



## Sub Contract Terms & Conditions

Unless expressly agreed & referred to in the relevant Particulars of Sub-Contract these terms & conditions of sub-contract generally apply to any contract made between Whitehead Building Services Ltd & the Sub-Contractor.

### 1. INTERPRETATION

In these conditions the following words shall have the following meanings:

<b>"Contract"</b>	the Sub-Contract Order and the Sub-Contractor's acceptance of that order;
<b>"Contractor"</b>	Whitehead Building Services - unless otherwise stated in the details of the order.
<b>"Goods"</b>	any goods agreed in the Contract to be purchased by the Company from the Sub-Contractor.
<b>"Sub-Contractor"</b>	the person, firm or company named in the foregoing Sub-Contract Order.
<b>"Sub-Contract Order"</b>	Particulars of Sub-Contract or the Contractor's written instruction to supply the Goods and/or Sub-Contract Works, incorporating these conditions.
<b>"Sub-Contract Works"</b>	the works described in the foregoing Sub-Contract Order.
<b>"Main Contract"</b>	any contract under which the Contractor has been appointed to carry out works of which the Sub-Contract Works form part.
<b>"Main Contractor"</b>	the person, firm or company for whom the Main Contract Works are being carried out.
<b>"Supervising Officer"</b>	the person, firm or company appointed under the Main Contract as Architect, Engineer, Supervising Officer or other person who has the responsibility under the Main Contract to supervise <u>inter alia</u> work under the Main Contract and the Sub-Contract Works howsoever such Supervising Officer shall be described in the Main Contract.

### 2. UNDERTAKINGS OF SUB-CONTRACTOR

- 2.1 The Sub-Contractor undertakes to provide everything which is necessary for the carrying out and completion of the Sub-Contract Works subject to and in accordance with the Sub-Contract Order and/or instructions supplied to him from time to time and to deliver the Sub-Contract Works to the Contractor complete in all respects to the satisfaction of the Contractor and the Supervising Officer and in accordance with any specifications, drawings and other documents referred to in the Particulars of Sub Contract.
- 2.2 The Sub-Contractor is deemed to have reviewed and agreed to all contract documentation relating to the Sub-Contract works including those documents included within their own responsibilities and the responsibilities of others relating to the Sub-Contract Works included within the main contract. Should the Sub-Contractor notify the Contractor of any discrepancy, inaccuracy or error between two or more contract documents it should notify the Contractor who will advise the Sub-Contractor of the course of action to take or which document prevails at no additional cost to the Contractor or extension to the sub-contract completion date.
- 2.3 If the Goods and/or the Sub-Contract Works which are the subject of this Contract are to be used in connection with another contract specified (including but not limited to the Main Contract), then this Contract shall be subject to the contract conditions and provisions of such specified contract in so far as the same are applicable and do not conflict with these conditions.
- 2.4 The Sub Contractor shall execute the Sub Contract Works so as to ensure compliance with the Contractor's obligations under the main contract or other specified contract (in so far as they relate to the Sub-Contract Works) and no act or omission by the Sub-Contractor in relation to this shall constitute, cause or contribute to any breach by the Contractor of any of its obligations under the main contract or other specified contract. The Sub-Contractor hereby acknowledges that any breach of the Sub-Contract either defined within these terms and conditions or the main contract or other specified contract may result in the Contractor committing breaches of the main contract or other specified contract and/or incurring additional losses, costs, expenses or liabilities. All such losses, costs, expenses or liabilities incurred by reason of or as a consequence of such

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breaches are deemed to be within contemplation of the Sub-Contractor at the time of entering into this contract as being a likely consequence of any such breach by the Sub-Contractor. The Sub Contractor shall indemnify the Contractor in respect of such losses, costs, expenses or liabilities suffered or incurred by reason of or as a consequence of such breach of the contract by the Sub-Contractor.

- 2.5 A copy of the Main Contract or other contract specified within the Particulars of Sub-Contract having been made available for the reasonable inspection of the Sub-Contractor prior to the date of acceptance of the Sub-Contract Particulars, the Sub-Contractor shall be deemed to have full knowledge of and shall observe, perform, comply with and be bound by all the provisions of the Main Contract so far as they relate to and are applicable to the Sub-Contract Works or any part thereof and are not inconsistent with the express provisions of the Sub-Contract Order as if the contents thereof had been repeated herein. Acceptance of this Contract will constitute acceptance of such contract conditions as part of the terms of the Sub-Contract Order whether such request to review a copy has been made or not.
- 2.6 No approval either expressed or implied by the Contractor or the Supervising Officer shall in any way relieve the Sub-Contractor of his responsibility for complying with the performance of other requirements of this Contract.

### 3. DESIGN RESPONSIBILITY

- 3.1 Where the Sub-Contract Order requires the Sub-Contractor to design and/or detail the whole or any part of the Sub-Contract Works the Sub-Contractor warrants that such designs and details shall be safe and suitable for their intended purpose and insofar as the Sub-Contractor selects materials such materials shall be of merchantable quality and fit for their intended purposes and conform to all relevant British Standards. In addition to this Contract, any design liability assumed by the Sub-Contractor will be the subject of a separate design supplement to this Contract.
- 3.2 The Sub-Contractor shall be entirely responsible for such design including all drawings and calculations & shall remain liable for any mistake, inaccuracy or discrepancy contained therein or any omission therefrom.

### 4. COMMENCEMENT AND COMPLETION

- 4.1 Time shall be of the essence in relation to all dates specified in the Sub Contract Order.
- 4.2 The Sub-Contractor shall unless otherwise specifically instructed in writing commence the Sub-Contract Works within 7 days after a written notice to commence is sent to him by the Contractor. The Sub-Contractor shall complete the Sub-Contract Works and any section or sections thereof within the period or periods specified for such completion in the Sub-Contract Order subject only to such fair and reasonable extension of time as the Contractor shall allow where the Sub-Contract Works are delayed by causes which result in an extension of time being awarded under the Main Contract. If no period or periods for completion are stated in the Sub-Contract Order the Sub-Contractor shall carry out the Works diligently and in such order, manner and time as the Contractor may reasonably direct so as to ensure completion of the Main Contract Works or any portion thereof under the Main Contract by the completion date or dates or such extended date or dates as may be allowed under the Main Contract.
- 4.3 If the Sub-Contractor fails to complete the Sub-Contract Works or any section or sections thereof in accordance with Sub-Clause 4.1 of this Clause he shall pay or allow to the Contractor a sum equivalent to any loss or damage suffered or incurred by the Contractor in respect of the failure of the Sub-Contractor as aforesaid including but not limited to such liquidate or unliquidated damages or costs as the Contractor may be liable to pay or may otherwise incur under the Main Contract or other specified contract and which arise in consequence of such failure and the Contractor shall be entitled to deduct any sum payable under this Sub-Clause from any amounts which may at any time be due or have become due to the Sub-Contractor from the Contractor whether under the Sub-Contract Order or otherwise.
- 4.4 If the Sub-Contractor becomes aware of an event that may delay progress of the Sub-Contract Works they should provide notice to the Contractor which expressly states that it is given pursuant to this Clause and specifies details of such event including but not limited to the anticipated period of delay and potential impact on the completion date of the Sub-Contract works or section/s of works. In any event such notice must be provided within 10 days of the event leading to such potential delay occurring & it shall be at the sole discretion of the Contractor to offer an Extension of Time to reflect such event/delay to the completion date or relevant section/s of works but the Sub-Contractor shall not be entitled to claim any additional payment associated with such event.

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### 5. ASSIGNMENT

- 5.1 The Sub-Contractor shall not sub-let or assign the Sub-Contract Order or the Sub-Contract Works or any part thereof without the prior written consent of the Contractor.

### 6. FACILITIES

- 6.1 Except insofar as the Main Contract provides for the provision of such facilities by the Contractor, the Sub-Contractor shall supply at his own cost all fuel, water, lighting, power, watching and attendance as is necessary for the performance of the Sub-Contract Works.
- 6.2 The Sub-Contractor shall at his own cost provide and erect all necessary temporary offices, workshops, sheds or other buildings and welfare facilities for him employees and workmen at such places on the site as the Contractor shall from time to time appoint unless otherwise indicated and shall remove the same from site on satisfactory completion of the Sub-Contract Works or on written notice so to do by the Contractor.
- 6.3 The Sub-Contractor shall at his own cost provide all machinery and mechanical plant necessary for the performance of the Sub-Contract Works and shall not use such that belong to the Contractor or others without their respective prior written approval.
- 6.4 Any use by the Sub-Contractor of any facilities, plant or equipment provided by the Contractor or others shall be at the sole risk of the Sub-Contractor and the Sub-Contractor shall be responsible for any loss, damage or injury arising in consequence of such use by the Sub-Contractor, his workmen or others and the Contractor shall have no liability whatsoever in Contract, Delict or otherwise in relation to any such loss or damage or injury (save in respect of death or personal injury caused by negligence on the Contractor's part as defined in the Unfair Contract Terms Act 1977).

### 7. SCAFFOLDING

- 7.1 The Contractor shall permit the Sub-Contractor, at his own risk, to use for the purposes of the Sub-Contract Works such standing scaffolding, towers, platforms, walk ways and other temporary works and structures (hereinafter called "scaffolding") as is from time to time provided by the Contractor but the Contractor shall not be bound to provide or retain the scaffolding for the Sub-Contractors use. No such permission shall imply any warranty or undertaking by the Contractor as to the fitness, condition or suitability of the scaffolding nor shall it impose any liability upon the Contractor, his servants or agents nor relieve the Sub-Contractor of any statutory or other obligations to test or inspect the scaffolding to be used by his servants or agents or to provide suitable scaffolding for their use.
- 7.2 The Contractor shall have the right from time to time to inspect any scaffolding provided by the Sub-Contractor for the Sub-Contractors use or the use of any person and if in the opinion of the Contractor the scaffolding or any part thereof is unsafe or unfit for use he may direct the Sub-Contractor, his servants or agents to vacate the scaffolding until it shall be rendered safe and fit for use by the Sub-Contractor. The Sub-Contractor shall have no claim for loss or expense or extension of time or in respect of any other matters whatsoever as a result of a direction being given by the Contractor under this sub-clause.

### 8. OTHER REGULATIONS

- 8.1 The Sub-Contractor shall at all times observe and comply with all statutory and other regulations applicable to the Sub-Contract Works and the latest Codes of Practice customary in the trade and shall indemnify and keep indemnified the Contractor from and against all or any breach or non-compliance therewith or non-performance of any obligation thereunder.

### 9. SITE CONDITIONS

- 9.1 The Sub-Contractor shall familiarise himself with the extent of the Sub-Contract Works, the site conditions, any access problems and police regulations regarding parking, loading and unloading prior to commencing the Sub-Contract Works.
- 9.2 The Sub-Contractor shall be responsible for the accurate setting out of the Sub-Contract works and for ensuring that the positions, levels and dimensions of the Sub-Contract Works are correct according to the drawings, specifications or bill notwithstanding that he may have been assisted by the Supervising Officer or the Contractor therein in the checking of the accuracy thereof.

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9.3 The Sub-Contractor shall continuously provide competent supervision for the Sub-Contract Works and shall employ only persons who are fit and skilled in the work assigned to them.

### 10. CLEARANCE OF SITE

10.1 The Sub-Contractor shall at all times keep the Sub-Contract Works and all areas of the Site made available to him free from waste material and rubbish and on completion shall leave the whole of the Sub-Contract Works and such areas clean and safe and in a workmanlike condition to the satisfaction of the Contractor and the Supervising Officer.

### 11. ACCESS TO THE SUB-CONTRACTOR'S WORK

11.1 The Contractor, the Main Contractor and the Supervising Officer and persons authorised by any of them shall at all reasonable times have access to the Sub-Contractor's works, all other areas of the site and to the Sub-Contractor's premises where work or materials are being executed, prepared or stored prior to inclusion in the Sub-Contract Works. Where goods or plant for incorporation in the Sub-Contract Works are being manufactured elsewhere the Sub-Contractor shall procure from the manufacturer thereof permission for the Contractor, the Main Contractor and the Supervising Officer or any person authorised by any of them to have access thereto and to inspect, examine and test the same as if such goods or plant were being manufactured on the Sub-Contractor's premises.

### 12. VARIATIONS

12.1 No variation to the Sub-Contract Works shall vitiate this Sub-Contract but the Sub-Contractor shall not undertake any variation to the Sub-Contract whether by way of addition, alteration, modification or omission except as may be:-

12.1.1 ordered by the Supervising Officer under the Main Contract and confirmed in writing to the Sub-Contractor by the Contractor; or

12.1.2 agreed to be made by the Main Contractor and the Contractor and confirmed in writing to the Sub-Contractor by the Contractor; or

12.1.3 ordered in writing by the Contractor.

12.2 If the Sub-Contractor receives a written order otherwise than under Sub-Clause 12.1.1 above or any verbal order he shall refer the same to the Contractor who shall give him written directions thereon within a reasonable period and the Sub-Contractor shall only act upon such order as given in writing by the Contractor.

### 13. VALUATIONS OF VARIATIONS

13.1 All variations to the Sub-Contract Works authorised pursuant to the preceding clause shall be valued in the manner provided by this Clause and the value thereof shall be added to or deducted from the Contract price.

13.2 The value of all variations shall be ascertained by measurement priced at the Contract rates for like or analogous work insofar as such rates are applicable or if not so applicable at fair and reasonable rates to be agreed with the Contractor and in accordance with the valuation principles laid down in the Main Contract.

### 14. PAYMENT

The Contract price shall be paid by the Contractor to the Sub-Contractor in the following manner:-

14.1 Payment of the Contract price shall be by stage payments, unless the sub-contract specifies the duration of the work is to be less than 45 days, or it is expressly agreed that the duration of work is estimated to be less than 45 days

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- 14.2 For the purpose of making applications for payment hereunder (both interim and final) the Sub Contractor shall at his own expense submit fully detailed applications for payment which shall clearly identify the total value of the Sub Contract Works properly executed by him and his materials and goods properly on site for incorporation into the Sub Contract Works up to the date of the said application. Each application shall be submitted in a form required by the Contractor in accordance with the dates indicated on the schedule of application dates appended to this Contract or, in the absence of such a schedule, at the dates advised by the Contractor so as to enable him to comply with the provisions of the Main Contract or, in the absence of such a schedule or such advice, on the 28<sup>th</sup> day of each month.
- 14.3 The date on which payment becomes due from the Contractor to the Sub Contractor shall be 30 days from the date on which the Sub Contractor is required to submit his application under Sub Clause 14.2 hereof.
- 14.4 Following receipt of a valid application for payment, not later than 5 days after the date on which payment becomes due, or would have become due if (a) the Sub Contractor had carried out his obligations under the Contract and (b) no set off or abatement was permitted to any sums claimed to be due under one or more other contracts, the Contractor shall certify the payment proposed to be made and the basis on which that amount was calculated. Subject to the provisions of Sub Clauses 14.5 and 14.6 hereof the Contractor shall pay to the Sub Contractor the amount certified. Payment shall be made by the final date for payment, which shall be 30 days from the date on which payment becomes due.
- 14.5 In addition to any other provision hereof the Contractor may deduct from or set off against any sum paid or payable hereunder to the Sub Contractor any Contra charges including any amount, levy or other sum that the Contractor may be or become liable to deduct from or pay on account of such sum paid or payable to the Sub Contractor hereunder by reason of any Act of Parliament or Statutory rule or regulation made thereunder which may be or become law during the subsistence of the Contract. The Contractor shall issue a notice of intention to withhold payment to the Sub Contractor not later than 1 day before the final date for payment specifying the amount proposed to be withheld and the grounds for withholding this amount, or if there is more than one ground, each ground and the amount attributable to it. Where the payment certificate issued in accordance with Sub Clause 14.4 hereof details any amounts to be withheld and the grounds for withholding it, the certificate shall be a valid notice of intention to withhold payment.
- 14.6 If the Main Contractor makes or proposes to make any arrangement or composition with its creditors or has a receiver, administrative receiver, administrator, liquidator, manager or similar officer appointed in respect of all or any part of its assets or passes a resolution for winding up other than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all obligations under the project or in the case of an individual, has a bankruptcy order made against him or has his estate sequestered or grants a trust deed for creditors or dies or in the case of a partnership is dissolved or undergoes or suffers any analogous acts or proceedings under the law of if any of the foregoing is threatened then the Contractor shall only be required to pay the Sub Contractor, 30 days after the receipt of monies from the Main Contractor, any sums received in connection with the Sub Contract Works.
- 14.7 All sums paid hereunder shall be made on account only and any such payments shall not be held to signify approval by the Contractor and/or the Supervising Officer of the whole or any part of the Sub Contract Works executed nor shall any such payment prejudice any claim the Contractor may have in respect of any defects in the Sub Contract Works whenever such defect may appear.
- 14.8 No later than 60 days following the practical completion of the Sub-Contract Works, the Sub-Contractor must submit a detailed Final Account indicating any variations to the original Sub-Contract Order Value. Should a Final Account not be submitted within 60 days either the most recent Gross Cumulative Application for Payment or the original order value will be deemed to reflect the Final Account. Any Applications for Payment or Final Accounts submitted after this will be deemed invalid.
- 14.9 Notwithstanding anything to the contrary elsewhere in this Sub-Contract, if the Main Contractor or Employer becomes insolvent 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 unless the Contractor has received payment in respect thereof under the Main Contract & only to the extent that such receipt relates to the Works. Insolvency is hereby defined as a company entering administration, the appointment of an administrative receiver, the passing of a resolution for voluntary winding-up without a declaration of solvency or the making of a winding-up order.

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### 15. HEALTH AND SAFETY

- 15.1 The Sub-Contractor shall be responsible for the safe execution of the Sub-Contract Works and shall comply with and observe all laws and regulations having the force of law in respect thereof and in particular with any site safety regulations with which the Contractor may have been required by the Main Contractor or the Supervising Officer to comply and shall indemnify the Contractor against all consequences of any breach of non-observance thereof. Without prejudice to the foregoing generality the Sub-Contract shall ensure that he does not breach or place the Contractor in breach of the Construction (Design and Management) Regulations 2015 or any remaking thereof or any amendments thereto. The Sub-Contractor shall ensure that he will meet all duties incumbent upon him in terms of the said Regulations and he will ensure that he provides any information requested by the Contractor or the Planning Supervisor in terms of the said Regulations, which is required for the preparation of a Health & Safety in terms of the said Regulations.
- 15.2 The Sub-Contractor, his servants or agents before entering upon the Sub-Contract Works must report to the Contractors appointed representative who will issue notice to the Sub-Contractor regarding the duties of Sub-Contractors which sets out the Safety and Security policies required by the Contractor which must be accepted by the Sub-Contractor and strictly complied with before commencing works operations on site. In particular the Health & Safety at Work Act 1974 must be complied with wherever relevant.
- 15.3 The Sub-Contractor shall have no right or remedy pursuant to any provision of this subcontract, whether by adjustment to the Subcontract Sum / Prices or by adjustment to the Subcontract Completion Date or any Key Date or otherwise or in damages at common law or in tort or pursuant to any theory of law to the extent that any matter listed in Schedule 1 (Notifiable Diseases) and/or Schedule 2 (Causative Agents) of the Health Protection (Notification) Regulations 2010 has any affect, whether direct or indirect, on the Works, or on the progress of the Works.

### 16. RESPONSIBILITIES AND INDEMNITIES

- 16.1 The Sub-Contract Works, materials, tools, plant, scaffolding, machinery and buildings of the Sub-Contractor, the subject of or used in connection with this Contract whether at his workshop or on the site shall be at the Sub-Contractor's sole risk for all loss and damage (other than that excepted under Clause 19 hereof) and the Sub-Contractor shall be responsible for and shall forthwith make good at his own expense (except as provided in Clause 19) any loss or damage that may occur. The Sub-Contractor shall also be liable for and shall indemnify the Contractor and the Main Contractor against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of:-
- 16.1.1 any death, injury, loss or damage to any person whomsoever or to the Main Contract Works (including any existing buildings) or to any other property whatsoever including adjoining premises, or their occupants, or to the Contractor's or other Sub-Contractor's plant or materials which may arise out of, or in consequence of, the execution of the Sub-Contractor's Works or the execution thereof by his servants or agents; and
- 16.1.2 any breach, non-observance, non-performance by the Sub-Contractor, his servants or agents of the provisions of the Main Contract or the Sub-Contract or any of them; and
- 16.1.3 any act, omission, default or neglect of the Sub-Contractor, his employees, servants or agents which involves the Contractor in any liability under the Main Contract.

### 17. INSURANCE

- 17.1 Without prejudice to their obligations to indemnify the Contractor and Main Contractor under Clause 17 hereof the Sub-Contractor shall take out and maintain adequate insurance acceptable to the Contractor in respect of all claims whatsoever which may arise thereunder and will produce on demand policies as requested.

Unless otherwise specified & agreed prior to agreement of the Particulars of Sub-Contract Insurance provisions for the following should be allowed for on an "Each & Every" Basis :

Employers Liability	£10,000,000 GBP (Ten Million Pounds)
Public/Products/Pollution Liability	£5,000,000 GBP (Five Million Pounds)
Contractors "All Risks"	£10,000,000 GBP (Ten Million Pounds)
Professional Indemnity	£5,000,000 GBP (Five Million Pounds)

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- 17.2 In the event of neglect by the Sub-Contractor to effect the said insurance or in the event of failure to produce on demand policies of such insurance's together with the receipts for premiums the Contractor shall be at liberty to insure on behalf of the Sub-Contractor and to deduct the premiums so paid from any monies due or becoming due to the Sub- Contractor.

### 18. INSURANCE BY OTHERS

- 18.1 Where the main contractor states that such risks have been insured either by the Consultant or the Main Contractor the Sub-Contractor shall not be responsible for loss or damage caused by fire, storm, tempest, lightning, flood, earthquake, aircraft or anything dropped therefrom, aerial objects, riot and civil commotion to the Sub-Contract Works or to any materials (other than temporary buildings, plant, tools, scaffolding and machinery provided by the Sub-Contractor, or any scaffolding or other plant which is loaned to him by the Contractor) properly upon the site and in connection with and for the purpose of this Sub-Contract.
- 18.2 In the event of any such loss or damage, the Sub-Contractor shall, if and when directed by the Contractor in writing, proceed immediately with the rectification or replacement of the damaged work and materials and the completion of the Sub-Contract Works in full accordance with the terms and conditions hereof.

### 19. DEFECTS

- 19.1 The Sub-Contractor undertakes to maintain and protect the Sub-Contract Works and shall make good every defect, shrinkage or other fault from whatsoever cause arising until the completion of work under the Main Contract and shall not be entitled to any payment for so doing unless such defect, shrinkage or other fault is caused by the faulty design, materials, workmanship, negligence, omission or default on the part of the Main Contractor or the Contractor or their respective servants or agents.
- 19.2 After completion of the work under the Main Contract the Sub-Contractor shall remedy any defects in the Sub-Contract Works arising therein before the expiry of the defects liability period of the Main Contract at a time to be decided by the Contractor, provided that the limitation of the defects liability period shall not apply to any defect in the Sub-Contract Works which reasonable inspection or examination at any reasonable time during the carrying out of the Works would not have disclosed.
- 19.3 The Contractor may on failure or refusal by the Sub-Contractor at any time after written notice so to do remove any defective workmanship and materials and make good the same or employ others to make good the same within a reasonable time or at any time carry out and remedy any such work or supply materials as is necessary and the Sub-Contractor shall pay to the Contractor any costs and expenses thereby incurred including the costs of identifying or locating defective work or materials and reinstatement by all trades affected thereby and any such costs or expenses may be set-off against amounts due or becoming due to the Sub-Contractor.

### 20. TERMINATION OF MAIN CONTRACT

If for any reason the Main Contract is terminated before the Sub-Contractor has fully performed his obligations under this Contract then the Sub-Contractor shall, subject to Clause 14.3 hereof, be entitled to be paid:-

- 20.1 The value of the Sub-Contract Works completed at the date of such termination such value to be calculated according to Sub-clause 14.2 hereof.
- 20.2 The value of the Sub-Contract Works begun and executed but not completed at the date of such termination such value to be calculated according to Clause 14.2 hereof.
- 20.3 The value of the unfixed materials and goods delivered upon site for use in the Sub-Contract Works the property in which has passed to the Main Contractor under the provisions of the Main Contract.
- 20.4 The cost of the materials or goods properly ordered for the Sub-Contract Works for which the Sub-Contractor shall have paid or delivery of which he is legally bound to accept. On such payment by the Contractor any materials or goods so paid for shall become the property of the Contractor.
- 20.5 The reasonable costs of removal from site of his temporary offices, buildings, plant, machinery, appliances, goods and materials provided that payment shall be conditional upon the Contractor agreeing that payment is due. The Contractor has complete discretion in this regard.

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- 20.6 If the Main Contract is terminated by the Main Contractor in consequence of any breach of the Contract by the Sub-Contractor then the above provisions as to payment shall not apply but the rights of the Contractor and Sub-Contractor hereunder shall be the same as if the Sub-Contractor had been in breach of the Contract under Clause 21 hereof.

### 21. TERMINATION OF THIS SUB-CONTRACT

If the Sub-Contractor:-

- 21.1 fails within seven days of notice in writing from the Contractor to proceed regularly and diligently with the Sub-Contract Works to the reasonable satisfaction of the Contractor; or
- 21.2 without reasonable cause suspends the Sub-Contract Works or any part thereof; or
- 21.3 refuses, delays or fails within seven days of notice in writing from the Contractor to rectify or remove defective work or improper materials to the reasonable satisfaction of the Contractor; or
- 21.4 is sequestrated or declared bankrupt or enters into a trust deed or deed of arrangement or compositions with his creditors or being a company has a receiver appointed or goes into liquidation) other than a voluntary liquidation for the purpose of reconstruction) or
- 21.5 commits any breach of the terms of this Contract which results in any liability on the Contractor's part to the Main Contractor under the Main Contract; or
- 21.6 fails to withdraw immediately, at the request of the Contractor, any one or more of his employees to whom the Contractor objects or whose presence on the work may contravene the conditions of this Contract or the Main Contractor or may cause labour disputes in the Sub-Contractor's or any other trade and to replace such employees immediately with others against whom there is not such objection;

then in any such event and without prejudice to any other rights and remedies which the Contractor may possess the Contractor may by written notice to the Sub-Contractor forthwith terminate the Contract.

### 22. PROVISIONS IN CASE OF TERMINATION

- 22.1 If the Contractor shall, in the exercise of the power contained in the preceding clause, terminate this Contract, then the Contractor may take possession of all materials, machinery, plant, goods and other things whatsoever brought on to site by the Sub-Contractor any may use them for the purpose of executing, completing and maintaining the Sub-Contract Works and may if he thinks fit sell all or any of them and apply the proceeds in or towards the satisfaction of monies otherwise due to him from the Sub-Contractor. The Sub-Contractor shall at no time bring any goods, materials, machinery, plant, appliances and other things whatsoever onto the site unless the above right has been reserved to the Contractor in respect of all and each of them.
- 22.2 The costs, charges and expenses so incurred in completing the Sub-Contract Works together with any damages or consequential loss arising out of the termination or incurred by the Contractor prior thereto together with a reasonable sum by way of overhead charges and supervision shall be set-off against any monies due or to become due on any account whatsoever to the Sub-Contractor and so far as not satisfied by any such set-off shall be payable by the Sub-Contractor to the Contractor on demand without prejudice to any other claim or right of action which the Contractor may have against the Sub-Contractor.

### 23. VALUE ADDED TAX

- 23.1 The Contractor shall in addition to the Sub-Contract Price pay to the Sub-Contractor such Value Added Tax as may be properly chargeable on payments due under the Sub-Contract. The arrangements for payment of Value Added Tax by the Contractor and applications by the Sub-Contractor therefore shall unless otherwise agreed by the same as under the provisions of the Main Contract.

### 24. PRICE

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- 24.1 Unless otherwise specified in the Sub-Contract Order the Contract price shall be fixed for the duration of the Contract and shall not be subject to adjustment in respect of any increase or decrease in the cost to the Sub-Contractor of the performance of the Sub-Contract Works.

### 25. RETENTION

- 25.1 Retention shall be withheld from all payments to the Sub-Contractor at a rate of 5% unless otherwise specified in the relevant Particulars of Sub Contract. Subject to there being no defects apparent in the Sub-Contract Works, the due date for 50% of the amount of retention will be 6 months following practical completion of the sub-contract works. The remaining balance of retention shall be released following the making good of defects in the Sub Contract works and the due date for payment shall be 24 months following practical completion of the sub-contract works.
- 25.2 In the event that the Sub-Contractor is insolvent the Contractor shall not be obliged to release any retention amount withheld until 12 years after the date of completion of the sub-contract works or if carried out, termination of the Sub-Contractors employment, whichever is earlier.

### 26. INFORMATION TO BE PROVIDED TO OTHERS

- 26.1 Any instructions, drawing level or other information which is required to be provided by the Sub-Contractor to others must be provided in due time upon written request to the Sub-Contractor provided always that the information is not requested unreasonably close to the date on which it is necessary for others to receive the same. The Sub-Contractor shall be responsible for providing any information required from him by others upon specific written request.

### 27. SECURITY FOR DUE PERFORMANCE

- 27.1 If required by the Contractor the Sub-Contractor shall provide a Surety or Guarantee Bond or an Insurance or Guarantee Policy subject to the Contractor's approval and to an extent not exceeding 10% of the Contract price by way of Guarantee for the due and faithful performance of the Contract. Such Guarantee shall be binding notwithstanding any variations, alterations or extensions of time that may be made, given, conceded or agreed hereunder and shall be valid until one month after the issue of the final certificate under the Main Contract.

### 28. WARRANTIES, PARENT COMPANY GUARANTEE & PERFORMANCE BONDS

- 28.1 If so requested by the Contractor, the Sub-Contractor undertakes to execute and provide any collateral warranties which may be required in accordance with the Main Contract or other specified contract. Additionally, should the Sub-Contractor employ a Consultant a warranty may be required to include the Sub-Contractor & relevant Consultant. All costs associated with any warranties required will be deemed included within the agreed value included within the Particulars of Sub-Contract.
- 28.2 If the Sub-Contractor is a subsidiary of a parent company a binding Parent Company Guarantee duly executed by the parent company may be required.
- 28.3 If so provided in the Particulars of Sub-Contract a Performance Bond for the sum of 10% of the total value of sub-contract works will be required executed as a deed by a surety company or bank.

### 29. GOVERNING LAW AND JURISDICTION

- 29.1 The formation, existence, construction, performance, validity and all aspects of the Sub-Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

### 30. ADJUDICATION

- 30.1 The adjudication provisions of the Scheme for Construction Contracts (England) Regulations 1998 shall apply to the Contract. Unless otherwise expressly stated in this Contract or otherwise agreed, the adjudicator shall be nominated by the Chairman or Vice-Chairman of the Chartered Institute of Arbitrators (Arbiters)

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## Sub Contract Terms & Conditions

### 31. ARBITRATION

31.1 In the event of any dispute or difference between the Contractor and the Sub-Contractor arising out of or in relation to the Contract such dispute shall be referred to the Arbitration and final decision of a person to be agreed between the parties as Arbitrator, or upon failure so to agree within a reasonable period, appointed by the Chairman or Vice-Chairman of the Chartered Institute of Arbitrators (Arbitrators). Unless the parties otherwise agree, no Arbitration shall commence until after the completion, alleged completion or abandonment of the Sub-Contract Works or until after the termination or alleged termination of the Contract.

The arbitrator will hold a meeting with the parties forthwith on his acceptance of office and will fix a timetable for the delivery of points of claim and defence or counter claim, for the discovery and inspection of documents, for the inspection of the Works (if necessary) and for the hearing of any oral evidence (if necessary), which timetable shall not without the consent of the parties exceed a period of six months from the date of that preliminary meeting.

The parties shall ensure that any evidence whether oral or written and any document or argument required to be submitted to the arbitrator is submitted to him in accordance with the agreed timetable.

The arbitrator shall give his award not later than three months from the end of the period mentioned above.

### 32. TESTING EQUIPMENT

32.1 Any testing equipment used by the Sub-Contractor to validate works must be calibrated with current certification available for inspection on request.

### 33. QUALITY & ENVIRONMENTAL MANAGEMENT SYSTEMS

33.1 The Contractor is accredited to ISO 9001:2015 and the Sub-Contractor shall comply with the company quality and environmental plan which are available on request.

### 34. PROVISION OF DOCUMENTS & INFORMATION & INTELLECTUAL PROPERTY RIGHTS

34.1 The Sub-Contractor shall submit to the Contractor all documents and information relating to the Sub-Contract Works which the Contractor reasonably requires including such documents and information which enable the Contractor to monitor the planning and execution of the Sub-Contract Works along with co-ordination of the Sub-Contract Works in relation to the Main Contract or other specified contract.

34.2 Insofar as intellectual property rights existing anywhere in the world in respect of anything used in or required for the Sub-Contract Works or the operation, repair, maintenance, replacement or extension of the main contract works or works specified in the Particulars of Sub Contract which are vested in the Sub-Contractor, the Sub-Contractor grants to the Contractor and other parties referred to in the main contract a royalty-free, non-exclusive and irrevocable license to use, reproduce, modify, adapt & translate any of the works, designs or inventions incorporated or referred to in anything used or required as aforesaid for all purposes relating to the Sub-Contract Works. The Sub-Contractor shall indemnify the Contractor against all claims for infringement of any patent, registered design, copyright, trademark or trade name or other intellectual property right if the claim arises out of the design, construction, manufacture or use of the Sub-Contract Works or any part thereof.

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