Commercial Contract Risk Report

Sample report — fictional AS 4000 subcontract scenario

CONTRACT	Subcontract Agreement SC-2026-0418
CONTRACT TYPE	AS 4000-1997 — Subcontract
COUNTERPARTY	[Redacted Head Contractor Pty Ltd]
REVIEWED FOR	Sample Subbie Pty Ltd
PROJECT STATE	Queensland (QLD BIF Act applies)
DATE GENERATED	18 June 2026

OVERALL VERDICT

HIGH RISK

BIGGEST RISK

Uncapped indemnity for consequential loss at clause 11.2, combined with a 10 business-day time bar on variation claims at clause 14.2. Sign as drafted and a single missed notice could cost more than the Subcontract Sum.

NEXT STEP

Your free 30-minute consultation with a WPC commercial manager is included. Book a time →

Executive Summary

The whole contract at a glance. Six risk areas, ranked by severity. Page references point to the relevant clause in your subcontract.

#	Risk Area	Verdict	Critical Finding	Page · Cl.
1	Variations	CRITICAL	No mechanism for instructed-but-undocumented variations; verbal instructions excluded.	p.14, cl.8.1
2	Extension of Time	CRITICAL	10 business-day time bar on EOT notice; missing one notice forfeits the entire claim.	p.16, cl.8.4
3	Payment Claims	HIGH	Payment terms 45 days from claim — slower than QLD BIF Act 25 business-day statutory minimum.	p.22, cl.12.3
4	Indemnities & Liability	CRITICAL	Uncapped indemnity including consequential loss. No insurer will respond in full.	p.31, cl.11.2
5	Latent Conditions	MEDIUM	Latent condition relief excludes weather, geotechnical and pre-existing services.	p.27, cl.9.6
6	Termination	HIGH	Termination for convenience available to Principal with no lost-margin compensation.	p.40, cl.18.4

SHOWSTOPPERS

3 items
Do not sign without amendment:
- Cl. 11.2 — Uncapped indemnity
- Cl. 8.4 — EOT time bar
- Cl. 8.1 — Variation mechanism

PRICE THE RISK

4 items
Negotiate; otherwise price-in:
- Cl. 12.3 — 45-day payment
- Cl. 18.4 — Termination for convenience
- Cl. 9.6 — Latent conditions scope
- Cl. 14.2 — Variation notice period

ACCEPTABLE

5 items
Acceptable as drafted:
- Cl. 25 — Dispute resolution
- Cl. 26 — Governing law
- Cl. 23 — Confidentiality
- Cl. 17 — Insurance limits
- Cl. 21 — Notices

1. Variations

CRITICAL

WHAT THIS CLAUSE DOES IN YOUR CONTRACT

The contract requires all variations to be in writing and signed by the Principal's Representative before the work is performed. There is no mechanism for instructed-but-undocumented variations and verbal instructions are expressly excluded.

QUOTED CLAUSE (VERBATIM)

> "The Subcontractor shall not be entitled to any payment in respect of any variation unless the variation has been authorised in writing by the Principal's Representative prior to the commencement of the varied work. No verbal instruction shall constitute a variation under this Subcontract."

— Clause 8.1, page 14

WHY THIS MATTERS COMMERCIALLY

On a live site, head contractors regularly instruct varied work by phone, in toolbox talks, or by marked-up drawings — and pre-emptive written authorisation almost never happens. This clause means that every time you act on a verbal instruction without stopping work to chase paperwork, you are doing free work. Across a typical $1.2M subcontract, undocumented variations frequently exceed $80–150k of unpaid scope.

BENCHMARK AGAINST COMMERCIAL BEST PRACTICE

AS 4000-1997 standard practice is that the Principal may direct variations verbally or in writing, the Subcontractor confirms the instruction in writing within a short period (typically 5 business days), and the variation is valued under the contract rates. This contract has stripped the Subcontractor-side protection entirely and given the Principal a contractual basis to refuse payment for any variation that wasn't perfectly papered before work commenced.

RECOMMENDED AMENDMENT WORDING

> Clause 8.1 is amended to read: "Where the Principal's Representative instructs a variation (whether verbally or in writing), the Subcontractor shall confirm that instruction in writing within five (5) business days. If the Principal's Representative does not dispute the written confirmation within five (5) business days of receipt, the variation shall be deemed authorised and valued in accordance with clause 14."

NEGOTIATION NOTE

Raise this in tender clarifications, not post-award. Most head contractors will accept the written-confirmation mechanism because it actually protects them too — it forces both parties to paper variations promptly. If they refuse, treat this as a showstopper: priced this risk is essentially uninsurable, and your margin disappears into unpaid variations within the first two months.

2. Extension of Time (EOT)

CRITICAL

WHAT THIS CLAUSE DOES IN YOUR CONTRACT

The contract grants the right to claim an extension of time, but requires written notice within 10 business days of the cause arising. Failure to give notice in time bars the entire claim — a strict time bar with no cure period.

QUOTED CLAUSE (VERBATIM)

> "The Subcontractor shall give written notice of any cause of delay within ten (10) business days of the cause first arising. If such notice is not given within the period specified, the Subcontractor's entitlement to an extension of time in respect of that cause is forever barred."

— Clause 8.4, page 16

WHY THIS MATTERS COMMERCIALLY

Time bars are the single most common reason Australian subbies lose EOT claims. 10 business days is aggressive — on a fast-moving site with overlapping causes (weather, late access, design changes), it is easy to miss the window. "Forever barred" wording removes any common-law relief. Courts have consistently upheld these clauses where the wording is clear (Walter Construction v CPL [2003] NSWSC 266; Probuild v DDI Group [2017] NSWCA). Miss one notice, lose the entire claim.

BENCHMARK AGAINST COMMERCIAL BEST PRACTICE

AS 4000-1997 standard is 28 days for EOT notice, with the Superintendent having discretion to extend time even where notice is late. Industry-fair practice on subcontracts is 15 business days with a cure period (the Subcontractor may remedy late notice if no prejudice is caused to the Principal). This contract is materially harsher than both.

RECOMMENDED AMENDMENT WORDING

> Clause 8.4 is amended to read: "The Subcontractor shall give written notice of any cause of delay within fifteen (15) business days of becoming aware of the cause. Where notice is given after the period specified, the Subcontractor's entitlement is not barred provided that the Principal has not been materially prejudiced by the delay in notification."

NEGOTIATION NOTE

Critical priority. Push hard for 15 business days plus the prejudice carve-out. Head contractors usually concede the prejudice clause because it doesn't materially increase their exposure — they retain the right to dispute the EOT on its merits. If they will only concede 15 days flat (no prejudice clause), accept it and implement an internal notice-tracking system for every project.

3. Payment Claims & Schedule

HIGH

WHAT THIS CLAUSE DOES IN YOUR CONTRACT

Payment claims are made monthly on the 25th. The contract requires payment within 45 calendar days of a valid claim — substantially slower than the Queensland Building Industry Fairness Act 25 business-day statutory standard.

QUOTED CLAUSE (VERBATIM)

> "The Principal shall pay each payment claim, or such other amount as the Principal may certify in a payment schedule, within forty-five (45) calendar days after the Principal receives the payment claim."

— Clause 12.3, page 22

WHY THIS MATTERS COMMERCIALLY

On a $1.2M subcontract running monthly claims of ~$100k, the difference between 25 business days and 45 calendar days is roughly two extra weeks of working capital tied up — about $50k of float you are funding for the Principal. Across a 12-month subcontract, that is around $25–35k of finance cost the contract is silently transferring to you. More importantly, the contractual period does not override the BIF Act — you are entitled to be paid within the statutory period regardless.

BENCHMARK AGAINST COMMERCIAL BEST PRACTICE

QLD BIF Act s.67U sets the statutory due date at 25 business days after a valid claim. The contract cannot lawfully impose a longer period. NSW and VIC equivalents are similarly 15 and 25 business days respectively. Industry-fair contractual terms align contract drafting to statute — this contract drafts in a longer period in the hope the Subcontractor doesn't know their statutory rights.

RECOMMENDED AMENDMENT WORDING

> Clause 12.3 is amended to read: "The Principal shall pay each payment claim, or such other amount as the Principal may certify in a payment schedule, within twenty-five (25) business days after the Principal receives the payment claim, being the statutory due date under section 67U of the Building Industry Fairness (Security of Payment) Act 2017 (Qld)."

NEGOTIATION NOTE

Head contractors often resist this because their own head-contract terms are longer. If they will not amend, you have two options: (1) submit every claim as a formal BIF Act payment claim with the statutory warning, which entitles you to adjudication if not paid in 25 business days; or (2) accept the 45-day contractual term and price-in the working-capital cost (~3% of monthly claim value as a finance line item). Most subbies should do both.

4. Indemnities & Liability Caps

CRITICAL

WHAT THIS CLAUSE DOES IN YOUR CONTRACT

You are required to indemnify the Principal for any loss, damage, claim, or expense arising from the works — without a cap and including consequential loss. This is the most dangerous clause in the contract.

QUOTED CLAUSE (VERBATIM)

> "The Subcontractor shall indemnify the Principal against all losses, damages, claims, costs, and expenses (including consequential, indirect, and economic loss) arising out of or in connection with the Subcontract Works, howsoever caused."

— Clause 11.2, page 31

WHY THIS MATTERS COMMERCIALLY

Uncapped, broad-form indemnity that captures consequential loss. Most insurance policies — including standard Public Liability and Professional Indemnity — will not respond to consequential loss claims. Practically: a $50k mistake on your part could become a $5M claim if it delays the Principal's downstream revenue, and your insurer will not cover it. "Howsoever caused" wording also captures loss caused by the Principal's own contributory negligence. This single clause has bankrupted more Australian subbies than any other contractual provision.

BENCHMARK AGAINST COMMERCIAL BEST PRACTICE

Industry-standard practice is (a) a liability cap at the greater of the Subcontract Sum or your Professional Indemnity policy limit, (b) explicit exclusion of consequential, indirect and economic loss, and (c) the indemnity limited to losses caused by your negligent acts or omissions — not "howsoever caused". AS 4903-2000 has all three by default. This contract has none.

RECOMMENDED AMENDMENT WORDING

> Clause 11.2 is amended to read: "The Subcontractor shall indemnify the Principal against direct losses, damages, claims, costs, and expenses arising out of the Subcontract Works to the extent caused by the negligent acts or omissions of the Subcontractor. The Subcontractor's aggregate liability under this Subcontract is capped at the Subcontract Sum. Neither party is liable to the other for any consequential, indirect, or economic loss."

NEGOTIATION NOTE

Raise this in tender clarifications, not post-award — once you've signed, you have no leverage. Head contractors will usually accept a cap at the Subcontract Sum and the consequential loss exclusion if you ask before pricing; they are trying to push risk down, not blow up the deal. If they refuse the cap, price an additional 3–5% into your tender margin to absorb the residual risk — or walk away.

5. Latent Conditions

MEDIUM

WHAT THIS CLAUSE DOES IN YOUR CONTRACT

The contract provides for relief where latent conditions are encountered, but excludes weather, geotechnical conditions, and pre-existing services from the definition. Notice must be given within 5 business days of discovery.

QUOTED CLAUSE (VERBATIM)

> "Latent Conditions means physical conditions on, under or in the vicinity of the Site which differ materially from those that should reasonably have been anticipated, but excludes weather conditions, ground and geotechnical conditions, and the presence or condition of any underground services."

— Clause 9.6, page 27

WHY THIS MATTERS COMMERCIALLY

The exclusions effectively gut the latent conditions clause. Geotechnical conditions and underground services are the two most common categories of genuinely unforeseeable site issues — the contract is asking you to price an uncapped risk for which you have no diligence right. The 5-business-day notice is also aggressive but consistent with the rest of the contract's time-bar pattern.

BENCHMARK AGAINST COMMERCIAL BEST PRACTICE

AS 4000-1997 defines Latent Conditions broadly to include physical conditions that could not reasonably have been anticipated, and does not exclude common categories like ground conditions. Industry-fair practice on subcontracts is to either (a) follow the AS 4000 definition, or (b) provide the Subcontractor with the geotechnical report and pre-existing services drawings, and treat anything outside those as a latent condition.

RECOMMENDED AMENDMENT WORDING

> Clause 9.6 is amended to read: "Latent Conditions means physical conditions on, under or in the vicinity of the Site which differ materially from those disclosed in the Site Information provided by the Principal. The Subcontractor shall give notice of any Latent Condition within ten (10) business days of discovery." The Principal to provide the geotechnical report and underground services drawings as Site Information attached to this Subcontract.

NEGOTIATION NOTE

Lower priority than the showstoppers above, but still worth raising. The cleaner fix is to get the Principal to attach their geotechnical report as Site Information — this gives you a baseline to claim against. If they refuse to share it, that itself tells you something about the site risk and you should price accordingly.

6. Termination

HIGH

WHAT THIS CLAUSE DOES IN YOUR CONTRACT

The Principal has the right to terminate the Subcontract for convenience on 14 days' notice. The Subcontractor is entitled to payment for work done and demobilisation costs — but no compensation for lost margin on the unperformed portion of the works.

QUOTED CLAUSE (VERBATIM)

> "The Principal may terminate this Subcontract for convenience by giving the Subcontractor not less than fourteen (14) days' written notice. On termination under this clause, the Subcontractor is entitled to: (a) payment for work properly performed up to the date of termination; and (b) reasonable demobilisation costs."

— Clause 18.4, page 40

WHY THIS MATTERS COMMERCIALLY

Termination for convenience without lost-margin compensation lets the Principal walk away from the contract whenever it suits them — typically when they have found a cheaper subcontractor or the project is restructured. You bear all of the tender cost, the mobilisation cost, and lose the contracted profit on every remaining month. On a $1.2M subcontract with 8% margin, late-stage termination for convenience could cost you $50–80k of expected profit with no recourse.

BENCHMARK AGAINST COMMERCIAL BEST PRACTICE

Industry-fair practice on subcontracts is termination for convenience either (a) not available at all to the Principal (only the head contract has it), or (b) available with compensation that includes lost margin on the remaining works, typically calculated as the Subcontract margin × the value of unperformed works. AS 4000-1997 does not contain a termination-for-convenience clause by default; it is an amendment a Principal must specifically seek.

RECOMMENDED AMENDMENT WORDING

> Clause 18.4 is amended by adding the following sub-clause (c): "(c) an amount equal to the Subcontractor's margin (being 8% of the Subcontract Sum) applied to the value of the works not yet performed at the date of termination, as compensation for lost profit."

NEGOTIATION NOTE

Negotiate for either removal of the clause or addition of lost-margin compensation. Head contractors usually concede one of the two — they prefer to keep the termination right and accept the compensation. If they refuse both, treat termination for convenience as a real (not theoretical) risk and price an additional 1–2% of the Subcontract Sum into your margin to self-insure against the residual exposure.

State Security of Payment Snapshot

How the Building Industry Fairness (Security of Payment) Act 2017 (Qld) applies to this contract. The BIF Act overrides contradictory contractual terms — these are your statutory rights regardless of what the Subcontract says.

Payment claim cycle	Monthly, on the 25th of each month (cl. 12.1)
Statutory due date	25 business days after a valid claim (BIF Act s.67U)
Contractual due date	45 calendar days after claim (cl. 12.3) — slower than statute
What you can do	The BIF Act overrides the contractual period. You are entitled to be paid within 25 business days regardless of what cl. 12.3 says — provided your payment claim is in BIF Act form.
Payment schedule deadline	15 business days from receipt of payment claim (BIF Act s.68)
Adjudication window	Apply within 30 business days of due date, or 20 business days of payment schedule (BIF Act s.79)
Time bars in this contract	Cl. 8.4 (EOT) · Cl. 9.6 (latent conditions) · Cl. 14.2 (variations) — all 10 business days. Aggressive but generally enforceable under QLD law.
BIF Act protections in play	Retention trust (projects > $1M) · Prohibition on pay-if-paid (s.200) · Mandatory payment claim warning · Personal liability for non-payment of subbies under s.197A

Practical implication

On a $100k monthly payment claim, the gap between contractual 45 calendar days and statutory 25 business days is roughly 2 weeks of additional working capital you would otherwise be funding for the Principal. Across the project life, that's around $25–35k of finance cost. Submit every payment claim as a formal BIF Act claim (with the prescribed warning) and the statutory period applies — regardless of what clause 12.3 says.

Deadline & Obligations Calendar

Every notice, claim, and reporting deadline extracted from your subcontract. Print this and stick it on the wall — missing a deadline is the single most common (and preventable) cause of lost entitlement on Australian subcontracts.

Obligation	Timing	Clause	Risk
Payment claims	25th of each month	cl. 12.1	
Payment schedule	Within 10 BD of claim	cl. 12.4	
Payment due (BIF)	25 BD (overrides 45 calendar)	cl. 12.3 / BIF s.67U	
EOT notice	Within 10 BD of cause	cl. 8.4	Time bar
EOT particulars	Within 20 BD of cause	cl. 8.4	
Variation notice	Within 10 BD of instruction	cl. 14.2	Time bar
Variation valuation	Within 20 BD	cl. 14.4	
Latent conditions	Within 5 BD of discovery	cl. 9.6	Very tight
Defects notification	Within 12 months of PC	cl. 19.1	
Insurance certificates	Annually	cl. 16.5	
Performance security	50% at PC, 50% at DLP end	cl. 5.3	
Final claim	Within 28 days of DLP expiry	cl. 12.6	Time bar

BD = business days · PC = Practical Completion · DLP = Defects Liability Period

Negotiation Priority

Ranked list of what to push back on, and in what order. Use this in your tender clarifications email before you price the job — once you've submitted a price, your leverage is gone.

MUST AMEND — Do not sign as drafted

1. Cl. 11.2 — Indemnity cap & consequential loss exclusion. Cap liability at Subcontract Sum, exclude consequential loss, limit to negligence.

2. Cl. 8.1 — Variation mechanism. Add written-confirmation procedure for verbal instructions; 5 BD deemed-acceptance window.

3. Cl. 8.4 — EOT time bar. Extend notice period to 15 BD with no-prejudice cure clause.

SHOULD AMEND — Price the risk if refused

4. Cl. 18.4 — Termination for convenience. Add lost-margin compensation of 8% × value of unperformed works.

5. Cl. 9.6 — Latent conditions. Broaden the definition; have the Principal attach the geotechnical report as Site Information.

6. Cl. 12.3 — Payment terms. Align contractual to BIF Act statutory 25 BD.

7. Cl. 14.2 — Variation notice period. Extend from 10 BD to 15 BD.

FLAG IN CLARIFICATIONS — Worth raising

8. Cl. 13.5 — Set-off rights. Confirm set-off limited to liquidated, disputed amounts.

9. Cl. 17.2 — Novation provisions. Confirm novation requires Subcontractor consent.

ACCEPTABLE AS DRAFTED

Cl. 25 — Dispute resolution · Cl. 26 — Governing law · Cl. 23 — Confidentiality · Cl. 17 — Insurance limits · Cl. 21 — Notices

Departure Schedule

A clause-by-clause table you can paste straight into your tender clarifications email or contract markup. This is the artefact senior commercial managers recommend every Australian subbie carry into every job.

Cl. #	Departure	Status
8.1	Add: variations may be instructed verbally if confirmed in writing within 5 BD; Principal has 5 BD to dispute the written confirmation.	Must amend
8.4	Amend: EOT notice period 10 → 15 BD; add no-prejudice cure clause for late notice.	Must amend
11.2	Amend: cap aggregate liability at Subcontract Sum; exclude consequential, indirect and economic loss; limit indemnity to negligent acts or omissions.	Must amend
9.6	Amend: redefine Latent Conditions against attached Site Information (including geotechnical report); notice period 5 → 10 BD.	Should amend
12.3	Amend: payment due 45 calendar days → 25 business days (BIF Act s.67U).	Should amend
14.2	Amend: variation notice 10 → 15 BD.	Should amend
18.4	Add sub-clause (c): on termination for convenience, Principal pays lost margin of 8% × value of unperformed works.	Should amend

Tip — paste this table into your tender clarifications email exactly as it stands. Most head contractors will accept 60–80% of these amendments without argument if you raise them before pricing.

Your Free 30-Minute Consultation

This report flagged 3 Critical and 2 High risk items in your subcontract. The included consultation is the fastest way to turn the report into a clarifications email you can send tomorrow morning.

Book your 30-minute consultation

A WPC commercial manager will walk you through every flagged clause, talk through your negotiation strategy, and tell you what to push back on first. No charge, no sales pitch, no commitment.

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Or reply to this email directly

If you'd rather start with a written question, reply to the email this report arrived in. Russell Hopkins or one of the WPC commercial team will respond within one business day.

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About this report

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This is a sample report generated against a fictional AS 4000 subcontract scenario for demonstration purposes. All clause numbers, dollar amounts, and counterparty references are illustrative only. Your real ContractLens report will be generated against your actual contract.

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