or agents which involves the Contractor in any liability to the Government under the Main Contract;
- (c) any claims, damage, loss or expense due to or resulting from any negligence or breach of duty on the part of the Nominated Supplier, his servants or agents; and
- (d) any loss or damage resulting from any claim under any statute in force for the time being by an employee of the Nominated Supplier in respect of personal injury arising out of or in the course of his employment.

PROVIDED ALWAYS THAT nothing in this Sub-Contract shall impose any liability on the Nominated Supplier in respect of any negligence or breach of duty on the part of the Government, the Contractor, his other sub-contractors or suppliers or their respective servants or agents.

#### **6.0 EXECUTION OF SUB-CONTRACT**

The Nominated Supplier shall execute and complete the supply and delivery of the Articles specified in **Schedule II** hereof so as to enable the Contractor to discharge his obligations under the Main Contract in so far as they relate and apply to this Sub-Contract in accordance with this Sub-Contract and in all respects to the reasonable satisfaction of the Contractor, the S.O. or the S.O.'s Representative and in conformity with all the reasonable directions and requirements of the Contractor (so far as they may apply) for the time being regulating the due execution of the Main Contract Works.

#### **7.0 STORAGE ACCOMODATION**

Unless otherwise provided in the Specification or elsewhere under this Sub-Contract, the Contractor shall provide suitable storage place on the Site for the proper storage of the Articles delivered to the Site for the use in the Main Contract Works and it shall be the Contractor's sole responsibility to indemnify the Nominated Supplier against any loss or damage to the same.

## **8.0 SAMPLE, TESTING AND ACCESS TO THE FACTORY, ETC.**

### **8.1 Sample and testing**

- (a) The Contractor and the S.O. shall be at liberty to call for samples of any Articles to be supplied under the Sub-Contract for examination and/or testing, and to call for such further samples as required until the samples submitted are in the opinion of the S.O. in accordance with the Specifications. Samples approved after such examination and/or test shall indicate the standard required under this Sub-Contract and such samples shall be kept in the custody of the S.O.
- (b) If in the opinion of the S.O., any articles supplied under this Sub-Contract are not in accordance with the Specification or with any approved sample, the S.O. may direct the Contractor in writing to submit any such Articles for expert examination and/or test and all costs in connection therewith shall be borne by the Nominated Supplier unless such examination and/or test shows that the said Articles are in accordance with the Specification or with the approved samples, in which case the costs in connection therewith shall be reimbursed by the Government.

### **8.2 Access to factory, etc**

The Contractor and the S.O. and their respective authorised representatives shall at reasonable times have access to the works, factory, workshops or other premises where the Articles to be supplied under this Sub-Contract are being manufactured and/or stored for the purpose of inspection and to examine any manufacturing process or to carry out any test on samples of the Articles or parts thereof for incorporation into the Articles as the S.O. or the Contractor deems necessary.

## **9.0 PACKING**

All Articles shall be supplied and delivered in such packing or containers or otherwise which shall in every way be adequate and sufficient for their purposes. Any loss or damage resulting from inadequate or defective packing shall be at the sole responsibility of the Nominated Supplier.

## **10.0 DEFECTIVE OR DAMAGED ARTICLES**

### **10.1 Removal and replacement**

The Nominated Supplier shall, at his own cost and when so notified in writing by the Contractor forthwith, subject to the consent of the S.O., remove and replace any Articles that are found upon delivery to be damaged, defective or in any way inferior to the approved samples or not in accordance with the Specification.

### **10.2 Defects appearing after delivery**

The Nominated Supplier shall make good by removing any defect in the Articles or replacing any defective Articles supplied, which may appear after delivery but within the Defect Liability Period under the Main Contract and shall bear any cost or expense reasonably incurred by the Contractor as a direct consequence of such defects.

PROVIDED THAT –

- (a) where the Articles have been used or fixed, such defects are not such that examination by the Contractor ought to have revealed them before using of fixing; or



- (b) such defects are due solely to defective workmanship or materials in the Articles supplied and shall not have been caused by improper storage or fixing by the Contractor, or misuse or by any act or negligence of the Contractor, his servants, Sub-Contractors or agents.

### **10.3 Failure of Nominated Supplier to remove or replace**

If the Nominated Supplier fails to remove and replace such defective or damaged Articles in accordance with either clause 10(1) or 10(2) or both, then the Contractor shall have the right to purchase such Articles elsewhere and/or effect replacements or to make good any defects or damage in any manner he deems necessary and all costs and expenses thereby incurred shall be recoverable from the Nominated Supplier.

## **11.0 QUANTITIES AND PRICES**

### **11.1 Quantities**

Any statement given in **Schedule II** hereto as to the total quantities of any Articles likely to be required under this Sub-Contract shall be deemed to be approximate only and the actual total quantities required shall be based on the orders made by the Contractor under clause 12 hereof.

PROVIDED THAT the total quantity of any Articles ordered under this Sub-Contract shall not be more than that required by the Main Contractor for the fulfillment of his obligations under the Main Contract as certified by the S.O.

### **11.2 Rates and prices**

The rates or unit prices stipulated by the Nominated Supplier in **Schedule II** hereof shall be in Ringgit Malaysia only and shall be deemed to include all materials, labour, plant, tools, taxes, duties, tariff, supervision, overhead charges, profits and any other things necessary for the performance and conduct of operations required for the supply and delivery of the Articles unless otherwise specifically excluded.

## **12.0 ORDERS**

### **12.1 Orders**

The orders for the Articles to be supplied under this Sub-Contract shall be given by the Contractor in written orders (hereinafter referred to as "Orders"). All the Orders shall clearly state the quantities, details or nature of the Articles to be supplied and the dates for commencement and completion of delivery and also state the amount, calculated at the rates or unit prices stated in **Schedule II** hereof that shall become due to the Nominated Supplier on the satisfactory completion of delivery of Articles specified in the Orders.

### **12.2 Commencement and completion of delivery**

The Nominated Supplier shall commence the supply and delivery of the Articles within the time stipulated in the Form of Tender for this Sub-Contract from the date of the Orders and complete the same to the full extent on or before the date for completion of delivery to be specified in the Orders. The dates for commencement and completion of delivery specified in the Orders shall be calculated from the dates of the Orders and based on the periods for commencement and completion of delivery as stated in the Form of Tender.

### **12.3 Final date for placing orders**

The Contractor shall place all his Orders before the date of completion of the Main Contract (exclusive of any extension thereof) or before the expiry of six (6) months after the date of acceptance of this Sub-Contract, whichever is the later. If the Contractor fails to place all his Orders before such date as the case may be, then the Nominated Supplier may refuse or agree to continue the supply and delivery of the Articles under the same terms and conditions of this Sub-Contract.

### **12.4 Error or ambiguity**

Any error, ambiguity or discrepancy discovered in the Orders shall be referred without delay to the Contractor for modification and/or clarification.

## **13.0 DELIVERIES**

### **13.1 Place of delivery**

The Nominated Supplier shall deliver the Articles to be supplied under this Sub-Contract to the Site and deposit at such places of storage provided by the Main Contractor.

### **13.2 Certificate as to quality of Articles**

When the Articles to be supplied under this Sub-Contract are delivered, the Nominated Supplier shall satisfy the Contractor and the S.O. by means of a certificate to the effect that the quality of the Articles so supplied is not in any way inferior to the approved sample or is in accordance with the Specification. The Nominated Supplier shall submit the original certificate to the S.O. No payment shall be made in respect of any of the Articles delivered which is not accompanied by such certificate.

### **13.3 Receipt on completion of delivery**

Upon satisfactory completion of delivery of any Articles in accordance with this Sub-Contract, the Nominated Supplier shall obtain a receipt thereof from the Contractor. The issue of such receipt and the certificate mentioned in clause 13(2) above shall in no way relieve the Nominated Supplier from his responsibility for removing and replacing defective or damaged Articles under clause 10 hereof.

## **14.0 PAYMENT TO NOMINATED SUPPLIER**

### **14.1 Payment to Nominated Supplier**

Subject to clause 14 (3) hereof, the amount certified as due to the Nominated Supplier in any Interim Certificate issued by the S.O. in accordance with the relevant provisions in the Main Contract shall within the period for honouring payment certificate stipulated in the Main Contract be paid by the Government direct to the Nominated Supplier. Nothing in this clause nor anything else contained in this Sub-Contract shall render the Government in any way liable to the Nominated Supplier.

### **14.2 Payment shall not be construed as evidence of quality**

No payment shall be considered as evidence of the quality of any Articles to which such payment relates nor shall it relieve the Nominated Supplier from his responsibilities under clause 10 hereof.

### **14.3 Contractor's right to set-off**

The Contractor shall be entitled to be paid and the Government may pay to the Contractor out any money otherwise due to the Nominated Supplier –

- (a) any amount the Government or the S.O. on its behalf in exercise of any right under the Main Contract has deducted from any money due to the Contractor and such deduction is in respect of some act or default solely of the Nominated Supplier, his servants or agents;
- (b) any amount agreed by the Nominated Supplier as due to the Contractor or any amount awarded in arbitration or litigation in favour of the Contractor and which arises out of or under this Sub-Contract.

PROVIDED ALWAYS THAT the Contractor shall have notified the S.O. of any such agreed amount or award (together with a copy of the consent or agreement of the Nominated Supplier or the award) not less than fourteen (14) days before the date of issuance by the S.O. of the Interim or Final Certificate under the relevant provisions of the Main Contract; and

- (c) the amount of any claim for loss or expense actually incurred by the Contractor by reason of any breach or failure to observe the provisions of the Sub-Contract by the Nominated Supplier.

PROVIDED ALWAYS THAT -

- (i) the amount of such loss or expense shall have been quantified in detail and with reasonable accuracy by the Contractor; and
- (ii) the Contractor shall have given to the Nominated Supplier notice in writing with a copy to the S.O. specifying the breach or failure and the amount quantified in clause 14.3 (c) aforesaid, not less than forty five (45) days before the issuance by the S.O. of any Interim or the Final Certificate under the relevant provisions of the Main Contract.

### **14.4 Payment by the Government**

Any payment made under this clause shall be deemed to be a payment to the Contractor by the Government under and by virtue of this Sub-Contract.

## **15.0 DISPUTES AS TO PAYMENT**

### **15.1 Disputes as to amount or failure by S.O. to certify**

If the Nominated Supplier is aggrieved by the amount certified by the S.O. for payment or by his failure to certify, then subject to the Nominated Supplier giving to the Contractor such indemnity and security as the Contractor may reasonably require, the Contractor shall allow the Nominated Supplier to use the Contractor's name, and if necessary will join with the Nominated Supplier as claimant in any arbitration proceedings by the Nominated Supplier in respect of the said matters complained of by the Nominated Supplier.

## **16.0 DELAY IN SUPPLY AND DELIVERY**

### **16.1 Notice to Contractor**

Upon it becoming reasonably apparent that the supply and/or delivery of any Articles ordered under this Sub-Contract is delayed, the Nominated Supplier shall forthwith give a written notice of the causes of delay to the Contractor who shall immediately inform the S.O. thereof

and of any representations made to him by the Nominated Supplier as to such cause of delay as aforesaid.

## **16.2 Reasonable adjustment**

If on receipt of such notice or representations as aforesaid, the S.O. is of the opinion that the supply and/or delivery of any such Articles is likely to be or has been delayed due to any of the causes or perils, (provided that the delay is not due to any act, negligence, default or breach of this Sub-Contract by the Nominated Supplier) for which the Contractor could obtain an extension of time for completion under the Main Contract, then in any such case, the Contractor shall, but not without the written consent of the S.O., make a reasonable adjustment to the date for completion of delivery specified in the Order.

## **17.0 FAILURE TO SUPPLY**

### **17.1 Failure to supply by specified date**

If the Nominated Supplier fails to supply and/or deliver any Articles under this Sub-Contract on or before the date for completion of delivery specified in the Order or such date for completion of delivery as may be adjusted in accordance with clause 16 hereof, then the Contractor shall have the right to do either one of the following:

- (i) cancel the Orders of any such Articles from this Sub-Contract without any compensation and obtain such Articles from other sources and all additional costs or expense thereby incurred shall be borne by the Nominated Supplier; or
- (ii) agree to accept the late delivery of any such Articles ordered but the Nominated Supplier shall be liable and pay or allow the Contractor any claims or damage for which the Contractor is liable to the Government under the Main Contract resulting from such delay.

### **17.2 Complete failure to supply**

If the Nominated Supplier fails to supply and/or deliver any Articles ordered in accordance with the provisions of this Sub-Contract, then the Contractor shall have the right to take action under clause 22 hereof.

## **18.0 PERFORMANCE BOND**

- (a) The Nominated Supplier shall, as a condition precedent to the commencement of any work under this Sub-Contract, deposit with the Contractor a Performance Bond in cash or in the form of a Banker's Draft or an approved Banker's or Insurance Guarantee equivalent to five (5 %) per centum of the total value of this Sub-Contract Sum as shown in **Schedule II** hereof for the due observance and performance of this Sub-Contract.
- (b) If the Nominated Supplier fails to carry out this Sub-Contract or commits any breach of his obligations under this Sub-Contract, the Contractor may utilize and make payments out of or deductions from the said Performance Bond, provided that the Contractor shall not be entitled to utilize such Performance Bond unless the S.O. shall have issued to the Contractor (with the duplicate copy to the Nominated Supplier) a certificate in writing stating in his opinion that the Nominated Supplier has been in default as aforesaid.
- (c) If a payment is made to the Contractor pursuant to any claim under the Performance Bond, the Nominated Supplier shall issue to the Contractor further security in the form

of additional Performance Bond or Bonds for an amount not less than the amount so paid to the Contractor on or prior to the date of such payment so that the total sum of the Performance Bond shall be maintained at all times at the value specified in sub-clause (a).

- (d) The Performance Bond (or any balance thereof remaining for the credit of the Nominated Supplier) shall be released or refunded to the Nominated Supplier upon the completion of making good of all defects, imperfection, shrinkages or any other faults whatsoever for the whole of the Works under the Main Contract and upon the receipt by the Contractor of the Certificate of Completion of Making Good Defects under the Main Contract.
- (e) Notwithstanding the above, in the event that the Sub-Contract is terminated under clause 22 hereof, the said Performance Bond or any balance thereof shall be forfeited.

#### **19.0 ASSIGNMENT**

- (a) The Nominated Supplier shall not without the written consent of both the Contractor and the S.O., transfer or assign this Sub-Contract or any part or share thereof, or any benefit or interest therein or thereunder, provided that the consent of the Contractor shall not be unreasonably withheld and that in case of any differences of opinion the Contractor and the S.O., the opinion of the S.O. shall prevail.
- (b) Such consent, if given, shall not relieve the Nominated Supplier from his liability or obligation under this Sub-Contract and he shall be responsible for the due observance by such assignees, of all the terms, stipulations and conditions under this Sub-Contract. The Nominated Supplier shall also be responsible for the acts, defaults or neglects of any assignees, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Nominated Supplier, his agents, servants or workmen.

#### **20.0 INTELLECTUAL PROPERTY RIGHTS**

The Nominated Supplier shall save harmless and indemnify the Government and the Contractor from and against all claims and proceedings for or an account of infringement of any patent rights, design, trade-mark or name or other protected rights in respect of any Articles supplied by the Nominated Supplier under this Sub-Contract and from and against all claims, demand, proceeding, damages, costs, charges and expense whatsoever in respect thereof or in relation thereto.

#### **21.0 SUSPENSION OF SUB-CONTRACT**

- (a) Notwithstanding any provisions in this Sub-Contract, in the event the S.O. instructed the Contractor to suspend the Main Contract Works, the Contractor shall then issue a written instruction to the Nominated Supplier to suspend the Sub-Contract or any part thereof.
- (b) Upon receipt of such written instruction, the Nominated Supplier shall suspend the Sub-Contract or any part thereof for such time and such manner as specified in the instruction. The Nominated Supplier shall properly protect, store and secure the Sub-Contract or any part thereof so far as necessary and in accordance with the written instruction.
- (c) In the event of such suspension shall continue for a period exceeding twelve (12) months, the Parties shall then discussed whether to resume the supply of the Articles.

- (d) Should the Parties agree to resume this Sub-Contract –
  - (i) the Nominated Supplier shall not be allowed to claim for loss or damage except direct expenses reasonably incurred. Provided always the Nominated Supplier shall use his best endeavor to mitigate expenses;
  - (ii) the Sub-Contract Sum shall remain the same; and
  - (iii) the Contractor shall have the right to review the scope of the Sub-Contract whereby all terms and conditions relating to the reviewed scope of this Sub-Contract shall be agreed upon by both Parties.
- (e) request for S.O.'s instruction to omit relevant section or part of the Works from the Contract. If the S.O. agrees to such request then the relevant section or part of the Works shall be duly omitted and deemed to be a variation to the Contract. Such variation shall not vitiate this Contract. If the S.O. does not agree to such request as aforesaid, then the Contractor shall be entitled to claim for any loss and/or expenses caused by and in respect of such delay beyond ninety (90) days as aforesaid.

#### **21.1 Extension of time**

If the Nominated Supplier suffers delay and/or incurs expenses in complying with the instruction under clause 21(a), and in resumption of the Sub-Contract, and if such delay and/or expenses was not foreseeable by the Nominated Supplier, the Nominated Supplier shall give notice for extension of time under clause 16 and the provisions thereof shall apply accordingly. The Nominated Supplier shall not be entitled to payment of loss and expense if he -

- (a) fails to take measures specified in clause 21(b); and
- (b) fails to take all necessary action to mitigate the expenses incurred.

#### **21.2 Consequences of mutual termination**

In the event the Parties agree to terminate this Sub-Contract, the Contractor shall pay the Nominated Supplier, (in so far as such amounts or items have not already been covered by payment on account made to the Nominated Supplier) the value of value of the Articles under **Schedule II** supplied or delivered up to the date of termination and in addition:

- (a) the cost of Articles reasonably ordered for the Sub-Contract, which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Government upon such payment being made to the Nominated Supplier);
- (b) a sum being the amount of any expenditure reasonably incurred by the Nominated Supplier in the expectation of completing the whole of this Sub-Contract in so far as such expenditure has not been recovered by any other payments referred to in this sub-clause; and
- (c) the reasonable cost of any protection works and removal of equipment and facilities from the Site.

## **22.0 TERMINATION OF NOMINATED SUPPLIER'S EMPLOYMENT**

### **22.1 Events of default**

In the event the Nominated Supplier –

- (a) fails to supply and deliver any Articles ordered under this Sub-Contract;
- (b) refuses or persistently neglects to comply with a written notice from the Contractor in accordance with clause 10 hereof to remove and replace any Articles that are found to be damaged, defective or in any way inferior to the approved sample or not in accordance with the Specification or do not meet the requirements of this Sub-Contract; or
- (c) fails to comply with the terms and conditions of this Sub-Contract,

then the Contractor may give to him a notice by registered post specifying the default and requiring the Nominated Supplier to remedy such default within fourteen (14) days of the receipt of such notice.

### **22.2 Termination**

If the Nominated Supplier fails to remedy the breach within such period, the Contractor shall have the right, but not without written consent of the S.O., to forthwith terminate this Sub-Contract by giving a written notice to that effect.

### **22.3 General default**

If the Nominated Supplier -

- (i) commits an act of bankruptcy;
- (ii) becomes insolvent or compounds with or makes arrangement with his creditors;
  - a. being a company, an order is made or resolution is effectively passed for the winding-up of the Nominated Supplier (except for the purpose of reconstruction or amalgamation with the written consent of the Contractor, which consent shall not be unreasonably withheld);
- (iv) is unable to pay its debt as and when they fall due, within the meaning of the Companies Act 1965; or
- (v) is levied with any distress or execution against him and the same is not satisfied or discharged by the Contractor within thirty (30) days of such distress or execution proceedings,

then the Contractor shall have the right to forthwith terminate this Sub-Contract by giving notice to that effect.

### **22.4 Consequences of termination**

In the event of the employment of the Nominated Supplier under this Sub-Contract under clause 22(1) or 22(2) above, the Contractor may, without prejudice to any other rights or remedies he possess, obtain such Articles described in **Schedule II** hereof including any Articles ordered prior to the termination of the employment of the Nominated Supplier but not

yet supplied, from other sources and all increased costs or expenses thereby incurred shall be borne by the Nominated Supplier. The increased costs or expenses, which the Contractor is entitled to recover, shall be limited to either:

- (i) the quantities as is purchased from another source by virtue of this sub-clause; or
- (ii) the total quantities of such Articles as is stated in **Schedule II** less any quantity supplied by the Nominated Supplier before the termination of his employment,

whichever is the lesser.

### **23.0 DETERMINATION OF THE CONTRACTOR'S EMPLOYMENT UNDER THE MAIN CONTRACT**

If for any reason the Contractor's employment under the Main Contract is terminated (whether due to any default of the Contractor or otherwise) then the employment of the Nominated Supplier under this Sub-Contract shall thereupon also be terminated.

### **24.0 NOMINATED SUPPLIER'S CLAIM TO RIGHTS AND BENEFITS UNDER THE MAIN CONTRACT**

- (a) The Contractor shall, in so far as he lawfully can at the request and cost of the Nominated Supplier, obtain for him any rights or benefits of the Main Contract in so far as the same are applicable to the Sub-Contract but no further or otherwise.
- (b) Whenever the Contractor is required by the terms of the Main Contract to give any particulars or notices to the S.O. or the Government, the Nominated Supplier shall, in relation to this Sub-Contract, give such particulars or notices or such other information in writing as will enable the Contractor to comply with such terms of the Main Contract and shall do so in sufficient time to enable the Contractor to comply with such terms punctually.

### **25.0 COMPLIANCE WITH EMPLOYMENT ACT 1955, ETC**

In the employment of workmen for the execution of this Sub-Contract, the Nominated Supplier shall comply with all the requirements of the Employment Act 1955, Employment (Restriction) Act 1968, Employee's Provident Fund Act 1951, the Industrial Relations Act 1967 and any other law relating to the employment of workmen, or any subsequent amendment, modification or re-enactment thereof.

PROVIDED THAT the Nominated Supplier shall not be entitled to any claim for additional costs and payments whatsoever in respect of his compliance with this clause.

### **26.0 ARBITRATION**

- (a) If any dispute or difference shall arise between the Contractor and the Nominated Supplier out of or in connection with the contract, then Parties shall refer such matter, dispute or difference to the S.O. for a decision.
- (b) The S.O.'s decision shall be in writing and shall subject to clause 26(d) hereof, be binding on the Parties until the completion of the Sub-Contract and shall forthwith be given effect to by the Nominated Supplier who shall proceed with the Sub-Contract with all due diligence whether or not notice of dissatisfaction is given by him.



- (c) If the Parties –
  - (i) fails to receive a decision from the S.O. within forty-five (45) days after being requested to do so; or
  - (ii) is dissatisfied with any decision of the S.O.,

then such dispute or difference shall be referred to arbitration within forty-five (45) days to an arbitrator to be agreed between the Parties and failing such agreement, to be appointed by the Director of the Regional Centre for Arbitration in Kuala Lumpur on the application of either Party hereto. Such arbitration shall be heard at the Kuala Lumpur Regional Centre for Arbitration and shall be conducted in accordance with the rules for arbitration of the Kuala Lumpur Regional Centre for Arbitration using the facilities and the system available at the Centre.

- (d) Such reference, except on the question of payments shall not be commenced until after the completion or alleged completion of the Sub-Contract or determination or alleged determination of the Nominated Supplier's employment under this Sub-Contract, or abandonment of the Sub-Contract, unless with the written consent of the Contractor and the Nominated Supplier.
- (e) In the event that such consent has been obtained in accordance with clause 26(d), the reference of any matter, dispute or difference to arbitration pursuant to this clause and/or the continuance of any arbitration proceedings consequent thereto shall in no way operate as a waiver of the obligations of the parties to perform their respective obligations under this Sub-Contract.
- (f) In any arbitration proceedings conducted pursuant to clause 26(c) above, the Parties may make any counter claim in relation to any dispute or difference arising from this Sub-Contract.
- (g) The arbitrator shall have power to review and revise any certificate, opinion, decision, requisition or notice, and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given in accordance with clause 26(c) aforesaid, in the same manner as if no such certificate, opinion, decision, requisition or notice had been given.
- (h) Upon every or any such reference the costs of such incidental to the reference and award shall be in the discretion of the arbitrator who may determine the amount thereof, or direct the amount to be taxed as between solicitor and client or as between party and party, and shall direct by whom and to whom and in what manner the same be borne, award and paid.
- (i) The award of the arbitrator shall be final and binding on the Parties.
- (j) In the event of the death of the arbitrator or his unwillingness or inability to act, then the Contractor and the Nominated Supplier upon agreement shall appoint another person to act as the arbitrator, and in the event the Contractor and the Nominated Supplier fail to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the Director of the Regional Centre for Arbitration in Kuala Lumpur.
- (k) In this clause, "reference" shall be deemed to be reference to arbitration within the meaning of the Arbitration Act 2005.
- (l) The arbitration shall be governed by the Arbitration Act 2005 and the laws of Malaysia.

## **27.0 STAMP DUTY**

The Nominated Supplier shall solely bear the stamp duties and anything incidental thereto.

## **28.0 BAHASA MALAYSIA TEXT SHALL PREVAIL**

This Sub-Contract shall be prepared in Bahasa Malaysia and English Language, both texts being equally authentic. In the event of any of the texts, the text in Bahasa Malaysia shall prevail.

## **29.0 COMPLIANCE WITH THE LAW**

The Parties shall comply with all applicable laws and with all directions, orders, requirements and instructions given to the Parties by any authority competent to do so under any applicable law.

## **30.0 FORCE MAJEURE**

- (a) Neither the Contractor nor the Nominated Supplier shall be in breach of its obligations under this Sub-Contract (or any part of thereof), other than the payment obligations as a result of the occurrence of an Event of Force Majeure.
- (b) An "Event of Force Majeure" is an event beyond the control of both Parties which are:
  - (i) war (whether declared or not), hostilities, invasion, act of foreign enemies;
  - (ii) insurrection, revolution, rebellion, military or usurped power, civil war or acts of terrorism;
  - (iii) natural catastrophes including but not limited to earthquakes, floods and subterranean spontaneous combustion or any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions;
  - (iv) nuclear explosion, radioactive or chemical contamination or radiation;
  - (v) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds; and
  - (vi) riot, commotion or disorder, unless solely restricted to employees of the Company or its personnel, servants or agent.
- (c) If an Event of Force Majeure occurs by reason of which either Party is unable to perform any of its obligations under this Sub-Contract (or any part thereof), the Party shall inform the other Party immediately of the occurrence of that Event of Force Majeure with full particulars thereof and the consequences thereof.
- (d) If either Party considers the Event of Force Majeure to be of such severity or to be continuing for such period of time that it effectively frustrates the original intention of this Sub-Contract, then the Parties may agree that this Sub-Contract may be terminated upon mutual agreement of the Parties.
- (e) If this Sub-Contract is terminated by an Event of Force Majeure pursuant to the above clause, all rights and obligations of the Parties under this Sub-Contract shall forthwith be terminated and neither Party shall have any claim against the other Party and

neither Party shall be liable to each other save for any rights and liabilities accruing prior to the occurrence of the Event of Force Majeure.

- (f) Neither Party shall be entitled to rely upon the provisions above if both Parties reasonably determine that an Event of Force Majeure has not occurred.
- (g) For avoidance of doubt, the Parties shall continue to perform those parts of those obligations not affected, delayed or interrupted by an Event of Force Majeure and such obligations shall, pending the outcome of this clause continue in full force and effect.

### **31.0 GOVERNING LAW**

This Sub-Contract shall be governed by and construed in accordance with the laws of Malaysia and the Parties irrevocably submit to the exclusive jurisdiction of the courts of Malaysia.

### **32.0 SEVERABILITY**

If any provision of this Sub-Contract is held to be illegal or is invalid under any laws or regulations effective and applicable during the term of this Sub-Contract, such provision shall be fully severable and this Sub-Contract shall be construed as if such illegal or invalid provision had never comprised as part of this Sub-Contract and the remaining provisions of this Sub-Contract shall remain in full force and effect and shall not be affected by the illegal or invalid provisions or by its severance from this Sub-Contract.

### **33.0 NOTICES**

- (a) Any notice, approval, consent, request or other communication required or permitted to be given or made under this Sub-Contract shall be in writing in Bahasa Melayu or the English language and delivered to the address, or facsimile numbers of the Contractor or the Nominated Supplier, as the case may be, shown below or to such other address, or facsimile numbers as either Party may have notified the sender and shall unless otherwise provided herein be deemed to be duly given or made, in the case of delivery in person or by facsimile transmission, when delivered to the recipient at such address or facsimile number which is duly acknowledged:

to the Contractor

Address:

Facsimile No.:

to the Nominated Supplier

Address:

Facsimile No.:

- (b) Any notice under this clause shall be effected by:
  - (i) personal service or courier and an acknowledgement of receipt obtained;

- (ii) leaving the notice at the registered office or site office of the Nominated Supplier in which case it shall be deemed to have been duly delivered; or
  - (iii) registered post in which case it shall be deemed to have been received seven (7) days after the date of posting.
- (c) It shall be the duty of the Party to notify the other if there is a change of address or entity by giving a written notice within fourteen (14) days. In the event of the Nominated Supplier failing to notify the Contractor of such an address or any change in his address, such written notices and instructions shall be deemed to have been served upon the Nominated Supplier if they are sent in the manner stated above to the address stated in this Sub-Contract or to the Nominated Supplier's site office.

#### **34.0 AMENDMENT**

No modification, amendment or waiver of any of the provisions of this Sub-Contract shall be effective unless made by mutual consent and made in writing by way of supplementary agreement specifically referring to this Sub-Contract and duly signed by the Parties.

#### **35.0 SUCCESSORS BOUND**

This Sub-Contract shall be binding upon each of the Parties hereto and their respective successors-in-title and permitted assigns.

#### **36.0 WAIVER**

Nor failure or delay on the part of any Party in exercising nor any omission to exercise any right, power, privilege or remedy accruing to the other Party under this Sub-Contract, upon any default on the part of the other Party, shall impair any such right, power, privilege or remedy or to be construed as a waiver thereof or any acquiescence in such default; nor shall any action by any Party in respect of any default or any acquiescence in such default affect or impair any right, power, privilege or remedy of the other Party in respect of any other or subsequent default. Any waiver made under this Sub-Contract shall only be valid if it is made in writing and signed by the Parties to this Sub-Contract or their respective authorised representatives.

#### **37.0 TIME**

Time, whenever mentioned shall be of the essence of this Sub-Contract.

**SCHEDULE I**

**PARTICULARS OF MAIN CONTRACT**

**(A) GENERAL INFORMATION**

1. Lokasi Tapak Bina: .....
2. Akses to Tapak Bina: .....
3. Approximate date of commencement of delivery of Articles:  
.....
4. Unloading etc by: .....
5. Storage accommodation by: .....
6. Caring and protection by: .....

**(B) INFORMATION ON MAIN CONTRACT**

- (a) The Main Contract (except details of the prices included therein) may be inspected at the office of .....
- (b) The following are extracts from the provision of the Main Contract but they shall in no way absolve the Nominated Supplier's responsibilities to examine and to have full knowledge of all the provisions of the Main Contract:
  - (1) Contract No.: ..... Dated : .....
  - (2) Contract for: .....
  - (3) Date for Completion (clause 39): .....
  - (4) Liquidated and Ascertain Damages for Non-Completion at the rate of RM ..... per ..... (clause 40)
  - (5) Sectional Completion (clause 41) .....
  - (6) Defects Liability Period (clause 48) .....
  - (7) Payment:
    - (a) valuation of Interim Certificates (clause 28(b))  
.....
    - (b) issue of Interim Certificate (clause 28(c))  
.....
    - (c) period of honouring of Interim Certificate (clause 28(d))  
.....

**SCHEDULE II**

**PARTICULARS OF ARTICLES TO BE SUPPLIED**

Item No.	Articles	Unit	Approximate Total Quantities	Unit Price		Amount	
				RM	Cent	RM	Cent
<b>Total value of Sub-Contract RM</b>							

*(Use separate attachment if necessary)*

**( Ringgit ..... )**

.....  
Contractor's signature and chop

**IN WITNESS WHEREOF** the Parties hereto have hereunto set their respective hands the day and year first above written

.....  
**Signature of Contractor**

(Name in full :.....)

I.C. No.: .....

In the capacity of

duly authorized to sign for and on behalf of

.....  
Contractor's Chop or Seal

.....  
Witness

(Name in full : .....) )

I.C. No. : .....

Occupation : .....

Address :

.....  
.....

.....  
**Signature of Nominated Supplier**

(Name in full : .....) )

I.C. No. : .....

In the capacity of

duly authorized to sign for and on behalf of

.....  
Nominated Supplier's Chop or Seal

.....  
Witness

(Name in full : .....) )

I.C. No. : .....

Occupation : .....

Address :

.....  
.....