

## **SUBCONTRACT ORDER TERMS AND CONDITIONS**

1.a) 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, Bills of Quantities, requirements and/or instructions when so ever and howsoever 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, the Employer, the Employers Agent and/or Architect and/or Engineer (and their Agents, representatives or servants).

b) 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.

2. a) 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.

b) Any conduct of the Sub-Contractor in relation to the execution of all or part of the Sub-Contract works shall be deemed to be an acceptance of and willingness to comply with the terms and conditions of this Order and no variation of any of these terms and conditions shall be binding upon the parties unless expressly first agreed in writing by the Contractor. Any failure by the Sub-Contractor to sign and return this Order will not vitiate the terms hereof.

3. The Sub-Contractor is deemed to have notice of all the terms and conditions of the Main Contract and Main Contract Documents (save for the Contractor's prices therein) and shall comply with any of the same which may in any way be relevant to the Sub-Contract Works as though the same were fully set out herein and the Contractor was the Employer and the Sub-Contractor was the Contractor. The Main Contract documents may be inspected at the Contractor's Head Office by request on reasonable notice and during normal working hours. The Sub-Contractor shall indemnify the Contractor against all claims, demands, proceedings, damages, costs, charges, loss and expense 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 this Order save to the extent that such claims, demands, proceedings, damages, costs, charges, loss and expense are occasioned by any act of negligence or default of the Contractor.

4. The Sub-Contractor shall not sub-let or assign the Sub-Contract Works in full or in part nor factor 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 Sub-Contract.

5. a) The Sub-Contractor is deemed to have visited the Site and shall satisfy itself before commencing the Sub-Contract Works as to the suitability of any previous work which may in any way affect the Sub-Contract Works, (including where appropriate and without restriction any position, dimensions and surface or background to which the Sub-Contractor is to fix or lay its work) and shall immediately advise the Contractor in writing if such previous work is out of position, wrongly dimensioned or in any other way unsuitable.

b) The Sub-Contractor shall have no claim or right of action against the Contractor arising from work previously carried out by others unless the discrepancy in position or dimension or other unsuitability of the work or surfaces has been referred to the Contractor by the Sub-Contractor pursuant to Sub-clause (a) of this Clause prior to the Sub-Contractor commencing the Sub-Contract Works.

6. Where or to the extent that the Sub-Contract Works 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 have in respect of any defect or insufficiency in such design or selection the like liability to the Contractor whether under statute or otherwise, as would an architect or, as the case may be, other appropriate professional designer holding himself out as competent to take on such design work of similar nature and complexity, who, acting independently under a separate contract with the Contractor, had supplied such design for or in connection with works to be carried out and completed by a Building Contractor not being the supplier of the design. No approval given by the Employer, Architect, Engineer or Contractor, their agents,

advisers or servants shall relieve the Sub-Contractors of its obligations under this clause.

7. The Sub-Contract Works are to be commenced on Site on the date on the face of this Order or when the Sub-Contractor is instructed to proceed and are to be completed within the Sub-Contract period or section periods specified in the Sub-Contract Details section on the front hereof subject only to such fair and reasonable extension of time as the Contractor in its entire discretion shall allow where the Sub-Contract Works are delayed by clauses which result in the granting of an extension of time to the Contractor under the Main Contract. The Sub-Contract Works shall be carried out by the Sub-Contractor diligently and in such order, manner and time as the Contractor may direct so as to ensure completion of the Main Contract Works or any portion thereof by the completion date or dates or such extended date or dates as may be allowed under the Main Contract. If the Sub-Contractor is in breach of the foregoing it shall without prejudice to and pending the final ascertainment or agreement between the parties as to the amount of the loss or damage suffered or which may be suffered by the Contractor in consequence thereof, forthwith pay or allow to the Contractor such sum as the Contractor shall bona fide estimate as the amount of such loss or damage, such estimate to be binding and conclusive upon the Sub-Contractor until such final ascertainment or agreement.

8. The Sub-Contractor will maintain and protect the Sub-Contract Works at its own expense to the Contractor and the Architect's or Engineer's satisfaction both during the progress of the Sub-Contract Works and until the Architect or Engineer has issued a Practical Completion Certificate in respect of the Main Contract Works including the Sub-Contract Works and will make good at its own expense, and at a time to be decided by the Contractor, any defects or damage, excluding damage and/or loss effected as a result of the Specified Perils, to the Sub-Contract Works.

9. a) The Sub-Contractor shall at its own risk in common with other Sub-Contractors and others engaged upon the Site have the reasonable and free use of such facilities/services provided by the Contractor and specified in the Sub-Contract Details sections on the front hereof always provided that:

(i) The Sub-Contractor shall indemnify the Contractor, the Employer, the Architect and/or any servant or agent of theirs against any claim for loss, damage or personal injury arising therefrom and undertakes to make good at its own expense any damage, loss or injury suffered by the Contractor any Sub-Contractor or other person as a result of such use, and

(ii) The Contractor shall not be liable to the Sub-Contractor for any expense, loss or damage caused by any failure to provide any such amenities, facilities or services, which failure is caused by circumstances outside the Contractor's control.

b) All other facilities/services required in order to complete the Sub-Contract Works shall be provided by the Sub-Contractor at its own expense.

10. All surplus materials/waste arising from the Sub-Contract Works shall be cleared from the site by the Sub-Contractor regularly during the course of the Sub-Contract Works and in any event at the request of the Contractor and immediately on completion of the Sub-Contract Works. In the event of the Sub-Contractor failing to meet or comply with this condition, the Contractor may undertake to dispose of such materials/waste and set off the cost of carrying out such work against sums which would otherwise be due to the Sub-Contractor.

11. The Sub-Contractor shall indemnify and save from harm the Contractor against and from all claims, causes of action, costs, damages, loss and expense whatsoever in respect of:

a) Personal injury or death of any person or injury to any property (including the Main Contract 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 consequence arising from the design of the Sub-Contract Works 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

b) Any negligence or breach of duty on the part of the Sub-Contractor, its Sub-Contractors, its or their servants or agents; and

c) Any breach or non-performance or non-observance by the Sub-Contractor, its Sub-Contractors, its or their servants or agents in 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.

12. a) The Sub-Contractor shall have and maintain adequate "Employers Liability", "Public 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 detailed in this

Order and produce on demand the policies of such insurance. In the event that the Sub-Contractor shall fail to effect such insurances the Contractor shall be at liberty to insure on behalf of the Sub-Contractor and to deduct the premium so paid from any monies due to the Sub-Contractor or to recover the premium from the Sub-Contractor as a debt.

b) In the event that the Sub-Contractor should make a claim against the Contractor, which claim is an insured risk under an insurance policy of the Contractor then in the event that the Contractor is liable in respect of any such claim the extent of the Contractor's liability will be limited to the amount recovered by the Contractor from its insurers. The Contractor will have no obligation to make payments to the Sub-Contractor in respect of any such claim unless and until the Contractor has received payment from the Insurer.

c) The Sub-Contractor shall comply with the Contractor's requirements on matters affecting the safe conduct of work on the Site and shall also comply with the Contractor's Safety Policy, a copy of which is available for inspection and shall also comply with all statutes, statutory instruments, bye-laws and regulations affecting the Sub-Contract Works and the carrying out thereof.

13. Whenever the Contractor is required by the terms of the Main Contract to give any return, account, valuation, estimate, request for payment, drawings, calculations, documents or notice, the Sub-Contractor shall in relation to the Sub-Contract Works give such documents or information in writing to the Contractor 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. If by reason of any negligence or breach by the Sub-Contractor of the provisions of this Sub-Contract the Contractor is prevented or delayed (whether wholly or partly) from recovering any sum under the Main Contract, then without prejudice to any other remedy of the Contractor for such negligence or breach the Contractor may deduct such sum, or in the case of delay interest thereon for the period of delay at the rate from time to time prescribed to be carried by Judgements in the Queen's Bench Division of the High Court of Justice, from monies otherwise due to the Sub-Contractor under this Sub-Contract but only to the extent that such prevention or delay is caused by the negligence or breach of the Sub-Contractor.

14. a) 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, including but not limited to the risk in any and all liabilities to third parties and employees and damage and loss howsoever caused, shall remain with the Sub-Contractor which shall at its own cost, maintain insurance of its goods and materials until Practical Completion of the Main Contract Works.

b) Notwithstanding clause 14 (a) 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.

c) The property in any plant tools and equipment for use in connection with the Sub-Contract Works shall pass from the Sub-Contractor to the Contractor immediately upon delivery to site and shall re-pass for the Contractor to the Sub-Contractor upon completion of the whole Sub-Contract Works.

d) The Sub-Contractor shall not remove from the site any plant tools, equipment, materials, temporary work or things provided by the Sub-Contractor in connection with the Sub-Contract Works prior to the completion of the Sub-Contract Works.

15. a) The Sub-Contractor should render written applications for payment to the Contractor at the time or times directed by the Contractor in duplicate quoting the Sub-Contract title and Sub-Contract Order Number.

b) The due date and final date for each payment shall be as set out on the face of this order. Applications for payment shall be accompanied by full details, so as to enable the Contractor properly to assess and value the application. The Contractor shall notify the Sub-Contractor of the amount of the payment to be made and the basis of calculation of such payment within 5 days of the due date. Payments will be made by the Contractor to the Sub-Contractor in accordance with the terms hereof, save in circumstances where the amounts of quantities included in any written application from the Sub-Contractor are not certified in full by the Architect and/or Engineer, providing such failure to certify is not due to any act or default of the Contractor, or save where the Employer or any other third party from whom the Contractor is entitled to receive monies of the Sub-Contract Works, is insolvent and has failed to make payment in full to the Contractor is respect of all or any part of the Sub-Contract Works.

c) Interim payments will be subject to the deduction of retention and any discounts as stated within the Sub-Contract. One half of the retention will

be released at Practical Completion of the Main Contract Works with the remainder being released on issue of the Certificate of Making Good of Defects under the Main Contract.

d) All interim payments shall be on account and these shall not be held to signify approval by the Contractor and/or the Architect or the Engineer of the whole of any part of the Sub-Contract Works executed nor shall any final payment prejudice any claim the Contractor may have in respect of any defects in the Sub-Contract Works whenever such defects may appear.

e) Without prejudice to the Contractor's common law rights, the Contractor may not withhold payment after the final date for payment unless he has given to the Sub-Contractor notice of the intention to withhold payment two days before the final date for payment specifying: The amount proposed to be withheld and the ground for withholding payment, and if there is more than one ground, each ground and the amount attributable to it. Further, and in addition to the provision of clause 7 hereof, and the Contractor's Common Law rights of set off, if the Sub-Contractor shall cause the Contractor loss by reason of any breach of this or any other Contract between the parties or by any act or by any breach of statutory duty giving rise to a claim for damages or indemnity or contribution by the Contractor against the Sub-Contractor, or the Contractor shall become entitled to payment from the Sub-Contractor under this or any other Contract between the parties then without prejudice to and pending the final ascertainment or agreement between the parties as to the amount of such loss, indemnity, contribution or payment the Sub-Contractor shall forthwith pay or allow to the Contractor such sum as the Contractor shall bona fide estimate as the amount of such loss, indemnity, contribution or payment such estimate to be binding and conclusive upon the Sub-Contractor until such final ascertainment or agreement.

f) No later than three months after the Sub-Contractor has finally performed his obligation under the Sub-Contract, and provided that one month has expired since the submission by the Sub-Contractor of a valid statement of final account, the Contractor shall determine the amount finally due under the Sub-Contract from the Contractor to the Sub-Contractor or from the Sub-Contractor to the Contractor as the case may be, after giving credit sums due under the Sub-Contract and amounts previously paid. The Contractor shall notify the Sub-Contractor in writing of the amount so determined within that same period. The final date for payment shall be 30 days later. In the event that the Sub-Contractor fails to submit a valid statement of final account, the Contractor shall be at liberty to value the Sub-Contract Works based on information then available to the Contractor, such valuation to be binding on the Sub-Contractor.

g) The Sub-Contractor must sign and return this Order and any warranties and bonds required and must forward details of all valid Sub-Contractors' tax certificates to the Contractor together with proof that the Sub-Contractor's Employer's Liability, Public Liability, Contractors All Risk and (where appropriate) Professional Indemnity insurance policies are in force before the Sub-Contractor is entitled to receive any payment under the terms of this Order. All documents required from the Sub-Contractor for Value Added Tax purposes must be provided upon demand and until they are provided the Contractor will be entitled to withhold payments otherwise due to the Sub-Contractor, including but not limited to interim and final payments otherwise due.

16. a) No payment for overtime will be made unless the Sub-Contractor is advised in writing by the Contractor that payment will be made and if the Sub-Contractor is so advised, it will be reimbursed the Nett additional non-productive rate incurred.

b) The sub-Contractor will be required to obtain any necessary overtime permits from the appropriate authority.

c) The Sub-Contractor shall require the authority of the Contractor to work overtime which is out with the normal site hours.

17. a) The Contractor shall have the power to give instruction for:

i) Any variation to the Sub-Contract Works including any addition or omission (whether or not any omitted Works are to be carried out by others).

ii) Re-measurement of the Sub-Contract Works.

iii) Carrying out any test or investigation

iv) The suspension of the Sub-Contract Works or any part thereof.

v) Any change in the intended sequence of the Sub-Contract Works.

vi) The removal and/or re-execution and/or acceptance of any work or materials not in accordance with the Agreement.

vii) The exclusion from the site of any person employed thereon. Save in relation to any addition to the Sub-Contract Works, the Sub-Contractor shall have no entitlement to be paid (whether by way of valuation, compensation, damages or howsoever otherwise) in relation to instructions issued by the Contractor.

b) No instruction shall vitiate this Sub-Contract but the Sub-Contractor shall advise the Contractor in writing of all works involving an addition to the Sub-Contract Works within 7 days of such addition becoming apparent and at the same time submitting detailed and priced calculations based upon the

Sub-Contract price showing such price adjustment if any. Additions to the Sub-Contract Works cannot be undertaken by the Sub-Contractor nor shall he receive payment for such additions without written authority from the Contractor. Where additions cannot be valued by reference to the Sub-Contract price, the Sub-Contractor shall be paid such reasonable amounts as ascertained by the Contractor.

c) In the event that the Sub-Contractor carries out work on a daywork basis, whether upon instruction from the Contractor or otherwise, the Sub-Contractor shall, within 7 days of such work being carried out, give written notice of the nature and extent of the dayworks so carried out, and shall present to the Contractor's authorised site representative a timesheet setting out the nature and extent of the work carried out, the individuals performing that work and the hours which they have spent on that work, together with but not limited to details of all materials and plant requirements. The submission of that written notice and time sheet shall be a condition precedent to any payment being made to the Sub-Contractor.

18. a) The Contractor may without prejudice to any other of its rights or remedies summarily determine the Sub-Contractor's employment under this Sub-Contract in respect of the whole or any portion of the Sub-Contract Works if the Sub-Contractor:-

i) Fails within seven days from the date of dispatch by registered or recorded delivery post of a notice in writing from the Contractor to proceed diligently with the Sub-Contract Works to the reasonable satisfaction of the Contractor and at all times in such a manner as will not, in the opinion of the Contractor, prejudice the completion of the whole or any portion of the Main Contract Works.

ii) Fails within seven days from the date of dispatch by registered or recorded delivery post of a notice in writing from the Contractor to commence remedial work to any defective workmanship and/or materials or fails to proceed with the same with due diligence or to complete such remedial work to the satisfaction of the Contractor, the Architect or Engineer within such period as the Contractor may specify in the said notice or if none is so specified within a reasonable time

iii) Fails within seven days from the date of dispatch by registered or recorded delivery post of notice in writing from the Contractor to comply with any of the obligations on the part of the Sub-Contractor herein contained,

iv) Fails within three days from the date of dispatch by registered or recorded delivery of a notice in writing from the Contractor to withdraw any of his employees to whom the Contractor objects or whose presence on the Sub-Contract Works may contravene the conditions of this Sub-Contract or the Main Contract, or may cause labour disputes in the Sub-Contractor's or any other trade, and to replace such employees immediately by others against whom there is no such objection

v) Repeats at any time any of the defaults noted in Sub-clauses 18 (a) (i) – (iv) above (whether previously repeated or not).

vi) Becomes bankrupt or makes any composition or arrangement with its creditors or has a winding-up order passed or made whether voluntary or compulsory (save for the purpose of amalgamation or restructuring) or has a Liquidator or Receiver or Administrator of its business appointed.

vii) Fails to complete and deliver up the whole or any portion of the Sub-Contract Works by the completion date or dates specified or by such amended completion date or dates as may be authorised by the Contractor.

b) Notice of determination of the Sub-Contractor's employment shall be given in writing by the Contractor and shall be delivered by registered or recorded delivery post.

c) Upon determination the Sub-Contractor shall not be entitled to compensation and shall not remove any of its equipment, materials or property on the site and, notwithstanding anything contained in these conditions, shall be 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 the work executed by the Sub-Contractor subject always to the right of the Contractor to set off all losses, expenses and damages suffered or which may be suffered by the Contractor by reason of such determination and subject further to any other right to set off which the Contractor may have. For the purposes of such completion the Contractor shall have the 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 any materials or fabricated work lying at the Sub-Contractor's works or workshop which have been bought or fabricated for the purposes of this Sub-Contract.

d) In the event that the Main Contract between the Contractor and the Employer is determined for whatsoever reason then the employment of the Sub-Contractor shall be treated as determined from the same date that the Main Contract was determined without any requirement for Notice to be given in accordance with the terms of Clause 18 (a) (ii) and the entitlement of the Sub-Contractor will be that which is specified in Clause 18 (c) hereof.

19. If stated on the face of this Order, the Sub-Contractor shall, prior to the Commencement Date or at such time and with such person as the

Contractor may stipulate, enter into an agreement with the Employer or other interested party substantially in the form of the Sub-Contractor Form of Warranty annexed hereto.

20. Any notice to be given by the Sub-Contractor to the Contractor pursuant to the provisions of s.112 of the Housing Grants, Construction and Regeneration Act 1996 ("the Act") must be served at the Contractor's registered office, by registered post, marked for the attention of the Contractor's company secretary. Failure to comply with this requirement will invalidate any notice to be given.

21. a) 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 adjudication in accordance with the then current Scheme for Construction Contracts. Any notice adjudication served by the Sub-Contractor on the Contractor must be sent to the Contractor's registered office, by recorded delivery, marked for the attention of the Contractor's company secretary. The adjudicator, at the choice of the Contractor, will be one of the persons stipulated on the face of the Order. If no adjudicator is so stipulated, the Contractor shall choose an appropriate adjudicator depending on the nature of the dispute or difference. The adjudicator's decision shall be final and binding upon the parties until completion of the Main Contract Works and shall forthwith be given to by the Contractor and the Sub-Contractor and the Sub-Contractor shall proceed with the Sub-Contract Works with all due diligence whether or not either party gives notice to the other as provided hereinafter. If either party is dissatisfied with the adjudicator's decision, that party may, within 20 working days after receiving the adjudicator's notice of his decision, give notice to the other party reserving the right to issue arbitration proceedings in respect of that matter. If no such notice has been given by either party to the other within 20 working days, as aforesaid, such decision of the adjudicator shall remain final and binding upon the parties for all purposes. All disputes or differences in respect of which a decision if any, of the Adjudicator has not become final and binding as provided above shall be determined by arbitration proceedings provided that no such proceedings shall be issued until after completion of the Main Contract Works. If the dispute to be referred to adjudication above, or subsequently to arbitration, raises issues which are substantially the same as or connected with issues raised in a related dispute or difference between the Contractor and the Employer under the Main Contract or between the Contractor and other parties connected with the Main Contract Works and if the related dispute has already been or is at any time referred for determination the parties hereto agree that if either so requires the dispute under this Sub-Contract shall, so far as possible, be referred to the same dispute resolution procedure as applies to that related dispute. Following completion of the Main Contract Works, any disputes or differences not finally resolved by adjudication may be referred to arbitration and the final decision of a single arbitrator to be agreed on between the parties or, in default of agreement, to be appointed at the request of the Contractor by the President of such body as the Contractor may, in its discretion, decide.

b) Irrespective of the outcome of any adjudication, the party serving the Notice to Adjudicate shall bear all of the costs and expenses incurred by both parties in relation to the adjudication, including but not limited to all legal and experts' fees.

c) Irrespective of the outcome of any adjudication, the party serving the Notice to Adjudicate shall be liable for the adjudicator's fees and expenses

d) At the conclusion of any adjudication, and in the event that the Adjudicator makes an award requiring one party to pay money to the other party, such payment shall be validly made if made into a stakeholder account to be agreed between parties, pending final determination of the matter at issue between parties, which were the subject matter of the adjudication, whether pursuant to these Conditions or otherwise.

22. In any such arbitration or other legal proceedings 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.

23. This Sub-Contract shall be governed by and construed in accordance with English Law.

24. Notwithstanding any other provision of this Sub-Contract, nothing in this Sub-Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it