

2. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and remedying of any defects therein the Contract Price of AED 100,000,000/= (UAE Dirhams One Hundred Million) or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

3. The following documents shall be deemed to form and be read and as part of this Agreement, viz. :-

- The Letter of Acceptance;
- The said Tender;
- The Particular Conditions of Contract;
- The General Conditions of Contract;
- The Specification;
- The Drawings; and
- The Bill of Quantities.

In witness whereof the Parties hereto have caused this Agreement to be executed the day and year first before written.

On behalf of the **Employer** :- **Contractor** :-

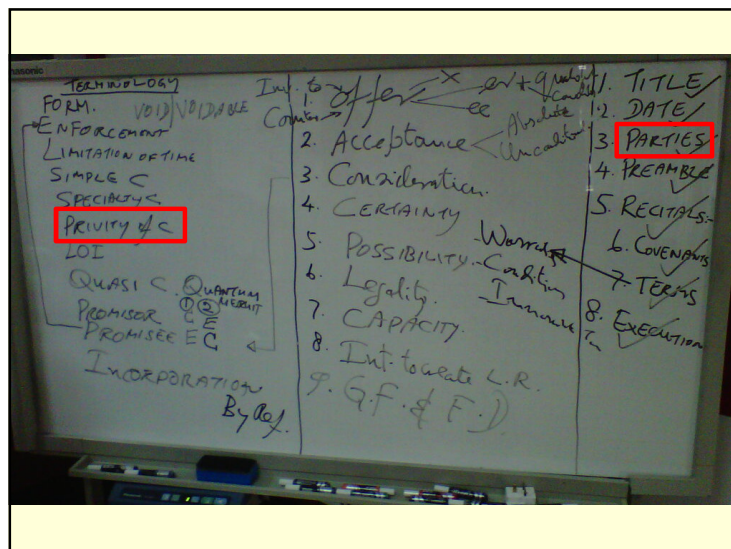
Name:- Name:-

In the presence of :- In the presence of :-

Name:- Name:-

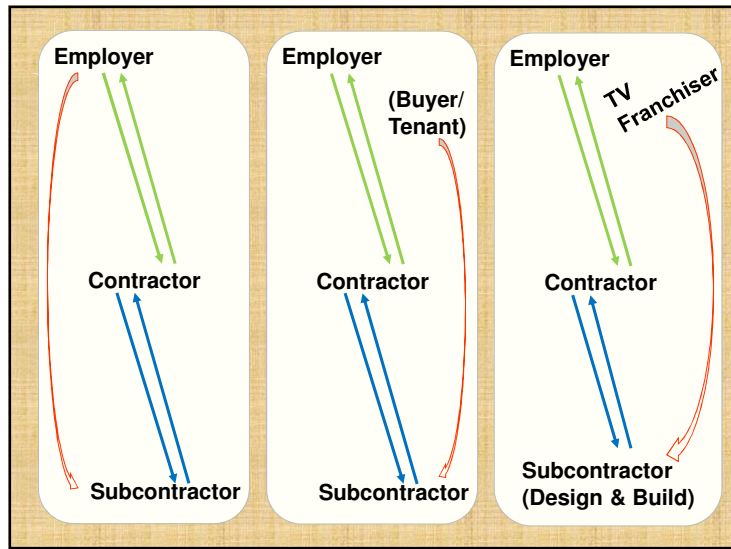
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Annexures to the Conditions of Contract:-
 - Protoma of the Performance Security
 - Protoma of the Advance Payment Bond
 - Protoma of the Retention Money Bond



Need for Collateral Warranties :-

- Privity of contract prevents a third party from enjoying any rights / benefits under a contract made between two other parties unless such right is specified in the contract.
- A third party (such as a prospective buyer of the finished facility or the financier or a prospective tenant or any other) who has an interest in the facility may want an assurance that a specialist Subcontractor :-
 - is complying with the specified quality and other execution requirements.
 - would not quit without notifying such third party if the Main Contractor defaults on payments, so that he can step in and make the payment to ensure work continuance / completion.
 - would agree to have certain provisions in the Subcontract to be extended to include what is owed to such third party (IP, PI, etc).
- To facilitate the above :-
 - Employers include in contracts a requirement to write a provision in the subcontracts requiring the Subcontractors to execute a Collateral Warranty with third parties to be named later.
 - Incorporate into to the contract a specimen of the Collateral Warranty Agreement.
 - Main Contractors incorporate the requirement into Subcontracts, and incorporate the specimen into the Subcontracts.
 - When called upon to do so, the Subcontractors should execute these.
- Collateral Warranty requirements are enforceable in the UAE.



UAE Federal Law No. 5/85 (2/87) – The Civil Code

BOOK TWO - CONTRACTS CHAPTER III - Contracts of Work

Part 1 - Muqawala (contract to make a thing or to perform a task)

Section 3 - Subcontracting

Article 890:

- (1) A contractor may entrust the performance of the whole or part of the work to another contractor unless he is prevented from so doing by a condition of the contract, or unless the nature of the work requires that he do it in person.
- (2) The first contractor shall remain liable as towards the employer.

Article 891 :

A sub-contractor shall have no claim against the employer for anything due to him from the first contractor unless he has made an assignment to him against the employer.



The Society of
Construction Law
International

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Protection of Subcontractors under French law: an overview

UK

Carole Malinvaud
December 2006

A paper given to a meeting of the Society of Construction Law in London on 5th September 2006.

Since 1975, French law has given all subcontractors in construction and transport contracts significant statutory protections for their right to be paid, including rights of action against the Employer and financial guarantees. Carole Malinvaud summarises these protections, differentiating between private and public sector contracts. The text of key provisions of the 1975 Law (translated into English) and summaries of the main cases interpreting these statutory rights are included in appendices. She then considers the relevance of the 1975 Law to international contracts and the impact of the Rome Convention. Finally she suggests ways in which subcontractors may protect their position, including via multi-party arbitration proceedings involving Employer and Main Contractor, with suggested clauses to achieve this in an ICC rules context.

Since 1975, French law has given all subcontractors in construction and transport contracts significant statutory protections for their right to be paid, including rights of action against the Employer

Law No. 19 of 2001 – Bahrain Civil Code

SECTION ONE - PERSONAL RIGHTS OR OBLIGATIONS BOOK TWO – SPECIFIC CONTRACTS

Part III – CONTRACTS FOR HIRE OF SERVICES

Chapter 1 - Contracts for Work - Section I - General Rules of Contracts for Work: Fourth: Assignment of Contract and Sub-contracts:

Article 605

- (a) A sub-contractor and workmen working for a contractor in the execution of a contract have a direct right of action against the employer but only to the extent of such sums as are due by the employer to the main contractor on the date that action is commenced.
- (b) Workmen of a sub-contractor likewise have the same right of action against the main contractor and the employer to the extent of the claims in question.

Article 606

The rights of a sub-contractor and workmen provided for in the preceding Article have priority over those of a person to whom the main contractor has assigned sums due to him by the employer. In case of plurality, they shall recover their rights in proportion to the debt owed to each of them.

Law No. 22 of 2004 – Qatari Civil Code

BOOK TWO - CHAPTER III

Contracts Pertaining to Works - Section 1 - Contracts of Work Sub-Section 1 - General Principles of a Contract of Works 5. Termination of a Contract of Works

Article 702 :

- 1 - The subcontractor and labourers who work for the main contractor while the work is being carried out will have the right to claim directly from the employer no more than the amount by which he is indebted to the main contractor from the time the action is brought and the subcontractor's labourers will have the same right in respect of both the main contractor and the employer.
- 2 - The aforementioned subcontractor and labourers, when they levy an attachment in respect of the employer or main contractor, will have a priority right over the amounts due to the main contractor or the subcontractor at the time such attachment is levied and the priority right of each of them will be in proportion to his right and payment of these amounts may be made directly to them.
- 3 - Such rights of a subcontractor and labourers as are established under this article will be preferred to the rights of those to whom the contractor assigns his right in respect of the employer.

Royal Decree No. 29 of 2013 – The Civil Code

BOOK II - Nominate Contracts Part Three – Work Contracts

Chapter 1

Muqawala Contracts (Contract to Build)

Section 3

Subcontracting

Article 644:

- (1) A contractor may assign the performance of the whole or part of the work to another contractor unless he is prevented from so doing by a condition of the contract, or unless the nature of the work requires that he do it in person.
- (2) The original contractor shall remain liable as towards the employer.

Article 645:

A sub-contractor shall have no claim against the employer for anything due to him from the first contractor unless he has made an assignment to him against the employer.

- The position in KSA is similar to that in UAE and Oman. The Subcontractor has no rights to claim against the Employer – Article 474 of the Saudi Civil Code.
- The position in Kuwait is that the Subcontractor has the right to claim against the Employer, but together with the Contractor – Article 682 of the Kuwaiti Civil Code.



UAE Federal Law No. 5/85 (2/87) – The Civil Code

INTRODUCTORY CHAPTER - General Provisions

Part 2 – Certain jurisprudential maxims
and rules of interpretation

Article 42:

- (1) No harm shall be done, nor harm done in return.
- (2) Harm shall be made good.
- (3) Harm may not be made good by causing similar harm (in return).

UAE Federal Law No. 5/85 (2/87) – The Civil Code

BOOK ONE

CHAPTER I - Personal Obligations and rights

Part 3 – Acts causing harm

Section 1 – General Provisions

Article 282 :

Any harm done to another shall render the actor, even though not a person of discretion, liable to make good the harm.

UAE Federal Law No. 5/85 (2/87) – The Civil Code

BOOK TWO - CHAPTER III

Contracts of Work

Part 1

Muqawala (contract to make a thing or to perform a task)

Section 1

Definition and scope of muqawala

Article 872 :

A muqawala is a contract whereby one of the parties thereto undertakes to make a thing or to perform work in consideration which the other party undertakes to provide.

Article 874 :

In a muqawala contract, there must be a description of the subject matter of the contract, and particulars must be given of the type and amount thereof, the manner of performance, and the period over which it is to be performed, and the consideration must be specified.

UAE Federal Law No. 5/85 (2/87) – The Civil Code

BOOK ONE

CHAPTER I - Personal Obligations and rights

Part 1 - Contracts

**Section 2 – The elements, validity and effect of the contract and options –
(5) The subject matter and purpose of the contract**

(b) The purpose of the contract

Article 208 :

- (1) The contract shall not be valid if it does not contain a lawful benefit to both contracting parties.
- (2) A contract shall be presumed to contain such lawful benefit unless there is evidence to the contrary.

Questions ?



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