

SUB-CONTRACT

GENERAL TERMS AND CONDITIONS – Rev 2.3 Jan 2023

DEFINITIONS

1. The following terms shall have the meanings ascribed to them below or elsewhere in these Conditions (as the case may be)

Compensation means: any loss and or expense payable to the Sub-Contractor by reason of one or more of the events listed at Condition 23

Competence in relation to the Sub-Contractor means: the Sub-Contractor shall have demonstrated or shall demonstrate to the Contractor that the Sub-Contractor has sufficient knowledge, experience and ability to plan, design (to the extent that the Sub-Contractor is required to design the Sub-Contract Works) and carry out the Sub-Contract Works, and has sufficient resources to plan, design (to the extent that the Sub-Contractor is required to design the Sub-Contract Works) and carry out the Sub-Contract Works, and is aware of the amount of time allowed for it to plan and prepare before starting work, and has an understanding of his own obligations under the Construction Design and Management Regulations 2015 and (where applicable) confirms or shall confirm that it has understood and satisfied his design duties under those Regulations

Conditions means: these Terms and Conditions

The **Construction Act** means: The Housing Grants Construction & Regeneration Act 1996 (as amended from the effective date by Part 8 of the Local Democracy Economic Development and Construction Act 2009 or any later statutory amendment or modification)

Contractor means: Murray & Willis Limited including their successors in title and assigns

Core Training requirements means: a minimum requirement of a current and relevant Construction Skills Certificate Scheme accreditation (CSCS) together with such other training and qualifications as are relevant to and reasonably required for the proper and safe performance of the Sub-Contract Works”

days means: calendar days unless otherwise stated

the **Documents** means: the documents listed or referred to in the Order including (without limitation) all specifications, method statements, risk assessments, plans, drawings, bills of quantities, preliminaries, Employer’s requirements, Contractor’s proposals, Sub-Contractor’s quotations, letters, e-mails whether in print or electronic form

Drawings means: the drawings showing the Sub-Contract Works contained or referred to in or accompanying the Order including any Main Contract drawings that apply or relate to the Sub-Contract Works

Employer means: the person firm or company by whom the Contractor is engaged to carry out and complete the Works

The term **final date for payment** is defined at Condition 36

The **Final Payment** means: the balance (if any) then unpaid of the Sub-Contract Price becoming due under Condition 34

Instruction(s) is defined in Conditions 16 and 17

Main Contract means: the Contract under which the Contractor is engaged by the Employer to carry out the Works of which the Sub-Contract Works form part

Making Good of Defects means: the making good or correction of defects shrinkages and other faults in the Sub-Contract Works, arising or identified within or as soon as possible at the expiry of the defects liability period as stated in the Order, by the Sub-Contractor to the reasonable satisfaction of the Contractor

Order means: the Sub-Contract Order to which these Conditions are attached

The term **payment due date** means the date on which payment is due as defined at Condition 34

The term **payment notice** is defined at Condition 44

The term **pay less notice** is defined at Condition 44

The **Payment Schedule** means: the programme of dates for interim payments set out in or annexed to the Order

Practical Completion means: a state in which the Sub-Contract Works are complete in all respects and free from apparent defects and the following things have been achieved, namely that the Contractor has full possession of the Sub-Contract Works, all installations that are part of the Sub-Contract Works have been fully commissioned and all necessary operating and maintenance manuals, guarantees, warranties and certificates required by the Sub-Contract have been provided, and all rubbish has been removed from the Site; and provided that practical completion shall have been achieved

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notwithstanding that there are minor defects in or omissions from the Sub-Contract Works which would ordinarily be included on a snagging list and which can be made good during the defects liability or defects correction period following the issue of a certificate of Practical Completion under the Sub-Contract without causing any material interruption or disturbance to the Employer's use and occupation of the Site.

Pre-qualified means: previously accepted by the Contractor (and, where so required under the Main Contract, by the Employer) as meeting the selection criteria for inclusion on that party's approved list of Sub-Contractors and suppliers of work or services of the kind required under the Sub-Contract

Programme means: the programme for the carrying out of the Sub-Contract Works contained or referred to in the Order as the same may be revised from time to time

Retention means: the percentage of the Sub-Contract Sum stated in the Order

Self-Billing Scheme Agreement means: the Contractor will add VAT to the nett amount of each payment made and the Sub-Contractor shall undertake not to issue a tax invoice or operate the authenticated receipt procedure and will advise in writing of any changes to their VAT registrations details.

Site means: the place in or upon which the Sub-Contract Works are to be carried out, the address of which appears in the Order

site materials are defined at Condition 49

Specification means: the specification or specifications contained or referred to in or accompanying the Order including any Main Contract specifications that apply or relate to the Sub-Contract Works

specified default is defined at Conditions 57 and 59

specified default notice is defined at Conditions 57 and 59

Statutory Requirements means: the requirements of any Act of Parliament, or statutory Instrument or Regulation made there under, Approved Code of Practice, local Bye Law, or ordinance in force at the time all or part of the Sub-Contract Works are carried out or with which the Sub-Contract Works, or the manner of the carrying out and completion of the Sub-Contract Works, must comply; or the requirements of any Local or Public Authority or Statutory Undertaker

Sub-Contract means: the contract entered into between the Contractor and the Sub-Contractor contained in or evidenced by the Order, the Documents and these Conditions for the carrying out and completion of the Sub-Contract

Sub-Contractor means: the sub-contractor named in the Order including their successors in title and assigns and, unless the context otherwise requires, including their employees and agents, and any other worker engaged by them or for whom they are responsible

Sub-Contract Sum means: the sum due or to become under the Sub-Contract to the Sub-Contractor for the Sub-Contract Works

Sub-Contract Works means: the permanent and temporary works and services and everything necessary for the permanent and temporary works and services, to be carried out under the Sub-Contract, including all necessary labour, plant, materials and equipment for the carrying out and completion of the same

The **Works** means: the works to be carried out and completed by the Contractor under the Main Contract

Variation is defined in Conditions 17 and 18 of the Conditions

Worker means: any employee, servant or agent of any party or other person for whom that party is responsible

2. These Conditions are the Conditions referred to in the Order unless otherwise agreed apply to all sub/sub-contracts entered into by the Contractor with the Sub-Contractor.
3. Defined terms have the same meaning ascribed in the Conditions.
4. Subject to Condition 5 below these Conditions shall apply to the exclusion of any other terms and conditions including without limitation any terms and conditions put forward or relied on by the Sub-Contractor.
5. No other terms shall have any validity or apply to the Sub-Contract save these Conditions and the terms set out or referred to in the Order or the Documents unless necessary to be implied by law. The Sub-Contractor agrees it has not in entering into this Sub-Contract relied on (nor shall hereafter seek to rely on) any representations, warranty, promises, undertaking, or statement made by the Contractor unless the same shall have been confirmed in writing and incorporated expressly into the Sub-Contract.

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Priority

6. The Sub-Contract is to be read as a whole and the Order, Conditions and Documents are to be taken as mutually explanatory of each other. In the case of inconsistency between them, the Sub-Contract shall be considered and construed according to the following order of priority:

The Order

The Conditions

The Main Contract terms and conditions in so far as they apply to the Sub-Contract Works

The Specification

The Drawings

The Sub-Contract tender / bills / schedules of rates or prices

Incorporated letters or minutes

Any other of the Documents

Compliance with Main Contract and indemnity

7. The Sub-Contractor shall –
- 7.1. be deemed to have knowledge of the provisions of the Main Contract (other than the Contractor's rates and prices). A copy of the Main Contract and its terms and conditions has been or will be provided to the Sub-Contractor upon request;
 - 7.2. observe and comply with the provisions of the Main Contract to be observed and complied with by the Contractor to the extent the same apply or relate to the Sub-Contract Works and are not inconsistent with the Sub-Contract and the Sub-Contractor shall indemnify and hold harmless the Contractor from and against any breach non-observance or non-performance by the Sub-Contractor of any of the provisions of the Main Contract and any act or omission of the Sub-Contractor which involves the Contractor in any liability of any kind whatsoever to the Employer under the provisions of the Main Contract;
 - 7.3. Without prejudice to the generality of Condition 7.1 (and to any other of the Conditions) the Sub-Contractor shall be deemed to have notice (if he has not actual notice) of and be bound by and shall comply with the provisions of the Main Contract that:
 - .1 require any notice, warning, advice or return to be given, or application to be made by the Contractor, to the intent that the Sub-Contractor shall give the equivalent notice, warning, advice, or return to the Contractor under the Sub-Contract, to enable the Contractor to comply fully and in good time with his obligations under the Main Contract;
 - .2 require the Contractor to indemnify the Employer, to the intent that the Sub-Contractor shall indemnify the Contractor from and against his liability to the Employer for anything done or omitted to be done by the Sub-Contractor under the Sub-Contract to the extent that it causes or contributes to any loss and or damage for which the Contractor is or becomes liable to the Employer;
 - .3 require the Contractor to pay or allow the deduction of liquidated or other damages for delay to the Employer, to the intent that the Sub-Contractor shall be liable to pay or allow to the Contractor the whole or a fair proportion of such damages as may be due to the failure of the Sub-Contractor to complete the Sub-Contract Works in accordance with the Programme or due to the Sub-Contractor preventing the Contractor completing the Works in accordance with the Main Contract;
 - .4 affect or relate to the scope or standards or the performance of the works to be carried out under the Sub-Contract, to the intent that if there is any difference between the scope or standards of the Works (as they apply to the Sub-Contract Works) described in the Main Contract and the scope or standards described in the Sub-Contract Works, the Sub-Contractor shall comply with the scope and standards as determined and directed by the Contractor, and if (but not otherwise) that direction involves a Variation under the Sub-Contract, the provisions of Conditions 17 and 18 shall apply;
 - .5 require the Contractor to comply with any Site rules or Employer's Health & Safety Policy or Rules, to the intent that the Sub-Contractor shall also comply with those Site rules, Policy or Rules.
 - .6 require the Contractor to apply for payment in a particular manner or by a particular date or time, or to provide details particulars vouchers invoices or other substantiation in support, to the intent that the Sub-Contractor shall provide in relation to his applications for payment under the Sub-Contract, everything necessary to enable the Contractor to comply fully and in good time with the Main Contract requirements;

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- .7 limit or govern the circumstances in which or the time by which the Contractor can apply for an extension of time for the completion of the Works or loss and or expense for delay or disruption to the Works, to the intent that the Sub-Contractor shall do everything reasonably necessary to enable the Contractor to obtain the benefits to which he wishes to claim and to comply fully and in good time with the Main Contract requirements in that behalf;
- 7.4 indemnify and hold harmless the Contractor against and from any claim, damage, loss or expense due to or resulting from any breach of the terms of the Sub-Contract, and or any negligence or breach of duty on the part of the Sub-Contractor whether such claim, damage, loss or expense is direct or indirect or consequential or comprises or includes a claim for loss or profits, loss of business, loss of opportunity, of any kind whatsoever;

Sub-Contractor's Obligations

8. Without prejudice to Condition 7, the Sub-Contractor shall have the following obligations.
- 8.1. The Sub-Contractor shall subject to the provisions of the Sub-Contract, (where and to the extent design is required by the Order), design, carry out, construct, complete, test, commission and maintain the Sub-Contract Works and provide all labour, materials, constructional plant, temporary works, transport to and from and in or about the Site and (except to the extent otherwise provided for in the Order), everything whether of a temporary or permanent nature required in and for such carrying out, construction, completion and maintenance of the Sub-Contract Works.
- 8.2. The Sub-Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before submitting his tender as to the nature of the ground and sub-soil, the form and nature of the Site, the extent and nature of the work and materials necessary for the completion of the Works (including any temporary works or measures necessary for the proper and safe completion of the Works), the means of communication with and access to and within the Site, the accommodation he may require and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting his tender and to have included for all such things in his rates and prices. No additional payment will be or become due to the Sub-Contractor arising from any failure on his part to comply with the provisions of this Condition 8.2.
- 8.3. The Sub-Contractor shall carry out and complete the Sub-Contract Works:
- .1 in accordance with the requirement of the Sub-Contract, in a proper, professional and workmanlike manner, and in accordance with the Statutory Requirements; and
 - .2 in conformity with the reasonable directions and instructions of the Contractor regulating the carrying out of the Sub-Contract Works or the Works. The Sub-Contractor shall pass on to the Contractor all approvals received by him in connection with Statutory Requirements; and
 - .3 using materials and goods for the Sub-Contract Works (excluding the Sub-Contractor designed works) which are, so far as procurable, of the kinds and standards described in the Documents; and
 - .4 using workmanship for the Sub-Contract Works (excluding the Sub-Contractor designed works) of the standards described in the Documents);
 - .5 to the extent that the quality of materials and goods or standards of workmanship are not described in the Documents, they shall be of a standard appropriate to the Sub-Contract Works; and
 - .6 employing competent worker and ensuring their compliance with the Core Training Requirements.

Design

9. Where and to the extent that the Sub-Contract or the Main Contract provides that the Sub-Contractor shall design, or complete the design, or accept responsibility for the design ('design') of the Sub-Contract Works or any part thereof, or integrate the design with the design of other works, or comply with any performance standards or criteria the Sub-Contractor shall –
- 9.1. carry out and complete the design, or any further design which results from any Variation, including the selection of any specification for the kinds and standards of the goods, materials and workmanship to be used in the Sub-Contract Works, using all the degree of skill and care to be expected of a competent designer experienced in the design of works and the provision of professional services for construction projects of the nature complexity kind and size of that for which the Sub-Contract Works (including design) are required;
 - 9.2. accept responsibility for the design of the Sub-Contract Works;
 - 9.3. integrate the design of the Sub-Contract Works with any other works as required and comply with the Contractor's directions for the integration of the design of the Sub-Contract Works with the design of the Works as a whole;
 - 9.4. ensure that the Sub-Contract Works when completed will comply with or achieve the performance standards or criteria; and
 - 9.5. in complying with this Condition 9, comply the CDM Regulations.

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10. The Sub-contractor shall have the like liability to the Contractor as would an architect, or engineer or, as the case may be other appropriate professional designer, holding himself out as competent to take on work of such design.

Limit of Design Liability

11. Where there is a limit on the Contractor's liability for design under the Main Contract, any liability of the Sub-Contractor in respect of his design, shall be subject to a limit of the same type and amount.

Setting out and provision of information

12. The Sub-Contractor shall be responsible for the setting out of his works and ensuring that all lines levels and dimensions are accurate and accord with the works with which they are to interface.
- 12.1. The Sub-Contractor shall supply the Contractor in advance of the commencement of the Sub-Contract Works with copies of:
- .1.1 The Sub-Contractor's design documents and if requested calculations reasonably necessary to justify or explain or amplify the Sub-Contractor's design proposals;
- .1.2 All levels and setting out dimensions prepared or used or intended to be used for the carrying out and completion of the Sub-Contract Works

As built drawings

- 12.2. Before Practical Completion of the Sub-Contract Works, the Sub-Contractor shall without further charge to the Contractor supply the Contractor with copies of the Sub-Contractor's design documents and such related information as may be specified in the Sub-Contract documents or as the Contractor may reasonably require, showing or describing the Sub-Contract Works as built and (without affecting the Sub-Contractor's maintenance obligations) concerning the maintenance and operation of them.
- 12.3. The copyright in the Sub-Contractor's design documents shall remain vested in the Sub-Contractor but subject to the Contractor having paid so much of the Sub-Contract Sum as is then properly due, the Contractor shall have an irrevocable, royalty free, non-exclusive licence, with full right to sub-licence the Employer, to use and reproduce the Sub-Contractor's design documents and the designs and contents of them for any purpose whatsoever relating to the Works including (but without limitation) any maintenance, repair or extension of the Works.
- 12.4. The Sub-Contractor shall not be liable for any use by the Contractor or the Employer of any of the Sub-Contractor's design documents or designs for any purpose other than that for which they were prepared.

Errors, discrepancies etc

13. Any error, discrepancy or divergence in or between the Documents, shall be dealt with in accordance with this Clause 13.
- 13.1. Subject to Clause 13.2, if the Sub-Contractor finds any error, discrepancy or divergence in or between the Documents, that is liable to affect the proper and timely carrying out and completion of the Sub-Contract Works, or compliance with the requirements of the Sub-Contract Works including the Statutory Requirements or the standards to be achieved, he shall notify the Contractor in writing who shall issue instructions to correct any such error, discrepancy or divergence and provided the same is not to due to the fault of the Sub-Contractor, such instruction shall be treated as a Variation.
- 13.2. If the Main Contract provides that any error, discrepancy or divergence in or between the Main Contract Conditions and the Main Contract documents shall be dealt with by and corrected at the expense of the Contractor, then any error, discrepancy or divergence in or between the Documents, shall likewise be dealt with and corrected by and at the expense of the Sub-Contractor.

Commencement and completion

14. The Sub-Contractor shall commence the Sub-Contract Works on the date for commencement stated in the Order and shall proceed regularly and diligently to carry out the Sub-Contract Works in compliance with the Programme and in accordance with the progress of the Works, and subject to Condition 21 below shall complete the Sub-Contract Works by the date for completion stated in the Sub-Contract Particulars.
15. Where the Programme and/or Order contains 'milestone' or Sectional dates for the commencement and completion of sections or parts of the Sub-Contract Works, or particular activities, the Sub-Contractor shall, in addition to his obligation under Condition 14 above and subject to Condition 21 below, comply with those milestone or Sectional dates.

Instructions and Variations

16. The Contractor shall be entitled any time to give such directions or Instructions as may be required for the safe, proper, or timely carrying out, completion or maintenance of the Sub-Contract Works or for the removal of any work, goods or materials that are not in accordance with the Sub-Contract. Such Instructions may be given orally or in writing and if orally shall be confirmed in writing by the Contractor within 5 days or if the Contractor shall fail to do so, then the Sub-Contractor shall confirm the same in writing to the Contractor within a further 3 days.

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17. The Contractor may instruct in writing a variation to the Sub-Contract Works, by
 - 17.1. the addition, omission or substitution of any work;
 - 17.2. altering the kinds or standards of any goods or materials;
 - 17.3. the suspension of the Sub-Contract Works if and to the extent necessary by virtue of a suspension of the Works;
 - 17.4. the suspension of the Sub-Contract Works if and to the extent reasonably required in the opinion of the Contractor for the safe or effective performance of the Sub-Contract Works.
18. An instruction under Condition 17.1 or 17.2 is a Variation. An instruction under 17.3 or 17.4 is a Variation unless it is due to any default of the Sub-Contractor. The cost of compliance with Condition 29.7 in accordance with Condition 29.8 is to be treated as a Variation.
19. No Variation or lawful instruction or direction shall vitiate this contract. The Sub-Contractor shall comply forthwith with any instruction or direction. If within 7 days of a notice requiring compliance, with an instruction or direction the Sub-Contractor does not comply, the Contractor may employ and pay others to execute any work necessary to give effect to the instruction or direction. The Sub-Contractor shall be liable for the additional costs incurred by the Contractor which shall either be deducted from sums otherwise due to the Sub-Contractor or recoverable as a debt.

Valuation of Variations

20. Valuation
 - 20.1. Any Variation (not being one due to a wrongful act, omission or default of the Sub-Contractor) which relates to additional or substituted work shall be valued as follows.
 - .1.1 Where additional or substituted work is of a similar character to and executed under similar conditions and does not substantially change the quantity of work set out in the Sub-Contract documents, the rates or prices set out in the Sub-Contract documents shall determine the valuation. For the avoidance of doubt, rates and prices based upon a schedule of rates will apply irrespective of the quantity.
 - .1.2 Where the additional or substituted work is not of similar character or is not executed under similar conditions or substantially changes the quantity of work set out in the Sub-Contract Documents, the rates or prices for such work set in those documents, less a reasonable allowance for the differences in character, conditions or quantities (as the case may be), shall determine the valuation.
 - .1.3 Where 20.1.1 and 20.1.2 do not apply, additional or substituted works shall be valued on the basis of fair rates or prices.
 - .1.4 If a Variation omits or reduces any item or items of work, an allowance shall be made having regards to the rates and prices in the Sub-Contract documents and the Sub-Contract Sum shall be reduced accordingly.
 - 20.2. Where a suspension of the Sub-Contract Works is a Variation in accordance with Condition 18, the Sub-Contractor shall be entitled to his reasonable costs actually incurred of de-mobilising and re-mobilising his labour and plant and (where applicable) his site establishment and the cost of storage of materials off site where this is necessary. In addition he shall be entitled to a reasonable amount in respect of his preliminary costs (including a fair contribution to head office overhead) for each week of the suspension.
 - 20.3. The amount ascertained under 20.1 or 20.2 shall be added to the Sub-Contract Sum.

Delay and extension of time

21. If the completion of the Sub-Contract Works is or is likely to be delayed, the Sub-Contractor shall be entitled to and the Contractor shall grant such extension of the time for completion as is fair and reasonable in all the circumstances provided (and compliance with the following provisions shall be a condition precedent to the grant of an extension of time):
 - 21.1. as soon as it becomes reasonably apparent that the completion of the Sub-Contract Works is being or is likely to be delayed and in any event within 14 days of when a reasonably competent Sub-Contractor should or would have become aware of the issue, the Sub-Contractor shall give notice in writing to the Contractor of the event or events giving rise to the delay or likely delay and particulars of the effects or likely effects of the delay on the date for completion or any increase in the Sub-Contract Sum and shall give particulars of the measures he has taken or intends to take to prevent or mitigate the delay or likely delay or to minimise any increase in the Sub-Contract Sum; and
 - 21.2. the event or events are beyond the reasonable control of the Sub-Contractor and could not reasonably have been foreseen by the Sub-Contractor at the date he entered into the Sub-Contract; and
 - 21.3. the Sub-Contractor has taken all reasonable steps to prevent, control or mitigate the effects of the delay; and
 - 21.4. the uninterrupted provision of fortnightly programmes showing the progress of the Sub-Contract works, the critical path at that point, progress recorded on a percentage complete basis and the activities shifted to show the revised sequence of

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working based on the current progress. The programme or accompanying narrative is required to show the causes and effect of the delay in that relevant period.

22. To the extent the Sub-Contractor is responsible for the delay or fails to take reasonable steps to prevent control or mitigate the delay or the effects of the delay, the extension of time to which he would otherwise be entitled shall be reduced accordingly.

Compensation

23. The Sub-Contractor may claim Compensation in the following circumstances.
- 23.1. If the completion of the Sub-Contract Works shall be delayed by reason of
- (a) any one or more of the events listed at 23.3.1 – 4 or 23.3.6 below, the Sub-Contractor shall be entitled to payment of the reasonable amount of any loss and or expense which he shall reasonably incur by reason of the event provided
- .1 as soon as it becomes reasonably apparent that the completion of the Sub-Contract Works is being or is likely to be delayed by such an event and in any event within 14 days of when a reasonably competent Sub-Contractor should or would have become aware of the issue, the Sub-Contractor shall give notice in writing to the Contractor of the event, and particulars of the effects or likely effects, the costs incurred or likely to be incurred by reason of the event and the measures he has taken or intends to take to prevent or mitigate the effects of the event; and
- .2 The event is not caused by the Sub-Contractor; and
- .3 the Sub-Contractor has taken all reasonable steps to prevent, control or mitigate the delay and the effects of the event;
- or
- (b) Suspension under 23.3.5 below, the Sub-Contractor shall be entitled to payment of a reasonable amount in respect of the costs and expenses reasonably incurred by the Sub-Contractor in the exercise of the right of suspension.
- 23.2. To the extent that the Sub-Contractor is responsible for the event or fails to take reasonable steps to prevent control or mitigate any delay arising from or the effects of the event, the loss and or expense to which he would otherwise be entitled shall be reduced accordingly. For the avoidance of doubt, in those periods there shall be no entitlement to recover monies.
- 23.3. The following are the events to which this Condition 23 applies:
- .1 A Variation which unavoidably extends the time for completion of the Sub-Contract Works and for which an extension of time has been granted under Condition 21
- .2 The Contractor does not allow access to and use of the Site in accordance with the Programme
- .3 The Contractor does not provide something which he is to provide by the date for providing it shown in the Programme
- .4 The Contractor gives an instruction to stop or not to start any work
- .5 a lawful suspension of performance of any or all of his obligations under this Sub-Contract by the Sub-Contractor pursuant to section 112(1) of the Construction Act
- .6 A breach of the Sub-Contract by the Contractor (which is not one of the other Compensation Events in the Sub-Contract)
- 23.4. The Sub-Contractor shall at his own expense provide the Contractor with such details, information and supporting documentation as shall be necessary or which the Contractor may require to enable the loss and expense to be ascertained. The provision of the information required by Clause 21.4 shall be a condition precedent to the grant of compensation relating to any event set out in Clause 23.3.
- 23.5. The loss and expense to which the Sub-Contractor is entitled shall be ascertained by the Contractor and added to the Sub-Contract Sum.
- 23.6. The Sub-Contractor shall not be entitled to any rights or remedies for delay to the completion or disruption to the regular progress of the Sub-Contract Works howsoever arising whether at common law or otherwise except as provided for by this Condition 23 or under Condition 22 above.
- 23.7. Working alongside other trades and the effects of the same is deemed to the Sub-Contractor's risk.

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Practical Completion and Lateness

24. Practical Completion of the Sub-Contract Works shall be deemed to have occurred when the Contractor notifies the Sub-Contractor in writing that
- 24.1. the Sub-Contract Works are accepted as practically complete; or
- 24.2. in the reasonable opinion of the Contractor, the same are practically complete (meaning completed in accordance with the Sub-Contract and the applicable provisions of the Main Contract and substantially free of defects), tested and commissioned as required and accompanied by all documents required to be provided by the Sub-Contractor before hand over.
25. The Contractor shall have the right (at his option and without obligation) to take possession of the Sub-Contract Works before Practical Completion by notice in writing to the Sub-Contractor to that effect and if he does so when the Sub-Contractor is not in breach of his obligations under the Sub-Contract, Practical Completion of the Sub-Contract Works shall be deemed to have occurred for the purposes of the Sub-Contract.
26. If the Sub-Contractor fails to complete the Sub-Contract Works by the relevant period(s) or date(s) for completion or extended period(s) or date(s) for completion, he shall pay or allow to the Contractor upon demand, the amount of any direct loss and / or expense suffered or incurred by the Contractor together with any liquidated and ascertained damages that the Contractor has incurred or is liable to incur under the Contract, in each case caused by that failure.

Defects

27. The Sub-Contractor shall at his own cost and in accordance with any direction of the Contractor, make good any defects, shrinkages or other faults in the Sub-Contract Works due to any materials goods or workmanship not in accordance with the Sub-Contract, or by reason of any failure to comply with his design obligations. In addition, if the Main Contract requires the Contractor at his own expense and irrespective of fault, to correct any defects, shrinkages or other faults in the Works, occurring at any time whether before or after Practical Completion, then the Sub-Contractor shall at his own expense and in accordance with the direction of the Contractor, make good any defects, shrinkages or other faults in the Sub-Contract Works. The Sub-Contractor shall attend to the defects, shrinkages or other faults within such period and manner as is specified in the Documents, or if none then in accordance with the Contractor's directions, and unless inconsistent with the Documents or such directions, shall proceed with, carry out and complete the making good, with all due diligence and as soon as reasonably practicable.
28. Where a deduction is made under the Main Contract which is attributable to any inaccurate setting out by the Sub-Contractor or to defects or other faults in or incompleteness of the Sub-Contract Works, the deduction of an equivalent amount or appropriate proportion of the deduction shall be borne by the Sub-Contractor and either deducted from monies otherwise due to the Sub-Contractor or recovered as a debt.

Injury, Damage and Insurance

Persons and Property

29. Injury to persons and property.
- 29.1. The Sub-Contractor shall be liable for and indemnify the Contractor against any expense, liability, loss, damage, claim, costs or proceedings whatsoever in respect of personal injury to or the death of person arising out of or in the course of or caused by the carrying out of the Sub-Contract Works, except to the extent the same is due to any act or neglect, breach of statutory duty or default of the Contractor, or his worker, or the Employer or his worker, or any other contractor or any statutory undertaker or third party.
- 29.2. Subject to Condition 29.3, the Sub-Contractor shall be liable for and indemnify the Contractor against any expense, liability, loss damage, claim, costs or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury, damage, claim, costs or proceedings arises out of or in the course of by reason of the carrying out of the Sub-Contract Works and except to the extent the same is due to any act or neglect, breach of statutory duty or default of the Contractor, or his worker.
- 29.3. The liability referred to at Condition 29.2 and the indemnity referred to at Condition 7.2 shall not extend to any loss or damage to the Works, and or any site materials by any of the Specified Perils, whether or not caused by the negligence, breach of statutory duty, omission or default of the Sub-Contractor, or his worker for the period up to the date of Practical Completion of the Sub-Contract Works or the date of termination of the Sub-Contractor's employment under this Sub-Contract.
- 29.4. Without prejudice to the obligation to indemnify the Contractor under Conditions 29.1 and 29.2 the Sub-Contractor shall take out and maintain the insurances set out in the Order.

The Sub-Contract Works and site materials

- 29.5. The Sub-Contractor shall be liable for the cost of restoration of the Sub-Contract Works and the replacement or repair of any Sub-Contract site materials that are lost or damaged before Practical Completion of the Sub-Contract Works or

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the termination of the Sub-Contractor's employment and the removal of resultant debris except to the extent that the loss or damage is due to the Specified Perils or any negligence, breach of statutory duty, omission or default of the Contractor, or his worker, or the Employer or his worker, or any other contractor or any statutory undertaker or third party.

- 29.6. When required by the Order but not otherwise, then without prejudice to the liability in 29.5, and until Practical Completion of the Sub-Contract Works, the Sub-Contractor shall in the joint names of the Contractor and Sub-Contractor insure the Sub-Contract Works and the site materials against loss or damage by reason of any risk except the Specified Perils in the sum set out in the Order
- 29.7. If any loss or damage occurs to the Sub-Contract Works or site materials before Practical Completion whether occasioned by the Specified Perils or otherwise, the Sub-Contractor shall forthwith upon occurrence or later discovery, notify the Contractor of the nature, extent and location of the loss or damage. The Sub-Contractor shall with due diligence and in compliance with the Contractor's instructions restore lost or damaged Sub-Contract Works and replace or repair lost or damaged site materials, remove debris and proceed with the Sub-Contract Works.
- 29.8. Where under Conditions 29.5 the Sub-Contractor is
- .1 not responsible for the cost of compliance with Condition 29.7, compliance shall be treated as a Variation. Loss or damage affecting the Sub-Contract Works caused by any of the Specified Perils shall be disregarded in computing any amounts payable to the Sub-Contractor under this Sub-Contract;
 - .2 responsible for the cost of compliance with Condition 29.7, the Sub-Contractor shall, in addition to being responsible for the cost of restoration of the Sub-Contract Works and the replacement or repair of any Sub-Contract site materials that are lost or damaged, (and the cost of removal of resultant debris), indemnify the Contractor from and against all loss and damage that the Contractor has suffered or shall suffer including loss of income, business, or profit, liquidated damages for delay, the cost of prolongation of the Sub-Contract Works or the Works, and any other losses or costs whatsoever associated with or consequent on the loss or damage to the Sub-Contract Works.
- 29.9. The Sub-Contractor shall not object to the payment to the Employer by insurers under any joint names policy under the Main Contract.
- 29.10. The Sub-Contractor shall produce evidence of such insurances as are required to be effected by him under Condition 29 to the reasonable satisfaction of the Contractor at inception and renewal of such insurance, and from time to time at the Contractor's request.
- 29.11. Nothing in this Condition 29 shall modify the Sub-Contractor's obligations in regard to defects in the Sub-Contract Works as set out at Condition 27.

Professional Indemnity Insurance

- 29.12. Without prejudice to his obligations under this Sub-Contract, whenever the Sub-Contract Works include any element of design by the Sub-Contractor, the Sub-Contractor shall at his own cost take out and maintain professional indemnity insurance with a limit of indemnity of not less than the sum stated in the Order or if none is there stated then £2,000,000 (one million pounds) for any one claim and in the aggregate with one automatic reinstatement in any policy year period, in relation to those Works provided always that:
- .1 such insurance shall be in place from the date of this Sub-Contract until twelve years after completion of the Sub-Contract Works, provided that such insurance is available to the Sub-Contractor at commercially reasonable rates and on commercially reasonable terms from insurers of substance and good repute;
 - .2 The insurance premiums in respect of the insurance shall at all times be the Sub-Contractor's responsibility;
 - .3 if such insurance is not available to the Sub-Contractor at commercially reasonable rates and on commercially reasonable terms, the parties will meet and the Sub-Contractor will outline the steps it intends to take to manage such risks. If the steps proposed by the Sub-Contractor are not reasonably acceptable to the Contractor, the Contractor shall be entitled to take whatever steps it reasonably believes are necessary to manage the risk (including without prejudice to the generality of the foregoing, the right to take out and maintain insurance which the Sub-Contractor might have effected and maintained) recover the costs incurred from the Sub-Contractor; and
 - .4 the Sub-Contractor will provide the Contractor with reasonable evidence that the policies referred to in this Condition are in full force and effect.

Collateral Warranties

30. Where the Main Contract or Sub-Contract Documents provide, the Sub-Contractor shall upon and within 14 days of a request from the Contractor, and at his own expense, provide to the Contractor collateral warranties in favour of the Employer or any third party funder or purchaser or tenant of the property on or in which the Sub-contract Works are carried out. The Collateral Warranties shall be either in the form annexed to Main Contract, or this Sub-Contract or such other form as the intended beneficiary shall reasonably require and shall be duly executed as a deed.

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Set-off and counterclaim

31. The Contractor shall have a full and unfettered right to set-off any sum which may become due from the Sub-Contractor to the Contractor under or arising out of or in connection with any other contract between them, from and against any sums due or becoming due to the Sub-Contractor under or arising out of or in connection with this Sub-Contract. Such right of set-off shall be exercisable without further notice beyond that required under the provisions of section 111 of the Construction Act and the payment provisions of the Sub-Contract.

Payment

32. Unless the Order otherwise provides, this is a fixed price lump sum contract, subject only to adjustment in accordance with the Variations provisions and or Compensation under Condition 23.
- 32.1. Unless the Order otherwise provides, the Sub-Contract Sum is neither re-measurable nor subject to fluctuations and there shall be no additions for any increases in the rates or prices of labour plant equipment and materials after the Tender.
- 32.2. Where the Order so provides, the Sub-Contract Sum shall be re-measured upon completion of the Sub-Contract Works and the Sub-Contract Sum adjusted accordingly.
33. Without prejudice to Condition 32.1, the Sub-Contract Sum may be re-measured at the sole option of the Contractor who shall have the right to call for re-measure at any time upon notice to the Sub-Contractor and following any such re-measure, the Sub-Contract Sum shall be adjusted accordingly. The Contractor shall be under no duty whether of fairness or otherwise, to elect for a re-measure.
34. Where the Sub-Contract Works are expected to last more than 45 days the Sub-Contract Sum shall be paid in instalments equal to the value of work properly carried out and materials properly supplied and design services properly rendered ~~or by stage payments~~ as provided for in the Order and all in accordance with the Sub-Contract. The first and subsequent Interim payments shall become due in accordance with the Payment Schedule or, in the absence of a Payment Schedule, then on the day of the month stated in the Order and in the default by the 20th Day of the Month. Interim Payments will cease after Practical Completion of the Sub-Contract Works. The Final Payment shall become due 3 months after the date of Practical Completion in accordance with Condition 24. These are the **payment due dates**.
35. There shall be deducted from each such instalment and the Final Payment
- 35.1. the amount of previous payments and / or deductions including those the subject of a previous pay less notice;
- 35.2. any sums due from the Sub-Contractor to the Contractor;
- 35.3. the Retention as provided for under Condition 37;
- 35.4. (where required) tax at the applicable rate under the Construction Industry Scheme.
36. The **“final date for payment”** shall be the date(s) stated in or calculated by reference to the Order or in the default 65 days from the payment due dates.

Retention

37. There shall be deducted from each instalment before the Final Payment, a sum equal to the percentage stated in the Order of the value of the Sub-Contract Works then due for payment until Practical Completion of the Sub-Contract Works when the percentage Retention shall reduce by one half. The Contractor shall be entitled to retain the sums deducted until the same become due for release. The sums retained shall be not be impressed with a trust nor held as fiduciary for the Sub-Contractor and the Contractor shall have no obligation pending payment to separately account for the sums retained or to invest them. The second half of the Retention shall become due for release within 21 days of the Making Good of Defects in the Sub-Contract Works.

Conditional payment

38. Payment to the Sub-Contractor shall be conditional to this extent: if the Employer shall be or become insolvent (as that term is defined by section 113 of the Housing Grants Construction and Regeneration Act, 1996, as amended by the Enterprise Act 2002), and by reason of such insolvency shall fail to pay the Contractor a sum falling due under the Main Contract which includes a sum due or becoming due to the Sub-Contractor under this Sub-Contract, the Contractor shall not be liable to pay that sum to the Sub-Contractor and shall be entitled to withhold payment of that sum for so long as and to the extent that payment is not made by the Employer. If that sum or any part therefore is later paid by the Employer or on his behalf to the Contractor, the Contractor shall account to the Sub-Contractor for the sum due to the Sub-Contractor to the extent that sum is actually received.

Suspension for non-payment

39. Without prejudice to any other right or remedy, and subject to Condition 45, if the Contractor fails to pay in full the notified sum to the Sub-Contractor by the final date for payment under this Sub-Contract, and the Contractor has not given a pay less notice complying with Condition 44, the Sub-Contractor may suspend performance of any or all of his obligations under this Sub-Contract on giving not less than 30 days' notice to the Contractor of its intention to do so and stating the ground or grounds on which it is intended to suspend performance.
40. The Sub-Contractor shall ensure that the Sub-Contract Works are left in a safe and secure condition during the period of suspension.

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Interest

41. If the Contractor fails to pay any amount or any part of an amount properly due to the Sub-Contractor under the Sub-Contract by the final date for payment, the Contractor shall pay simple interest on the amount paid late for the period until the amount is paid, at the rate of 2% over base rate in force at the time. Such interest shall be a debt due to the Sub-Contractor. The parties acknowledge that the Contractor's liability under this Condition 41 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

Payment procedures

42. Unless otherwise provided for in the Payment Schedule, interim payment applications shall be made the number of days before the payment due dates as provided for in the Order and in the default 5 days prior to the due date. All applications shall be accompanied by sufficient details and substantiation to enable the Contractor to see what work has been carried out and or services supplied, where, when and by whom; what goods and materials (including hired plant and equipment) have been supplied and at what cost and whether those goods and materials have been incorporated into the Sub-Contract Works or brought to site for imminent incorporation; and to satisfy himself that title has passed to the Sub-Contractor who in turn is legally entitled to pass title in unincorporated goods and materials to the Contractor or in incorporated goods and materials to the Employer as the case may be. A Sub-Contractor's application shall be given in writing by recorded delivery for the attention of the Financial Director of the Contractor and shall clearly specify that it either an interim or final application, it shall clearly state order number and the date the works have been valued. The Parties agree that any failure to do so will result in that document not being recognised as a payment application.
43. Where VAT is payable the Sub-Contractor shall submit a proper and valid vat invoice unless the Sub-Contractor has entered into a Self-Billing Scheme Agreement with the Contractor.
44. Payment
- 44.1. The Contractor shall assess and value the work, goods, materials and services provided in accordance with the Sub-Contract.
- 44.2. No later than 5 days after the payment due date the Contractor shall notify the Sub-Contractor of the sum he considers to have been due at the payment due date (or 'zero' if no payment is due), and the basis on which that sum is calculated (the **payment notice**).
- 44.3. The final date for payment shall be 65 days after the date on which payment becomes due (unless a different period is stated in the Order).
- 44.4. Subject to Condition 45 and unless the Contractor has served a notice under Condition 44.5, he shall pay the Sub-Contractor the sum referred to in the payment notice or if the Contractor has not served a payment notice, the sum referred to in the Sub-Contractor's application or invoice or default notice (as the case may be) (referred to in this clause 44 as "**the notified sum**") on or before the final date for payment. A Sub-Contractor's default notice shall be given in writing by recorded delivery for the attention of the Financial Director of the Contractor and shall clearly specify that it is a default notice.
- 44.5. Not less than 1 day before the final date for payment (referred to in this Condition 44 and Condition 45 as "**the prescribed period**"), the Contractor may give the Sub-Contractor notice that it intends to pay less than the notified sum (a **pay less notice**). Any pay less notice shall specify:
- (a) the sum the Contractor considers to be due on the date the notice is served; and
 - (b) the basis on which the sum is calculated.
45. Notwithstanding Condition 44 and without prejudice to Condition 57 if the Sub-Contractor becomes Insolvent within the meaning of Condition 53 after the prescribed period referred to in Condition 44, the Contractor shall not be required to pay the Sub-Contractor the notified sum on or before the final date for payment.
46. The Sub-Contractor shall entirely at his own expense, submit his final account and final payment application within 1 month of Practical Completion of the Sub-Contract Works unless some other period is specified in the Order. The Sub-Contractor shall entirely at his own expense, provide such details, information and substantiation as may be necessary or requested by the Contractor in support of the final account and final payment application. The Sub-Contractor may be required to attend one or more meetings to explain or discuss the final account, and in each case the Sub-Contractor shall comply and attend at his own expense.

The Final Payment

47. Within 12 months of submission of the final account and payment application by the Sub-Contractor, and compliance by the Sub-Contractor with Condition 46, the Contractor shall determine the value of all work goods materials and services that are in accordance with the Sub-Contract and Sub-Contract Sum shall be adjusted accordingly. After taking into account previous payments and / or deductions including those the subject of a previous pay less notice and the Retention applicable to the adjusted Sub-Contract Sum, the Contractor shall notify the Sub-Contractor of the amount of the Final Payment due (if any) and the same shall become due and be paid to the Sub-contractor in accordance with Conditions 34-36 and where applicable Condition 38, and Condition 44 and where applicable Condition 45.

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Plant and equipment

48. Any and all Plant, tools and equipment provided by the Sub-Contractor for his use shall be of good and sufficient construction, sound and in good working order, and fit for purpose and shall comply with all relevant British Standards and European Regulations and Directives and be used and stored safely and properly in accordance with the Statutory Requirements and good practice.

Unfixed Materials and Goods

49. Materials goods and equipment brought to and stored on the Site for incorporation into the Sub-Contract Works (“**site materials**”) shall not be removed from the Site without the express prior written consent of the Contractor (which consent shall not be unreasonably withheld or delayed). Where the value of site materials has been included in any application for interim payment under which the amount properly due to the Contractor has been paid by the Employer, they shall upon such payment become the property of the Employer and the Sub-Contractor shall not deny such title. If the Contractor shall pay the Sub-Contractor for any site materials before their value is included in any interim payment under the Main Contract, they shall upon such payment become the Contractor’s property.

Statutory Requirements

50. The Sub-Contractor shall at all times and in all manners and at his own expense fully comply with the Statutory Requirements in relation to the Sub-Contract Works.

Health & Safety at Work and the Environment

51. The Sub-Contractor shall:
- 51.1. have and follow a proper good and sufficient Health & Safety at Work Policy and Plan, have made and shall follow a proper good and sufficient risk assessment including a design risk assessment in respect of any design responsibility which forms part of the Sub-Contract Works, have made and shall follow a proper good and sufficient method statement for the safe execution and completion of the Sub-Contract Works;
 - 51.2. be familiar and comply with all relevant provisions of the Construction Design and Management Regulations 2015;
 - 51.3. be expected to follow good practice to safeguard the environment and where he has the choice of materials, to use those which are least harmful to the environment;
 - 51.4. have regard to and ensure he complies with the Contractor’s Health & Safety at Work, Waste Management, Data Protection and other applicable Policies and Rules and the Designers’ and Principal Contractor’s Risk assessments, method statements and the Construction Phase Plan;
 - 51.5. have regard to and comply and with the Statutory Requirements and including (without limitation), the Health & Safety at Work Act 1974 (or any statutory modification), all Regulations and Approved Codes of Practice made and issued under that Act, the Environmental Protection Act 1990 (or any statutory modification)

Contracts (Rights of Third Parties) Act 1999

52. Notwithstanding any other provision of the Sub-Contract, nothing in the Sub-Contract confers or is intended to confer any right to enforce any of its terms on any person who is not party, save that a lawful assignee shall be entitled to the title rights and benefits conferred by the assignment.

Termination

53. Without prejudice to the definition of insolvency as it relates to the Employer under Condition 38 above, for the purposes of the following provisions for termination of the Sub-Contract, a Party to the Sub-Contract is Insolvent if:
- 53.1. He enters into or makes a formal proposal to enter into an arrangement, compromise or composition in satisfaction of his debts (other than a scheme of arrangement as a solvent company for the purpose of amalgamation or reconstruction); or
 - 53.2. Without a declaration of solvency, he either passes a resolution or makes a determination that he be wound up or convenes a meeting of shareholders or of creditors for the purposes of passing such a resolution or appointing a liquidator; or
 - 53.3. He has a winding up petition or bankruptcy petition properly presented against him in respect of a debt due, or a winding up order or bankruptcy order is made against him;
 - 53.4. He has appointed to him an administrator or any person or persons give notice of an intention to appoint an administrator to him or any person or persons lodge an application at court for an administration order to be made in respect of him within the meaning of Schedule B1 to the Insolvency Act 1986; or
 - 53.5. He has an administrative receiver or a non-administrative receiver appointed in respect of any of his assets; or
 - 53.6. He is the subject of an analogous arrangement or proceedings in an other jurisdiction; or

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- 53.7. In the case of a partnership any partner is the subject of an individual voluntary arrangement or any other event or proceeding as referred to in conditions 53.1 to 53.6.
54. Termination shall take effect on receipt of the relevant notice. Each termination notice referred to in these Conditions shall be given in accordance with the provision for the giving of notices at Condition 67 below.
55. The termination provisions are without prejudice to any other rights and remedies which the Contractor or Sub-Contractor may possess.
56. Irrespective of the grounds of termination, the Sub-Contractor's employment may at any time be reinstated if and on such terms as the Parties agree.

Termination by Contractor

57. Default by Sub-Contractor

- 57.1. If, before Practical Completion of the Sub-Contract Works, the Sub-Contractor:
- .1 Without reasonable cause wholly or substantially suspends the carrying out of the Sub-Contract Works; or
 - .2 Fails to proceed regularly and diligently with the performance of his obligations under this Sub-Contract; or
 - .3 Refuses or neglects to comply with an instruction or direction of the Contractor requiring him to remove any work, materials or goods, not in accordance with this Sub-Contract and by such refusal or neglect the Works are materially effected; or
 - .4 assigns any right benefit or interest in or under this Sub-Contract or sub-lets the Sub-Contract Works otherwise than in accordance with these Conditions; or
 - .5 Fails to comply with his obligations under the CDM Regulations; or
 - .6 commits any other breach (not being of a trivial nature) of any of the Conditions

(a "specified default"), the Contractor may give a notice to the Sub-Contractor specifying the default or defaults ("specified default notice").

- 57.2. If the Sub-Contractor continues a specified default for 7 days from receipt of the specified default notice, the Contractor may on, or within 21 days from, the expiry of that 7 day period by a further notice to the Sub-Contractor forthwith terminate the Sub-Contractor's employment under the Sub-Contract.
- 57.3. If the Contractor does not give the further notice referred to in Condition 57.2 (whether as a result of the ending of any specified default or otherwise) but the Sub-Contractor repeats a specified default (whether previously repeated or not) then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Sub-Contractor forthwith terminate that employment.

Insolvency of the Sub-Contractor

- 57.4. The Sub-Contractor shall immediately notify the Contractor if one of the events in Condition 53 shall apply or if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in Condition 53.
- 57.5. If the Sub-Contractor is Insolvent, the Contractor may at any time by notice to the Sub-Contractor terminate the Sub-Contractor's employment under this Sub-Contract.

Consequences of termination under 57

58. If the Sub-Contractor's employment is terminated under any of the provisions of Condition 57:
- 58.1. The Contractor may employ and pay other persons to carry out and complete the Sub-Contract Works and make good any defects of any kind therein and may enter upon and take possession of the Sub-Contract Works and may use all the Sub-Contractor's temporary buildings, plant, tools, equipment, goods and Site Materials for those purposes;
- 58.2. The Sub-Contractor shall:
- .1 unless he has already done so, cease work and vacate the Site;
 - .2 When required in writing by the Contractor to do so (but not before) remove or procure the removal from site of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Sub-Contractor;
 - .3 Without charge provide the Contractor with copies of all the Sub-Contractor's design documents then prepared, whether or not previously provided;

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- .4 If so required by the Contractor within 10 days of the date of termination, assign (so far as assignable and so far as he may lawfully be required to do so) to the Contractor, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of work for the purposes of this Sub-Contract
- 58.3. The provisions of Condition 58.4 below shall thereupon apply and the other provisions of this Sub-Contract which require any further payment or any release of retention to the Sub-Contractor shall cease to apply.
- 58.4. Upon completion of Sub-Contract Works the making good of defects, or earlier termination of the Contractor's employment, however arising, the Sub-Contractor may apply to the Contractor and the Contractor shall pay to the Sub-Contractor the value of any work properly executed or goods and materials properly supplied and or any services properly rendered by the Sub-Contractor to the extent not included in previous payments. Without prejudice to his other rights, the Contractor may deduct there from, the cost of completing the Sub-Contract Works, the cost of remedy of any defects in the Sub-Contract Works, the amount of any direct loss and/or damage caused to the Contractor as a result of the termination, and any other amounts payable by or due from the Sub-Contractor to the Contractor under this Sub-Contract or any other contract between them. To the extent that the amounts due to the Contractor exceed the amounts due to the Sub-Contractor the balance shall be recoverable from the Sub-Contractor as a debt.

Termination by Sub-Contractor

59. Default by Contractor

59.1. If the Contractor:

- .1 Without reasonable cause wholly or substantially suspends the carrying out of the Sub-Contract Works; or
- .2 Fails to comply with the CDM Regulations.

(a "specified default"), the Sub-Contractor may give a notice to the Contractor specifying the default or defaults ("specified default notice").

59.2. If a specified default continues for 10 days from receipt of notice under Condition 52.7.8.1 the Sub-Contractor may on or within 21 days from the expiry of that 10 day period by a further notice to the Contractor terminate the Sub-Contractor's employment under this Sub-Contract.

Termination under the Main Contract

60. If the Contractor's employment under the Main Contract is terminated, the Contractor shall immediately notify the Sub-Contractor and the Sub-Contractor's employment under this Sub-Contract shall thereupon terminate.

Insolvency of Contractor

61. If the Contractor is Insolvent:

- 61.1. The Sub-Contractor shall be entitled by notice to the Contractor to terminate the Subcontractor's employment under the Sub-Contract but the Sub-Contractor shall not exercise that right prior to the period of 21 days (or such further period as the Parties may agree) from the date upon which the Contractor became Insolvent;
- 61.2. Pending such termination of the Sub-Contractor's employment or the date of commencement of any continuation between the Parties, the Sub-Contractor's obligations under the Sub-Contract to carry out and complete the Sub-Contract Work shall be suspended.

Consequences of termination under Conditions 59-61

62. If the Sub-Contractor's employment is terminated under Conditions 59, 60 or 61:

- 62.1. The provision of this Condition 62 shall thereupon apply and the other provisions of the Sub-Contract which require any further payment or any release of any retention to the Sub-Contractor shall cease to apply.
- 62.2. The Sub-Contractor shall:
 - .1 Remove or procure the removal from site of all temporary buildings, plant, tools, goods and equipment belonging to the Sub-Contractor; and
 - .2 Without charge, provide the Contractor with copies of any as-built drawings then prepared;
 - .3 Prepare and submit to the Contractor an account setting out the amount referred to in this Condition 62 if applicable, namely:
 - .1 The total value of work properly executed, goods and materials properly supplied and services properly performed at the date of termination of the Sub-Contractor's employment, ascertained in accordance with

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the Sub-Contract, as if the employment was not being terminated, together with any other amounts due to the Sub-Contractor under these Sub-Contract;

2. The reasonable cost of removal.
3. The costs of materials or goods including Site Materials properly ordered for the Sub-Contract Works for which the Sub-Contractor has paid or is legally bound to pay;
4. For the avoidance of doubt the Sub-Contractor shall not be entitled to any direct loss and/or damage or other payment caused by or due to the termination;
5. After taking into account amounts previously paid to the Sub-Contractor under this Sub-Contract, or due from the Sub-Contractor to the Contractor under the Sub-Contract or any other contract between them, the Contractor shall pay to the Sub-Contractor the amount properly due in respect of the account within 2 years of its submission by the Sub-Contractor to the Contractor, without deduction of any retention. Payment by the Contractor for materials and goods shall be subject to such materials and goods thereupon becoming the Contractor's property.

Termination for convenience

63. The Contractor may by notice, terminate the Sub-contractor by notice to clause 63, in the event of such termination the Sub-contractor shall comply with the provision set out in condition 62.2 and the other provisions of the Sub-Contract which require any further payment or any release of any retention to the Sub-Contractor shall cease to apply. The Contractor shall pay to the Sub-Contractor the amount properly due in respect of the account within 3 months of its submission by the Sub-Contractor to the Contractor, without deduction of any retention. Payment by the Contractor for materials and goods shall be subject to such materials and goods thereupon becoming the Contractor's property. The Contractor and Sub-Contractor agree that the provisions of this clause 63 are an exclusive remedy for the purposes of the termination for convenience and that all common law rights are excluded.

Dispute Resolution

64. Any dispute(s) and or difference(s) between the parties arising under out of or in connection with the Sub-Contract ("Dispute") shall be resolved in accordance with this clause 64.
 - 64.1. Any party may give notice to the other party or parties referring the Dispute to adjudication on the following basis:
 1. if the parties are unable to agree the identity of the individual to act as adjudicator then the adjudicator shall be nominated by the President of the Chartered Institute of Arbitrators (or its appointing or successor body), with the intent that by agreement or nomination the adjudicator be appointed and the Dispute referred to the adjudicator within 7 days of the notice to refer;
 2. if the Sub-Contract is for construction operations in England the adjudication shall be conducted in accordance with the Scheme for Construction Contracts (England & Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England & Wales) Regulations 1998 (amendment) (England) Regulations 2011; if the Sub-Contract is for construction operations in Wales the adjudication shall be conducted in accordance with the Scheme for Construction Contracts for Wales; or if the Sub-Contract is for construction operations in Scotland the adjudication shall be conducted in accordance with the Scheme for Construction Contracts for Scotland or any later statutory modification or replacement in each case ("The Scheme") subject to the provisions of this Condition 64.1
 3. if a dispute arising under the Main Contract is the same or substantially the same as a Dispute referred or to be referred under the Sub-Contract, and the Main Contract permits or the Employer agrees to the joinder of disputes or parties, then the Contractor shall be entitled to require the Dispute under the Sub-Contract to be joined and heard with Main Contract dispute or at his option (and whether or not the Main Contract so permits or the Employer consents) require the Dispute under the Sub-Contract to be referred to the same adjudicator appointed in the Main Contract dispute.
 4. the Adjudicator shall have the power to determine more than one dispute under this Sub-Contract at the same time, and if requested to do so by either Party shall determine any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to him
 5. to be effective, any notice of adjudication that is sent by the Sub-Contractor to the Contractor under this Sub Contract shall be given in writing and delivered either by hand, special or recorded delivery or first class post to the address stated on the front of the order marked for the attention of the Company Secretary and Finance Director.
 6. in the event of a referral by the Sub-Contractor, the Contractor will be permitted to provide a Response in no less than 14 days from the receipt of the Referral.

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Legal proceedings

- 64.2. Where the Main Contract provides that any dispute or difference between the Employer and the Contractor shall be finally determined by arbitration, any Dispute not finally resolved under the provisions of 64.1 above shall be referred to and finally determined by arbitration in accordance with this Condition 64.2. Any Dispute may be referred by any party to arbitration before a single arbitrator in accordance with the Arbitration Act 1996 or any statutory modification thereof. The arbitration shall be conducted in accordance with the Arbitration Rules of the Chartered Institute of Arbitrators who (or whose appointing or successor body) shall failing agreement between the parties appoint a person to be arbitrator.
- 64.3. Where the Main Contract provides or allows that any dispute or difference between the Employer and the Contractor shall be finally determined by litigation, and provided the party applying has complied as far as possible with the provisions of Condition 64 – 64.1 above [and where it applies and the parties chose to adopt the procedures contained in the Framework Agreement] any Dispute not finally resolved under the provisions of 64.3 above shall be referred to and finally determined by the English courts.
- 64.4. Where the dispute is purely a domestic dispute between the Contractor and the Sub-Contractor, the Contractor may elect at its sole discretion to have the dispute finally determined by Arbitration under the Chartered Institute of Arbitrators Business Arbitration Rules. The appointed Arbitrator will be a practicing Barrister with a minimum of 7 years of Construction Law experience.

Assignment

65. The Contractor shall be entitled to assign the benefit of this Sub-Contract by written notice to the Sub-Contractor to either:
- 65.1 any holding company or other group company of the Contractor; or
 - 65.2 any company, bank or institution by way of security,
 - 65.3 and to any other person with the prior consent of the Sub-Contractor (such consent not to be unreasonably withheld or delayed).
66. The Sub-Contractor:
- 66.1 may sub-let the carrying out of part of the Sub-Contract Works, subject to the right of the Contractor to raise reasonable objection to the sub-letting or any proposed sub-sub-contractor. In the event of any such sub-letting, the Sub-Contractor warrants that it has performed or will perform his obligations under the Construction Design and Management Regulations 2015 in relation to such sub-sub-contractor including (without prejudice to the generality of the foregoing) satisfying himself that his sub-sub-contractor has sufficient competence and resources to plan, design (to the extent the sub-sub-contractor is responsible for design) and carry out the sub-sub-contract works; or
 - 66.2 shall not assign or part with this Sub-Contract, or any part of this Sub-Contract, or the benefit or any advantage or right or interest in or under the Sub-Contract, unless the assignment is proposed to be made to a holding company or other group company of the Sub-Contractor of equivalent or greater competence capacity and financial standing to that of the Sub-Contractor and provided the proposed assignee is Pre-qualified in which case the written consent of the Contractor shall be obtained (such consent not to be unreasonably withheld or delayed).

Notices

67. Subject to clause 44.4 any notice or other communication required to be given by this Sub-Contract shall be validly given if it is in writing and sent by any effective means (electronic or otherwise) and shall be deemed to have been duly given or served if delivered by hand or sent by prepaid letter post to the recipient's address stated in the Order, or such other address as the recipient may from time to time notify to the sender, or if no such address is current, to the recipient's last known business address or in the case of a body corporate his registered or principal office. If in any emergency any communication is made orally with respect to health and safety, risk of damage to person or property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.

Letters of Intent

68. If the Contractor is employed by the Employer under a letter of intent (or other equivalent) and the Contractor's employment under such letter of intent (or other equivalent) is terminated or if the Employer does not otherwise proceed to appoint the Contractor under the Main Contract or if the Contractor does not get approval under the Main Contract for the appointment of the Sub-Contractor then the Contractor shall thereupon have the right to terminate the Sub-Contract at will and immediately upon written notice. If so then:
- 68.1. The Contractor shall be obliged only to reimburse the Sub-Contractor the sums properly due for carrying out the Sub-Contract Works to the date of such notice plus any reasonable demobilisation costs properly incurred by the Sub-Contractor and the Sub-Contractor shall have no claim against the Contractor for breach of contract, loss of profit, loss of expectation or contracts or otherwise;
 - 68.2. The Sub-Contractor shall:

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- 68.2.1. vacate the site promptly and with as little disruption as possible, removing all plant and waste materials and leaving the site clean and tidy;
- 68.2.2. deliver to the Contractor all designs, plans, programmes and other documents prepared in relation to the Sub-Contract Works by the Sub-Contractor or on its behalf; and consult with the Contractor with regard to the action which the Sub-Contractor shall take for the fulfilment or cancellation of orders and shall supply to the Contractor all invoices and other documents relating to orders made or intended to be made.

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