

Contents

<i>Preface</i>	<i>xiii</i>
1 Background and Introduction	1
1.1 The Joint Contracts Tribunal (JCT)	1
1.2 Sub-contracting	1
1.3 The formation of contracts and sub-contracts	2
1.4 Standard forms of contract and sub-contract	6
1.5 The JCT Sub-contracts dealt with within the chapters of this book	7
1.6 The JCT Sub-contracts not dealt with in the chapters of this book	10
2 The Sub-contract Agreement	17
2.1 Introduction	17
2.2 The structure of the sub-contract agreement	19
2.3 The recitals	20
2.4 The articles	22
2.5 The sub-contract particulars	23
2.6 Attestation forms	35
2.7 Schedule of information	37
2.8 Supplementary particulars	38
2.9 Equivalent sub-contract provisions	38
3 Definitions and Interpretations	44
3.1 Introduction	44
3.2 Definitions	44
3.3 Interpretation	45
3.4 Reckoning periods of days	46
3.5 Contracts (Rights of Third Parties) Act 1999	46
3.6 Giving of service of notices and other documents	46
3.7 Effect of the final payment notice (or the default payment notice)	47
3.8 Applicable law	49
3.9 Equivalent sub-contract provisions	49
4 Sub-contractors' General Obligations	51
4.1 Introduction	51
4.2 General obligations	53

4.3	Sub-contractor's design	59
4.4	Materials, goods and workmanship	71
4.5	Compliance with main contract and indemnity	75
4.6	Errors, discrepancies and divergences	76
4.7	Equivalent sub-contract provisions	80
5	Time	85
5.1	Introduction	85
5.2	Time and the adjustment to the period for completion	86
5.3	Practical completion and lateness	96
5.4	Equivalent sub-contract provisions	98
6	Defects, Design Documents and Warranties	102
6.1	Introduction	102
6.2	Defects	103
6.3	Sub-contractor's design documents	107
6.4	Collateral warranties	108
6.5	Equivalent sub-contract provisions	113
7	Control of the Sub-contract Works	114
7.1	Introduction	114
7.2	Assignment and sub-letting	116
7.3	Person-in-charge	118
7.4	Access provided by the sub-contractor	119
7.5	Opening up the works and remedial measures	119
7.6	Attendance and site conduct	123
7.7	Health and safety and CDM	129
7.8	The CDM Regulations (i.e. the Construction (Design and Management) Regulations 2015)	135
7.9	Suspension of the main contract by the contractor	142
7.10	Benefits under the main contract	146
7.11	Certificates/statements or notices under the main contract	146
7.12	Equivalent sub-contract provisions	147
8	Payment	150
8.1	Introduction	150
8.2	The amount due in respect of interim payments	151
8.3	Unfixed materials	152
8.4	The amount due in respect of the final payment	153
8.5	Retention	156
8.6	Payment due dates and final dates for payment for interim payments	159
8.7	Payment Notices and Pay Less Notices for interim payments	160

8.8	The payment due date and the final date for payment for the final payment	162
8.9	Payment Notices and Pay Less Notices in respect of the final payment	162
8.10	VAT (Value Added Tax)	164
8.11	Construction Industry Scheme (CIS)	164
8.12	Interest	164
8.13	Sub-contractor's right of suspension	165
8.14	Fluctuations	166
8.15	Equivalent sub-contract provisions	167
9	Loss and Expense	171
9.1	Introduction	171
9.2	Can common law damages claims be excluded by the contract?	173
9.3	Are claims for extensions of time and loss and/or expense linked?	173
9.4	What are the grounds/requirements for loss and expense?	174
9.5	What are Relevant Sub-contract Matters?	174
9.6	Can the contractor recover direct loss and/or expense from the sub-contractor?	176
9.7	In pursuing a loss and expense claim, what does a sub-contractor need to prove?	177
9.8	What needs to be proved in a loss and expense claim document?	179
9.9	What is a global claim?	180
9.10	Common heads of a loss and expense claim	182
9.11	Prolongation costs	183
9.12	Disruption claims	186
9.13	Winter working	187
9.14	Head office overheads and profit	187
9.15	Loss of profit	190
9.16	Increased costs	190
9.17	Cost of claim preparation	191
9.18	Interest and finance charges	191
9.19	Acceleration	192
9.20	Common law damages	193
9.21	Equivalent sub-contract provisions	196
10	Variations	197
10.1	Introduction	197
10.2	What is a variation?	198
10.3	How is a variation instructed?	198
10.4	Can a variation vitiate a contract?	199

10.5	Must a sub-contractor comply with all variation directions issued?	200
10.6	Must a sub-contractor comply with all variation directions issued that may injuriously affect the efficacy of the sub-contractor's design?	200
10.7	What happens if a sub-contractor does not comply with a direction issued?	201
10.8	How should variations be valued?	201
10.9	How should variations that relate to a sub-contractor's design work be valued?	201
10.10	What is the procedure to be followed in respect of a schedule 2 quotation?	202
10.11	What are the valuation rules?	205
10.12	Equivalent sub-contract provisions	210
11	Injury, Damage and Insurance	214
11.1	Introduction	214
11.2	Sub-contractor's liability for personal injury or death	215
11.3	The sub-contractor's liability for injury or damage to property	216
11.4	The sub-contractor's liability for loss or damage to the sub-contract works	217
11.5	What Specified Perils insurance cover, in respect of loss or damage to works and site materials, does the sub-contractor obtain under the joint names all risks policies?	218
11.6	What is the sub-contractor's liability for damage to the sub-contract works?	218
11.7	What are the employer's options where terrorism cover is not available?	220
11.8	Is the contractor responsible for damage caused to the sub-contractor's plant, etc.?	221
11.9	Is the sub-contractor required to take out professional indemnity insurance?	221
11.10	When and how does the Joint Fire Code apply?	222
11.11	Equivalent sub-contract provisions	223
12	Termination of Sub-contract	226
12.1	Introduction	226
12.2	How can a contract come to an end?	227
12.3	What can cause a sub-contract to be terminated?	228
12.4	What is a breach of contract?	228
12.5	Will any breach of contract enable one to terminate the sub-contract?	228

12.6	What is a repudiatory breach at common law?	229
12.7	Why have termination provisions in the contract if the sub-contract can be terminated at common law?	229
12.8	What is the effect of a sub-contract being terminated at common law?	230
12.9	Are the effects of a sub-contract being terminated under common law or by contractual provisions the same?	230
12.10	Where can the contractual termination provisions be located in the Sub-contract?	231
12.11	Are the party's common law termination rights preserved under the Sub-contract?	231
12.12	What reasons give the contractor a right to terminate the sub-contractor's employment under the JCT Sub-contract Conditions?	231
12.13	What is deemed to be default by the sub-contractor under clause 7.4.1 of SBCSub/D/C?	231
12.14	What happens when a sub-contractor commits a specified default noted at clause 7.4.1 of SBCSub/D/C?	232
12.15	Must all notices either by the Contractor or the Sub-contractor referred to under Section 7 'Termination' of the sub-contract conditions be given in accordance with clause 1.7.4?	233
12.16	What does insolvency of the sub-contractor mean?	233
12.17	What happens when the sub-contractor becomes insolvent?	234
12.18	What does corruption entail?	235
12.19	What are the consequences of the contractor terminating the sub-contractor's employment?	235
12.20	What reasons give the sub-contractor the right to terminate his or her employment under the JCT sub-contract conditions?	237
12.21	What is deemed to be default by the contractor under clause 7.8.1 of SBCSub/D/C?	237
12.22	What happens when a contractor commits a specified default noted under clause 7.8.1 of SBCSub/D/C?	238
12.23	What does insolvency of the contractor mean?	239
12.24	What happens when the contractor becomes insolvent?	239
12.25	What are the consequences of the sub-contractor terminating his or her own employment?	240
12.26	If a sub-contractor's employment is terminated for any reason, can it subsequently be reinstated?	242
12.27	Equivalent sub-contract provisions	242

13 Settlement of Disputes	245
13.1 Introduction	245
13.2 Mediation	245
13.3 Adjudication	247
13.4 Arbitration	253
13.5 Litigation	260
13.6 Equivalent Sub-contract provisions	263
<i>Table of Cases</i>	265
<i>Table of Statutes and Regulations</i>	269
<i>Index</i>	271

<http://www.pbookshop.com>