



# **SUB-CONTRACTOR TERMS & CONDITIONS**

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## 1. General

- 1.1** All defined terms shall have the meaning assigned to them on the face of the Order or to the extent that they are not expressly defined in the Order then they shall have the meaning assigned to them in the Main Contract.
- 1.2** In this Order, the singular includes the plural and vice versa.
- 1.3** The Sub-Contractor will upon and subject to the conditions and documents referred to in this Order provide everything which is necessary for the proper and timeous execution and completion of the Sub-Contract Works in accordance with all drawings, specifications, requirements and/or instructions supplied to the Sub-Contractor and will deliver up the Sub-Contract Works to the Contractor complete in every respect to the satisfaction of the Contractor and its Employer.
- 1.4** The Sub-Contractor shall be responsible for all mistakes, inaccuracies, discrepancies and omissions in all drawings, detail, documents and information provided by it. Without prejudice to any express or implied warranties or conditions, the Sub-Contractor warrants that the Sub-Contract Works will comply with any performance specification or requirement contained or referred to in this Order.
- 1.5** Any tender quotation or estimate issued by the Sub-Contractor is subject to acceptance by the Contractor and a contract will not be formed until the Contractor has placed its written Sub-Contract Order form together with an Order number. The terms and conditions of this Order shall prevail over any other terms and conditions which are inconsistent with them which the Sub-Contractor seeks (whether before or after the date hereof) to impose upon the Contractor, irrespective of any provision therein purporting to exclude or supersede all or any of these terms and conditions and shall further prevail (to the extent to which they are inconsistent) over any other terms and conditions which are said to apply to this Order. Any failure by the Sub-Contractor to formally acknowledge receipt of the Sub-Contract Order shall have no effect or prejudice on the existence of a contract which shall come into effect upon the placing of the written Sub-Contract Order.
- 1.6** The Sub-Contractor shall not sub-let or assign the Sub-Contract Works or any benefit hereunder or otherwise assign responsibility for receipt of any payment hereunder without written consent first being obtained from the Contractor and such consent if given shall not relieve the Sub-Contractor from any liability under this Order. Further, where any sub-letting of the Sub-Contract Works is consented to by the Contractor, then the Sub-Contractor shall ensure that its sub-contractor is engaged on terms which include provisions similar to Clause 19 of this Order.

## 2. Main Contract

- 2.1** Where the Sub-Contract Order refers on its face to the Global Agreement, then all references in the Conditions to “the Main Contract” shall be deemed to be “the Global Agreement”.
- 2.2** The Sub-Contractor is deemed to have notice of all relevant terms and conditions of the Main Contract and Main Contract Documents and shall comply with any of the same which may be relevant to the Sub-Contract Works (save for those terms and conditions that have been expressly amended in this Order) as though the same were fully set out herein and the Contractor was the Employer and the Sub-Contractor was the Contractor.
- 2.3** The Sub-Contractor shall indemnify the Contractor against all claims, demands, proceedings, damages, costs, charges, losses and expenses whatsoever suffered or incurred by the Contractor arising under the Main Contract consequent upon the Sub-Contractor’s failure to comply whether in whole or in part with the terms and conditions of the Main Contract save to the extent that such claims, demands, proceedings, damages, costs, charges, losses and expenses are occasioned by any act of negligence or default of the Contractor.



**2.4** Notwithstanding anything else in this Order the Sub-Contractor shall carry out the Sub-Contract Works so as:

**2.4.1** to enable the Contractor to meet in full its obligations under or in connection with the Main Contract; and

**2.4.2** not to put the Contractor in breach of either the Main Contract or other Sub-Contracts.

**2.5** In the event of any ambiguity or inconsistency between the Order and the Conditions in the Main Contract, or any ambiguity or inconsistency within the Sub-Contract Conditions, the Sub-Contractor shall, as soon as it becomes aware of the same, refer it to the Contractor who shall decide in its absolute discretion which terms prevail and the Sub-Contractor shall comply with such decision without entitlement to any additional costs, loss or expense arising therefrom.

### 3. Sub-Contract Works

**3.1** The Sub-Contractor is deemed to have visited the Site and satisfied itself both as to the nature and content of the Sub-Contract Works and the conditions under which they are to be carried out. No claim for any remedy will be allowed which is based upon either lack of knowledge of the Site or the condition or efficacy of other works carried out, or to be carried out on the Site. The Sub-Contractor will ensure that the Sub-Contract Works are properly and effectively coordinated with the Works under the Main Contract.

**3.2** Where or to the extent that the Sub-Contract Works and any addition or variation to them include design work or the Sub-Contractor shall have designed any part of the Sub-Contract Works or shall have selected materials for incorporation therein, the Sub-Contractor shall ensure that such design is carried out with reasonable skill and care and that such materials are safe, suitable and fit for their intended purpose or purposes.

**3.3** No approvals, comments, instructions, consents, advice or indication of satisfaction given by or from the Employer, Contractor, or their agents, or advisers, nor any enquiry or inspection which the same may make or have carried out for on its behalf will operate to reduce, extinguish, exclude, limit or modify the Sub-Contractor's obligation to fulfil its duties and obligations under this Order unless it is in writing, refers to this Order and clearly identifies the duty or obligation and the extent to which such duty or obligation is to be reduced, extinguished, excluded, limited or modified and is signed by the Contractor.

**3.4** The Sub-Contractor shall in order to facilitate the efficient completion of the Sub-Contract Works assist and co-operate with the Contractor so as to enable the Contractor to:

**3.4.1** negotiate or communicate with the Employer in relation to the Sub-Contract Works;

**3.4.2** obtain any necessary permissions or approvals from government or statutory authorities;

**3.4.3** prepare technical data for the Sub-Contract Works;

**3.4.4** co-ordinate with other sub-contractors employed by the Contractor.

**3.5** In respect of intellectual property rights the parties agree the following:

**3.5.1** In consideration of the payment of £1 (being included within the Sub-Contract Sum) by the Contractor to the Sub-Contractor (receipt of which is hereby acknowledged), the Sub-Contractor hereby grants with full title guarantee an irrevocable, non-exclusive, royalty free licence to copy and use all the copyright in the drawings, details, plans and other documents of any nature whatsoever and any designs contained in them which have been or are hereafter provided by the Sub-Contractor in the course of performing its obligations under this Order (the "Documents")

**3.5.2** The Sub-Contractor warrants that the Documents are its original work and that they have not been copied from any other work or material, and that the exercise by the Contractor of the rights assigned to it will not infringe the rights of any third party.



**3.5.3** The Sub-Contractor agrees to indemnify and to keep the Contractor indemnified from and against all costs, expenses, liabilities, losses, damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Contractor incurs or suffers as a consequence of a direct or indirect breach of any of its warranties in **Clause 3.5.2**, and at the request of the Contractor shall provide all reasonable assistance as the Contractor may request to enable the Contractor to resist any action, claim or proceedings brought against the Contractor as a consequence of any such breach.

**3.5.4** The Sub-Contractor waives all its moral rights arising from the Sub-Contract Works pursuant to section 78 of the Copyright, Designs and Patents Act 1988 or otherwise insofar as it is lawful to do so.

**3.6** The Sub-Contractor shall appoint sufficient and suitably qualified site staff.

**3.7** The Sub-Contractor shall ensure that all materials to be installed in the Sub-Contract Works:

- 3.7.1** are ordered in sufficient time to maintain the progress of the Works; and
- 3.7.2** comply with clause 3.2 and the specification and approved drawings; and
- 3.7.3** are checked on arrival and any damage is reported to the Contractor's immediately; and
- 3.7.4** are unloaded, checked, stored and protected at all times following the check under **clause 3.7.3**.

**3.8** The Sub-Contractor shall ensure that the Works are adequately protected at all times and that materials are stored in accordance with the manufacturer's written specifications or instructions.

**3.9** This Order and the subject matter thereof shall be treated as confidential between the Contractor and the Sub-Contractor and shall not be disclosed by the Sub-Contractor without the Contractor's prior consent in writing.

## 4. Commencement of Sub-Contract

**4.1** No less than 7 days before the Commencement Date of the Sub-Contract Works, or at such other time as the Contractor may specify, the Sub-Contractor shall supply to the Contractor the following information:

- 4.1.1** the order, sequencing and methodology of activities forming the Sub-Contract Work;
- 4.1.2** the earliest starting date for each activity;
- 4.1.3** a list of activities which will be critical to progress;
- 4.1.4** a list of any drawings which the Sub-Contractor is required to provide; This information shall not form part of this Order nor shall it in any way be construed as being binding on the Contractor. The Contractor's approval of any such information submitted to it shall not relieve the Sub-Contractor of its responsibility under this Order for the sufficiency or accuracy thereof.

**4.2** The Sub-Contractor shall commence the Sub-Contract Works following the Contractor's instructions to commence the Sub-Contract Works and shall thereafter proceed with the same without delay.

**4.3** The Sub-Contract Works shall be carried out and completed within the Period for Completion and are in any event (but without prejudice to the Period for Completion) to be carried out diligently and in such manner, order and time as the Contractor may direct in accordance with the Main Contract programme and at all times having regard to the progress of the Works and so as to ensure completion of the Works or any part thereof by the Main Contract Completion Date or dates.

- 4.4** The Contractor may at its discretion issue an instruction to advance or delay the Commencement Date of the Sub-Contract Works.
- 4.5** Any drawings, or other information which is requested from the Sub-Contractor must be provided in due time so as not to cause any disruption or delay to the Works.
- 4.6** The Sub-Contract Works must cause the minimum of disturbance or disruption to the Contractor or to any others.
- 4.7** All surplus materials/waste arising from the Sub-Contract Works shall be cleared from the Site by the Sub-Contractor by the end of every working day and during the course of the Sub-Contract Works and as requested by the Contractor and immediately on completion of the Sub-Contract Works.

## 5. Delay and Loss & Expense

- 5.1** The provisions of this clause 5 shall be conditional upon the Sub-Contractor using its best endeavours to prevent delay in the progress of the Sub-Contract Works or any part thereof, however caused.
- 5.2** If, and whenever it becomes reasonably apparent that the Sub-Contract Works, or any part thereof, is being or is likely to be delayed, the Sub-Contractor shall forthwith give written notice to the Contractor of the material circumstances, including the cause or causes of the delay and shall identify in such notice any matter which in its opinion falls within clause 5.4.
- 5.3** In respect of each and every matter which comes within clause 5.4 and identified in the notice given by the Sub-Contractor pursuant to clause 5.2, the Sub-Contractor shall in writing as soon as possible after such notice, give particulars of the expected effects thereof and estimate the extent, if any, of the expected delay to the Period for Completion and any anticipated effect which such delay may have on the Works, beyond the Period for Completion or any previously extended Period for Completion which results from such delay.
- 5.4** If, on receipt of any notice, particulars and estimate under clauses 5.2 and 5.3, the Contractor properly considers that any of the causes of the delay is an act, omission or default of the Contractor, or is the occurrence of a Relevant Event under clause 5.5; and the completion of the Sub-Contract Works is likely to be delayed thereby beyond the Period for Completion, or any revision thereto, then the Contractor shall in writing in its absolute discretion, give an extension of time to the Sub- Contractor by fixing such revision to the Period for Completion as the Contractor considers to be reasonable.
- 5.5** The following are the relevant events ("Relevant Events") referred to in clause 5.4:-
  - 5.5.1** Any variation pursuant to clause 12.11;
  - 5.5.2** Any instruction for the carrying out of any test or investigation of work, materials or goods, unless the inspection or test shows that the work, materials or goods are not in accordance with the Sub-Contract;
  - 5.5.3** The deferment or suspension of giving of possession of the site or of the Sub-Contract Works or any part thereof;
  - 5.5.4** Any impediment, prevention or default, whether by act or omission by the Contractor, except to the extent caused or contributed to by any default, whether by act or omission of the Sub-Contractor or any of its authorised agents;
  - 5.5.5** Force majeure.
- 5.6** If the Sub-Contractor fails to complete the Sub-Contract Works within the Period for Completion, or any revision thereto, the Contractor shall notify the Sub-Contractor in writing, setting out the amount of delay and the Liquidated Damages to which the Contractor shall be entitled to receive from the Sub-Contractor by way of deduction or allowance.

- 5.7** Upon receipt of the notice given by the Contractor under clause 5.6, the Sub-Contractor shall pay or allow to the Contractor the Liquidated Damages at the rate stated in the Order.
- 5.8** In the event that the regular progress of the Sub-Contract Works is materially affected by any of the Relevant Events, the Sub-Contractor shall make a written application to the Contractor and shall be entitled to an amount of direct loss and/or expense from the Contractor provided that:-
- 5.8.1** The Sub-Contractor's application shall be made as soon as it has become, or ought reasonably to have become apparent to him that the regular progress of the Sub-Contract Works, or any part thereof, has been or is likely to be affected;
  - 5.8.2** The Sub-Contractor shall submit to the Contractor all information in support of its application as is required by the Contractor, to show that the regular progress of the Sub-Contract Works, or any part thereof, has been or is likely to be affected;

## 6. Indemnity

- 6.1** The Sub-Contractor shall indemnify and save from harm the Contractor against and from all claims, causes of action, costs, damages, losses and expenses whatsoever in respect of:
- 6.1.1** personal injury or death of any person or injury to any property (including the Works) real or personal arising out of or in the course of or in relation to or by reason of the execution of the Sub-Contract Works by the Sub-Contractor including any design undertaken by the Sub-Contractor (and including but not restricted to the use of any plant equipment or facilities whether in connection with such execution or otherwise); and
  - 6.1.2** any negligence or breach of duty on the part of the Sub-Contractor, its sub-contractors, its or their servants or agents; and 6.1.3 any breach or non-performance or non-observance by the Sub-Contractor, its subcontractors, its or their servants or agents of the provisions of this Order. save to the extent that such claims, causes of action, costs, damages, loss and/or expense are occasioned by any act or negligence or default of the Contractor.

## 7. Insurance

- 7.1** The Sub-Contractor shall have and maintain adequate "Employers Liability", "Public Liability", "Product Liability", "Contractors All Risks" and (where appropriate) "Professional Indemnity" insurance in relation to all such risks arising out of or in relation to this Order for such amounts as may be requested by the Contractor and shall produce on demand evidence of such insurance, and such insurance shall continue notwithstanding any termination pursuant to Clause 15 insofar as equipment, materials and property of the Sub-Contractor are used on the Site thereafter.

## 8. Health & Safety

- 8.1** The Sub-Contractor shall comply with the Principal Contractor's requirements on matters affecting the safe conduct of their works on the Site and with the Principal Contractor's Safety Policy, a copy of which is available for inspection and shall also comply with all statutes, statutory instruments, bye- laws, approved codes of practice and regulations affecting the Sub-Contract Works and the carrying out thereof including but not limited to the Health and Safety at Work (etc) Act 1974 and the Construction (Design and Management) Regulations 2007 or amendments thereof.

- 8.2** The Sub-Contractor (including its agents and employees) shall be required to wear personal protective equipment whilst on Site as specified by the Contractor.
- 8.3** 5 working days Prior to commencing operations on site the Sub-Contractor shall provide the Contractor with the following:
- 8.3.1** Site Specific Risk Assessment (where applicable);
  - 8.3.2** Site Specific Method Statement;
  - 8.3.3** All relevant COSHH data for the intended work;
  - 8.3.4** Copies of all Training Certificates relevant to the personnel on a particular project; The Sub-Contractor shall e-mail this information to the individual named in Section 9 of the Order.

## 9. Title

- 9.1** The risk in all goods and materials to be incorporated in the Sub-Contract Works and in all plant, tools and equipment for use in connection with the Sub-Contract Works, shall remain with the Sub-Contractor which shall at its own cost, maintain insurance of its goods and materials until the Main Contract's Completion Date.
- 9.2** Notwithstanding Clause 9.1 hereof, all goods, materials and temporary works shall become the property of the Contractor as and when the goods, materials and temporary works or any part thereof are first identified, inspected and appropriated by the Contractor for the Sub-Contract Works and in any event upon delivery to the Site and whether payment therefore has at that time been made by the Contractor in whole or in part or not at all.
- 9.3** The Contractor or the Employer or its agent shall be entitled to have tests carried out on anything for, or which has already been, incorporated into the Sub-Contract Works.

## 10. Suspension

- 10.1** The Contractor and Sub-Contractor agree that, in the event of service of a notice pursuant to s. 112 of the Housing Grants, Construction and Regeneration Act 1996 ("the Act"), at least 14 days' notice of suspension is to be given, and that any notice so served must be served at the Contractor's registered office, by registered post, marked for the attention of the Contractor's Commercial Director. Failure to comply with this requirement will invalidate any notice purported to be given.

## 11. Payment

### Applications for Payment

- 11.1** For the purpose of this Clause 11 only, an Application for Payment means the later of: 10
- 11.1.1** the date the Contractor receives an application for payment for a proportion of the Sub-Contract Sum accompanied by all supporting details reasonably required by the Contractor to enable the Contractor to assess and value the application; or
  - 11.1.2** in the event that the Sub-Contractor fails to provide the supporting details referred to in Clause 11.1.1 above, the date on which such supporting details are received by the Contractor.
- 11.2** Unless otherwise agreed, and provided that the Sub-Contractor has returned the signed order and copies of its insurance in accordance with Clause 7.1, the Sub-Contractor shall submit to the Contractor written Applications for Payment in accordance with the Application and Payment Date Schedule in Schedule 1 to



the Order. In the absence of a completed Schedule 1 to the Order the Sub-Contractor shall be entitled to make Applications for Payment on the final day of each calendar month. In respect of all written Applications for Payment the Sub-Contractor shall be entitled to apply for such amount as is fair and reasonable having regard to the amount of work performed and goods supplied. The Payment Due Date and Final Date for each interim payment shall be as set out on the face of the Order. The Contractor shall notify the Sub-Contractor within 5 days of the Payment Due Date of the amount of the payment to be made and the basis of calculation of such payment, less any Retention and Main Contractor's Discount as specified on the face of this Order. Such notification shall comprise "the Payment Notice" and the amount specified therein shall be "the Notified Sum". For the avoidance of doubt, the Main Contractor's Discount may be deducted from any payments due to the Sub-Contractor irrespective of the date or dates when payments are made. Where an Application for Payment is made later than the relevant Date for Sub-Contractor Application for Payment set out in Schedule 1 to the Order (or the final day of the relevant calendar month as the case may be) it shall be regarded as an Application for Payment in respect of the next interim payment. The Sub-Contractor shall not be entitled to make more than one Application for Payment in each calendar month. Notwithstanding any other provision of this Order, nothing in this Order permits or requires the Sub-Contractor to give any notification to the Contractor pursuant to Section 110(B)(4) of the Act.

## Retentions

**11.3** For the avoidance of doubt, the Contractor shall be entitled to deduct and retain the Retention at the percentage stated in the Order, until the First Retention Release Application Date stated in the Order (or, if later, the date on which the Sub-Contract Works reach practical completion, whereupon the Sub-Contractor shall, make an Application for Payment. The Payment Due Date and the Final Date for payment shall be calculated as stated on the face of the Order and subject to clause 11.7, the Contractor shall release the proportion of Retention so stated within the Order. Upon the Second Retention Release Application Date stated in the Order (as such Date may be extended in accordance with this Clause 11.3) the Sub-Contractor shall make an Application for Payment in respect of any outstanding Retention, and the Payment Due Date and the Final Date for payment shall be calculated as stated on the face of the Order. The Contractor shall release the remainder of the Retention so stated within the Order by the Final Date. The Second Retention Release Date shall be extended by such time as the Sub-Contractor has discharged its obligations under and in accordance with Clause 14.2.

## Employer Insolvency

**11.4** Where the Employer or any other third person (payment by whom is under the Main Contract (directly or indirectly) a condition of payment there under) becomes insolvent as referred to by Section 113(2), (3), (4) or (5) of the Act, then notwithstanding any other provision of this Order, the Contractor shall not be obliged to make any further payment to the Sub-Contractor of any amount which is due or may become due to the Sub-Contractor or payable or may become payable to the Sub-Contractor pursuant to this Order or any award or decision made in favour of the Sub-Contractor against the Contractor unless the Contractor has received payment in its bank account in respect thereof and then only to the extent of such receipt.

## Payments on Account

**11.5** Payments are on account only and shall not be held to signify approval by the Contractor and/or any Architect or Engineer of the whole or any part of the Sub-Contract Works executed neither shall any final payment prejudice any claim whatsoever which the Contractor may have in respect of or arising out of or in connection with the Sub-Contract Works.

## Loss

**11.6** Further, and in addition to the provisions of Clause 4.7, and Clause 11.10 hereof and to the Contractor's common law rights of set-off, if in the opinion of the Contractor the Sub-Contractor shall have caused or will cause the Contractor loss by reason of any breach of this or any contract between the Contractor and Sub-Contractor or by any tortious act or any breach of statutory duty, giving rise to a claim for damages or indemnity or contribution by the Contractor against the Sub- Contractor or if the Contractor shall become entitled to payment from the Sub-Contractor under this or any other contract between the Contractor and the Sub-Contractor, then without prejudice to and pending the final determination or agreement between the parties of the amount of such loss, indemnity or contribution or payment, the Sub-Contractor shall pay or the Contractor may deduct from any payment under this Order the amount of any bona fide claims set off or counter-claim by the Contractor against the Sub-Contractor or an indemnity from which the Contractor may be or become entitled to seek from the Sub-Contractor whether or not arising out of this Order and whether for an ascertained or estimated sum.

## Pay Less Notice

**11.7** Without prejudice to the Contractor's common law rights, the Contractor may not withhold payment of the Notified Sum or any part thereof after the Final Date for interim payments or the final date for the final payment (as the case may be) unless he has given to the Sub-Contractor notice of the intention to pay less than the Notified Sum ("the Pay Less Notice" no later than 2 days before the Final Date for interim payments or the Final Date for the final payment specifying:

- 11.7.1** the amount which the Contractor considers to be due on the date the Pay Less Notice was served; and
- 11.7.2** the basis on which that sum was calculated.

## Final Payment

**11.8** On the later of:

- 11.8.1** three months after the Sub-Contractor has completed the Sub-Contract Works, or **11.8.2** one month from the submission by the Sub-Contractor of a valid statement of final account, the Contractor shall determine the amount finally due under the Order from the Contractor to the Sub-Contractor or from the Sub-Contractor to the Contractor as the case may be, after giving credit for sums due under the Order and amounts previously paid. 12 The Contractor shall notify the Sub- Contractor in writing by way of the Final Account Statement within one calendar month of the periods referred to in clauses 11.8.1 and **11.8.2** (or at any time prior to the expiry of one or both of the periods referred to in Clauses 11.8.1 and 11.8.2 as the Contractor may at its absolute discretion choose) of the amounts so determined. Such Final Account Statement shall specify the sum that the Contractor considers to be or to have been due at the payment due date and the basis on which that sum is calculated. For the purposes of this Clause 11 such Final Account Statement shall comprise the "Payment Notice" in respect of the final payment and the amount specified as due therein shall be the "Notified Sum". Save in respect of any Retention, which shall be released pursuant to Clause 11.3, the date which is one calendar month from the relevant date referred to in Clause 11.8.1 or Clause 11.8.2 shall be the payment due date of the final instalment (save that where the Contractor has issued the Final Account Statement prior to the expiry of one or both of the periods referred to in Clauses 11.8.1 and 11.8.2 the date which is one calendar month from the date on which the Sub- Contractor finally performs its obligations under the Order shall be the payment due date of the final instalment). The final date for payment thereof shall be 60 days from the payment due date.

**11.9** The issue of the Final Account Statement pursuant to Clause 11.8 shall, for all purposes, be conclusive evidence that all extensions of time, if any, as are due under the Order have been given and conclusive evidence that the reimbursement of any direct loss and/or expense, if any, to the Sub-Contractor pursuant to the Order is in final settlement of all or any claims which the Sub- Contractor has, or may have, arising out of the occurrence of any of the matters referred to under the Order, whether such claim be for breach of contract, duty of care, statutory duty or otherwise. The Sub-Contractor hereby acknowledges and agrees that upon the expiry of 28 days after the issue of the Final Account Statement pursuant to clause 11 the amount finally due under the Order shall, unless the Sub-Contractor has by then commenced an adjudication or an arbitration challenging such determination, be conclusive, final and binding upon the Sub-Contractor in respect of all sums whatsoever to which the Sub-Contractor may be entitled under or in connection with this Order. Further, and in addition to the provisions of Clauses 4.7, and 11.6 hereof and to the Contractor's common law rights of set-off, the Contractor shall be entitled to deduct from the final instalment the following sums in the event of the following corresponding events:

- 11.9.1** a sum equivalent to the cost of remedying any defects not made good as at the payment due date of the final instalment and;
- 11.9.2** a sum (estimated or otherwise) equivalent to all monies due under the final instalment in the event that the Sub-Contractor fails to deliver to the Contractor a declaration of an authorised signatory on behalf of the Sub-Contractor certifying that the final instalment payment is in full and final settlement of the Sub-Contractor's costs, expenses, claims and counter-claims whatsoever, howsoever and wherever arising.

### Value Added Tax

**11.10** Unless otherwise specifically stated the price for the supply of goods or services or any consideration payable pursuant to this Order excludes valued added tax levied by the Value Added Tax Act 1994 and all legislation additional or supplemental therefore ) ("VAT") but is inclusive of all other taxes or duties of whatsoever kind.

### Conditionality

- 11.11** Unless the Contractor otherwise agrees in writing and notwithstanding anything to the contrary elsewhere in this Order:
- 11.11.1** no part of the Sub-Contract Works will be deemed to have reached practical completion; and
  - 11.11.2** no payment will be made to the Sub-Contractor; until 11.11.3 the Sub-Contractor has signed and returned this Order; and 11.11.4 all documents and information required by the Tender Clarification Checklist have been provided to the Contractor; and
  - 11.11.3** proof of the existence and maintenance of all requisite Sub-Contractor' insurance policies have been provided to the Contractor.

### Interest

**11.12** If any sum payable pursuant to this Order or otherwise in connection with this Order by the Sub- Contractor to the Contractor, or by the Contractor to the Sub-Contractor, is not paid by the final date for payment then, without prejudice to the Contractor's and the Sub-Contractor's other rights under this Order or otherwise, that sum will bear interest from the final date for payment until payment is made in full, both before and after any judgment, at the Bank of England base rate from time to time. In the event that either party is liable to the other for damages, interest at the said rate shall be payable from the date of accrual of the respective party's cause of action. The parties agree that this clause 11.12 is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

- 11.13** For the avoidance of doubt, upon the Contractor's request the Sub-Contractor shall supply details of its tax reference number.

### **Sub-Contractors Insolvency**

- 11.14** Notwithstanding Clauses 11.2 and 11.7 the Contractor shall not be required to make any payment to the Sub-Contractor in circumstances where the Sub-Contractor becomes insolvent within the meaning of Section 113(2), (3), (4) or (5) of the Act and such insolvency occurs after the date which is 2 days before the final date for any such payment.

## **12. Instructions**

- 12.1** Subject to Clause 12.2 the Contractor may at any time issue written instructions to the Sub- Contractor which may include the following.

- 12.1.1** any variation to the Sub-Contract Works including any addition or omission (whether or not any omitted Sub-Contract Works are to be carried out by others); and
- 12.1.2** carrying out any test or investigation; and
- 12.1.3** the suspension of the Sub-Contract Works or any part thereof; and
- 12.1.4** any change in the intended sequence of the Sub-Contract Works; and
- 12.1.5** the removal and/or re-execution and/or acceptance of any work or materials not in accordance with the Order; and
- 12.1.6** the exclusion from the site of any persons employed thereon; and
- 12.1.7** acceleration or delay of the Sub-Contract Works.

The Sub-Contractor will subject to Clause 12.2 forthwith comply with such instructions. Failing agreement on any consequent variation of the Sub-Contract Sum and/or the instalments by which it will be paid and/or the payment due dates, the Sub-Contract Sum, the instalments and the payment due dates will be as is fair and reasonable in the circumstances but based where possible on the rates (if any) and existing payment arrangements set out in this Order.

- 12.2** If the Sub-Contractor considers that an instruction by the Contractor under Clause 12.1 would require an increase in the Sub-Contract Sum then prior to complying with the instruction (save in the case of emergency instructions which require immediate action) the Sub-Contractor will so notify the Contractor and within five working days of the instruction the Sub-Contractor will provide to the Contractor a written estimate of the increase in the Sub-Contract Sum, which shall be subject to agreement by the Contractor in accordance with the terms of this Order. Following notification by the Sub-Contractor the Contractor may either withdraw the instruction or instruct the Sub-Contractor to comply with it either before or after attempting to agree the amount of the increase. No additional payment will become due and payable in respect of varied works if the Sub-Contractor has not complied with the requirements of this Clause 12.2. Where additions cannot be valued by reference to the Sub-Contract, the Sub-Contractor shall be paid such reasonable amounts as ascertained by the Contractor and in which event, the Sub-Contractor shall submit fully costed record sheets for varied sub-contract works on a weekly basis clearly identifying the subcontract works carried out and detailing the individual resource time expended.

## **13. Dayworks/Fluctuations**

- 13.1** No day work will be permitted except where, in the opinion of the Contractor, it would be unfair to value such work at other than day work rates and such work must be of an incidental nature. Where the Sub-Contractor considers it has a claim for day work, it shall agree this in writing and in advance with the Contractor.



- 13.2** Unless otherwise indicated in the Order, the Sub-Contract Sum will be deemed to allow for all price fluctuations and no adjustment shall be made to the Sub-Contract Sum in the event of such fluctuations or increases in the cost of labour or materials.

## 14. Sub-Contract Defects Liability Period

- 14.1** Completion of the Sub-Contract Works is dependent upon an inspection by the Contractor or any other person nominated by the Contractor. Partial completion of the Sub-Contract Works must be agreed in writing with the Contractor.
- 14.2** The Contractor will notify the Sub-Contractor in writing of any defect, imperfection, shrinkage or damage in the Sub-Contract Works which requires rectification. The Sub-Contractor will then make good at its own expense, and at a time to be decided by the Contractor, such defect, imperfection, shrinkage or damage to the Sub-Contract Works up to the end of the Main Contract Works' Defect Liability Period. 15
- 14.3** The Sub-Contractor shall commence any required rectification works within the period agreed with the Contractor and shall complete the same within a reasonable period at the Sub-Contractor's own cost. 14.4 In the event of the Sub-Contractor failing to comply with Clause 14.2 and Clause 14.3 the Contractor may undertake to carry out the rectification to the Sub-Contract Works, and may at its discretion set-off the costs of carrying out such works against sums which would otherwise become due to the Sub-Contractor.

## 15. Termination

- 15.1** The Contractor may terminate the Sub-Contractor's employment under this Order forthwith upon notice in writing to the Sub-Contractor to this effect. Following such termination the Sub-Contractor shall be entitled in accordance with Clause 11 above to be paid for the Sub-Contract Works performed up to the date of such termination provided that the Sub-Contractor has first released to the Contractor all original and copy documents, drawings and papers of whatsoever nature relating to or in connection with the project and provided always that the Sub-Contractor has delivered to the Contractor the declaration referred to in Clause 11.10.2 hereof.
- 15.2** Subject always to the Sub-Contractor's rights to suspend work in certain circumstances pursuant to the Act, and notwithstanding Clause 15.1 above the Contractor may without prejudice to any other of its rights or remedies summarily determine the Sub-Contractor's employment under this Order in respect of the whole or any portion of the Sub-Contract Works if the Sub-Contractor:
- 15.2.1** suspends the Sub-Contract Works or any part thereof or fails to proceed diligently with the Sub-Contract Works to the reasonable satisfaction of the Contractor; 15.2.2 fails forthwith upon notice from the Contractor to commence work to remedy any defective workmanship and/or materials or incomplete work or fails to proceed with such remedial work with due diligence or to complete such remedial work to the satisfaction of the Contractor within such period as the Contractor may specify or if none is so specified within a reasonable time;
  - 15.2.3** fails to complete and deliver up the whole or any portion of the Sub-Contract Works by the time or times specified or by such amended time or times as may be allowed by the Contractor;
  - 15.2.4** fails to comply with an instruction under Clause 12;
  - 15.2.5** makes any arrangements with its creditors, has a Receiving Order made against it or commences an act of bankruptcy or, being a limited company, goes into liquidation or has a Receiver or Administrator appointed or fails to pay his debts as they fall due;



- 15.2.6** fails to comply with any of the obligations on the part of the Sub-Contractor herein contained or if the main Contract is determined by the Employer as a consequence (whether in whole or in part) of any breach of this Order by the Sub-Contractor.
- 15.2.7** commits, or its employees or agents commit, a Prohibited Act in breach of the provisions of clause 19 of this Order;
- 15.2.8** or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010.

**15.3** Upon determination under the foregoing clause the Sub-Contractor shall not be entitled to compensation therefore and shall not remove any of its equipment, materials or property from the Site and notwithstanding anything contained in these conditions, shall become entitled to no further payment until completion of the Sub-Contract Works by the Contractor or by others whereupon the Sub-Contractor shall become entitled to payment for Sub-Contract Works executed by the Sub- Contractor and subject always to the right of the Contractor to set off all losses, expense and damages suffered or which may be suffered by the Contractor by reason of such determination and subject further to any other right of set off which the Contractor may have.

**15.4** For the purposes of completion of the Works the Contractor shall have the free use of the Sub-Contractor's equipment materials and property on the site without responsibility to the Sub-Contractor for fair wear and tear thereof and of any materials or fabricated work lying at the Sub- Contractor's works or workshop which have been bought or fabricated for the purpose of this Order.

## 16. Collateral Warranties

**16.1** If stated on the face of this Order the Sub-Contractor shall, at such time and with such person as the Contractor may stipulate, enter into a collateral warranty in the form required by the Contractor or the Employer (acting reasonably).

## 17. Adjudication

**17.1** In the event of any dispute or difference under the Sub-Contract arising at any time between the Contractor and the Sub-Contractor such dispute or difference may in the first place be referred to an Adjudicator named by the Royal Institute of Chartered Surveyors. The powers of the Adjudicator and the effects of the Adjudicator's Decision shall be in accordance with the Housing Grants Construction and Regeneration Act 1996 – section 108 and the Scheme for Construction Contracts 1998 part 1 – Adjudication.

## 18. Arbitration

**18.1** Save as is required for the enforcement through the Courts of any adjudicator's decision given under Clause 17, all disputes or differences between the parties under or in connection with this Order shall, subject to Clause 17.5, be referred to arbitration in accordance with this Clause 18, and the parties agree that no such arbitration shall be commenced by either party prior to completion of the Works. Following completion of the Works, any disputes or differences not finally resolved by adjudication shall, subject to Clause 17.5, be referred to the arbitration. The Arbitrator shall be appointed by the Royal Institute of Chartered Surveyors.

**18.2** If the dispute or difference to be referred to arbitration under this Order raises issues which are substantially the same as or connected with issues raised in any related dispute between the Contractor and the Employer under the Main Contract, the Contractor and the Sub-Contractor hereby agree that the dispute or difference under this Order shall be referred to the arbitrator appointed to determine the related dispute; and such

arbitrator shall have power to make such directions and all necessary awards in the same way as if the procedure of the High Court as to joining one or more defendants or joining co-defendants or third parties was available to the parties and to him. 17

- 18.3** In any such arbitration as provided for herein any decision, opinion, certificate or award of the Architect, Engineer, client's representative or arbitrator appointed under or pursuant to the Main Contract which is final and binding on the Contractor under the terms of the Main Contract shall also be final and binding between the Contractor and the Sub-Contractor.

## 19. Code of Conduct

- 19.1** The Sub-Contractor warrants that it has not committed any Prohibited Act and that it shall not commit any Prohibited Act.
- 19.2** If the Sub-Contractor (or anyone employed by or acting on behalf of the Sub-Contractor) or any of its or their agents commits any Prohibited Act, the Contractor shall be entitled to act in accordance with clause.
- 19.3** If a Prohibited Act is committed by:
- 19.3.1** the Sub-Contractor or by an employee not acting independently of the Sub-Contractor, then the Contractor may terminate this Agreement by giving notice to the Sub-Contractor; 19.3.2 an employee of the Sub-Contractor acting independently of the Sub-Contractor, then the Contractor may give notice to the Sub-Contractor of termination of this Order. This Order will terminate unless within 30 days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Sub-Contract Works by another person;
  - 19.3.3** a sub-contractor (agreed in accordance with clause 1.6) or by an employee of that subcontractor (whether of not acting independently), then the Contractor may give notice to the Sub-Contractor of termination of this Order. This Order will terminate, unless within 30 days of receipt of such notice the Sub-Contractor terminates the relevant sub-contract and procures the performance of such sub-contracted works and/or services by another person;
  - 19.3.4** any other person not specified in clauses 19.3.1 to 19.3.3, then the Contractor may give notice to the Sub-Contractor of termination and this Agreement will terminate unless within 30 days of receipt of such notice, the Sub-Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Sub-Contractor or the sub-contractors) and (if necessary) procures the performance of such part of the Sub-Contract works by another person.
- 19.4** Any notice of termination under clause 19.3 shall specify:
- 19.4.1** the nature of the Prohibited Act;
  - 19.4.2** the identity of the party whom the Contractor believes has committed the Prohibited Act; and
  - 19.4.3** the date on which the Sub-Contractor's employment under this Order will terminate, in accordance with the applicable provision of clause 19.3.
- 19.5** For the purpose of this clause 19, Prohibited Act means:
- 19.5.1** offering giving or agreeing to give any representative or agent of the Contractor or any other person any gift or consideration of any kind as an inducement or reward:



**19.5.1.1** for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Order or any other contract with the Contractor or any contract in relation to the Main Contract or Sub-Contract Works; or

**19.5.1.2** for showing or not showing favour or disfavour to any person in relation to this Order or any contract with the Contractor or any contract in relation to the Main Contract or Sub-Contract Works

**19.5.2** receiving any gift or consideration of any kind as inducement or reward in the procurement, award, engagement and ongoing contractual relationship of any contract, supplies or works in relation to the Development;

**19.5.3** committing any offence:

**19.5.3.1** under the Prevention of Corruption Acts 1889-1916;

**19.5.3.2** under the Bribery Act 2010;

**19.5.3.3** under legislation creating offences in respect of fraudulent acts; or

**19.5.3.4** at common law in respect of fraudulent acts in relation to this Order or any other contract with the Contractor or any contract in relation to the Main Works or Sub-Contract Works.

## 20. Entire Understanding

**20.1** This Order embodies the entire understanding of the parties and there are no other arrangements between the parties relating to the subject matter of this Order intended to form part of this Order and no amendment or modification of this Order will be valid or binding on any party unless the same is made in writing and refers expressly to this Order and is signed by the parties concerned or their duly authorised representatives.

## 21. Law

**21.1** This Order shall be governed by and construed in accordance with English Law unless the Main Contract is governed by the law of another jurisdiction in which case this Order shall be governed by and construed in accordance with that law.

**21.2** To the extent that any provision of any Act of Parliament, Regulation or other statutory provision referred to in this Order is from time to time amended by Parliament the relevant provision shall be treated for the purposes of this Order as, and shall be effective as, so amended.

## 22. Notices

**22.1** All notices required to be given by the Sub-Contractor pursuant to this Order shall be given in writing and sent by facsimile and by registered post to the registered office of the Contractor marked for the attention of the Finance Director and shall only be effective if received by the Contractor by no later than 4pm on the date of receipt of such notice.

**22.2** All notices received by the Contractor after 4pm on the date of receipt shall for the purposes of this Order be deemed to have been served on the next working day following receipt thereof.