

CONDITIONS OF PURCHASE FOR SERVICES

No terms or conditions submitted at any time by the Sub-Contractor shall form any part of the Contract. In the event of a conflict between any of these Conditions and any specific term or condition (whether in the Sub-Contract or otherwise) referred to in the Purchase Order, the latter shall prevail.

1. DEFINITIONS

1.1. In these Conditions:

- 1.1.1. **Agreement** means the Purchase Order, the Letter of Enquiry and these Terms and Conditions;
- 1.1.2. **Sub-Contract** means the contract between the Contractor and the Sub-Contractor consisting of the Purchase Order, these Conditions, and any other documents (or parts thereof) specified in the Purchase Order;
- 1.1.3. **Delivery Date** means the commencement date on which the Services are to be commenced, as specified in the Purchase Order;
- 1.1.4. **Services** means any such services supplied to the Contractor by the Sub-Contractor pursuant to or in connection with the Purchase Order;
- 1.1.5. **Price** means the lump-sum price of the Services as specified in the Purchase Order;
- 1.1.6. **Contractor** means Global-MSI, a Division of MS INTERNATIONAL plc;
- 1.1.7. **Purchase Order** means the document setting out the Purchaser's requirements for the Contract;
- 1.1.8. **Sub-Contractor** means the party names as such in the Purchase Order;
- 1.1.9. **Acceptance** means the Sub-Contractors written acceptance of the Purchase Order;
- 1.1.10. **CIS** means the Construction Industry Scheme established by the Finance Act 2004, as amended by the Income Tax (Construction Industry Scheme) Regulations 2005, the Finance Act 2007 and the Finance Act 2009;
- 1.1.11. **Final Contract Sum** means the amount finally due under the Agreement from the Contractor to the Sub-Contractor or from the Sub-Contractor to the Contractor as the case may be after giving credit to the Sub-Contractor for the Price and after giving credit to the Contractor for all amounts previously paid by the Contractor and for all sums to which the Contractor is entitled under or in connection with the Agreement;
- 1.1.12. **Insolvent** means as defined in s113 (2)-(5) Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009;
- 1.1.13. **Insolvency Event** means in relation to the Sub-Contractor;
 - 1.1.13.1. the Sub-Contractor stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986;
 - 1.1.13.2. any step being taken by any person with a view to the winding up of the Sub-Contractor or any person presenting a winding-up petition;
 - 1.1.13.3. a receiver, manager, administrative receiver or administrator being appointed in respect of the Sub-Contractor;
 - 1.1.13.4. the Sub-Contractor ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Contractor before that step is taken (which approval must not be unreasonably withheld or delayed);
 - 1.1.13.5. the Sub-Contractor otherwise becoming Insolvent; or
 - 1.1.13.6. any event occurring which, under the law of any relevant jurisdiction, has an analogous effect to any of the events listed above;
- 1.1.14. **Letter of Enquiry** means the enquiry from the Contractor to the Sub-Contractor relating to the Sub-Contract
- 1.1.15. Works together with the annexures thereto;
- 1.1.16. **Main Contract** means the contract between the Employer and the Contractor covering inter alia the Sub-Contract Works and all schedules and appendices thereto;
- 1.1.17. **Site** means the place at which the Sub-Contract Works are to be executed identified in the Purchase Order.
- 1.1.18. **Sub-Contractor's Documents** means all bills of quantities, calculations, designs, details, drawings, electronically stored information, plans, reports, specifications and other documents, prepared or to be prepared by or on behalf of the Sub-Contractor in connection with the Sub-Contract Works or any part thereof;
- 1.1.19. **Sub-Contract Period** means the dates set out in the Purchase Order;
- 1.1.20. **Sub-Contract Works** means all the work described in and necessary to complete the works referred to in the Purchase Order, the Letter of Enquiry and these Terms and Conditions;
- 1.1.21. **Works** means the works to be carried out by the Contractor under the Main Contract incorporating inter alia the Sub-Contract Works.

2. GENERAL & SUB-CONTRACTORS GENERAL OBLIGATIONS

- 2.1. The Purchase Order together with the Letter of Enquiry, the Confirmation of Acceptance and these Terms and Conditions shall constitute the entire agreement between the Contractor and the Sub-Contractor. No statement, warranty or representation (whether oral or otherwise) made either before or after entering the Agreement shall have any contractual effect whatsoever.
- 2.2. If there is any conflict or ambiguity between the other documents comprising this Agreement and the Terms and Conditions, the Terms and Conditions shall prevail. If there is any conflict between the Purchase Order and the Letter of Enquiry, the Purchase Order shall prevail.
- 2.3. Save to the extent expressly provided elsewhere in this Agreement, nothing in this Agreement confers or is intended to confer any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms on any person who is not a party to it.
- 2.4. If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
- 2.5. The Sub-Contractor shall carry out and complete the Sub-Contract Works and any variations or additions thereto working regularly and diligently to the satisfaction of the Contractor in compliance with the terms and conditions of the Sub-Contract in accordance with the Sub-Contract Documents, and in accordance with the Contractor's directions and/or any programme issued by the Contractor using materials and workmanship to the quality and standards therein specified and in conformity with all instructions, directions and requirements of the Contractor and shall not specify for use or permit to be used in the Sub-Contract Works any goods or materials generally known in the construction industry to be deleterious to health and safety and/or the environment and/or the durability or integrity of the Sub-Contract Works in the particular circumstances in which they are used or which by their nature or application contravene any British or EU Standards or Code of Practice current at the date of use of such goods or materials.
- 2.6. The Sub-Contractor shall be deemed to have knowledge of the terms and conditions of the Main Contract [except detailed prices] a copy of which is available for inspection by the Sub-Contractor at the Contractor's offices and undertakes to assume, observe, perform and comply with all the provisions of the Main Contract on the part of the Contractor to be assumed, observed, performed and complied with so far as they relate to and are applicable to the Sub-Contract or any portion of the same and are not expressly varied hereunder and the Sub-Contractor acknowledges that any breach by him of this Sub-Contract may result in the Contractor committing breaches of and becoming liable in damages under the Main Contract all such damages are hereby agreed to be included as being within the contemplation of the parties. The Sub-Contractor shall not by any act, omission or default cause, constitute or contribute to any breach by the Contractor of its obligations and duties or lead to a diminution in the Contractor's rights under the Main Contract and shall indemnify and save harmless the Contractor from and against any and all losses, costs, damages, and expenses the Contractor suffers or incurs or may become liable for arising from any breach or non-compliance by the Sub-Contractor of its obligations and duties under this clause.
- 2.7. Without prejudice to any other remedy the Contractor may have, the Sub-Contractor shall indemnify the Contractor against all claims, liabilities, demands, proceedings, damages, costs and expenses (including any direct, indirect or consequential losses, loss of reputation, and all interest, penalties and legal and other reasonable professional costs and expenses) made against or incurred by the Contractor in relation to any breach or failure by him to carry out its obligations under this Sub Contract.
- 2.8. No approval or acceptance of any work, drawing, specification or other thing provided by the Sub-Contractor shall relieve the Sub-Contractor of its responsibility under this Sub-Contract.
- 2.9. The period for completion of the Sub-Contract Works will only be extended for a reason which entitles the Contractor to an extension of time under its contract with the Main Contractor or Employer.
- 2.10. In the event that the Sub-Contractor, in the opinion of the Contractor, fails to progress the Sub-Contract Works in a regular and diligent manner, then the Contractor may remove any part or parts of the Sub-Contract Works and have such works completed by others. In such circumstances the Contractor may deduct any additional cost of completing such works from any amounts payable to the Sub-Contractor.
- 2.11. The Sub-Contractor is deemed to have visited the Site and satisfied himself as to the conditions in which the Sub-Contract Works shall be carried out and to have fully allowed for the same in the Price and shall not be entitled to any extension of time and/or increase in the Price in connection with the same. The Contractor gives no warranty or representation as to the condition of the Site or any adjoining property or as to the accuracy or sufficiency of any survey data or other data contained in any document made available to the Sub-Contractor by the Contractor, or as to any recommendations or conclusions made or reached in any such document.
- 2.12. Where the Sub-Contractor designs any part of the Sub-Contract Works included associated or related works whether permanent or temporary in nature the Sub-Contractor warrants to the Contractor that he shall exercise all proper diligence, skill and care to be expected of an expertly qualified and competent specialist contractor experienced with carrying out works of a similar scope, nature, complexity and size to the Sub-Contractor, in relation to the following:
 - 2.12.1. The design of the Sub-Contract Works: and
 - 2.12.2. The selection of kinds and standards of materials and goods for the incorporation into the Sub-Contract Works: and
 - 2.12.3. The co-ordination and integration of the Sub-Contract design with the remainder of the works, and design by others.
- 2.13. The Sub-Contractor further warrants to the Contractor that the Sub-Contract Works shall satisfy any performance specification or other requirements included or referred to in the Sub-Contract and/or Main Contract, which relate to the Sub-Contract Works and shall comply with any statutory requirements, which are relevant to the Sub-Contract Works.
- 2.14. The Sub-Contractor shall comply with any requirement in the Main Contract in relation to the submission of any documents and drawings, which may be required in accordance with the Main Contract. No approval or revision of any documents or drawing shall relieve the Sub-Contractor of its obligations and the warranties given under this Sub-Contract.

3. DEFAULT BY SUB-CONTRACTOR

- 3.1. If the Contractor considers that the Sub-Contractor will be in breach or is in breach of its obligations hereunder, without prejudice to any other remedy that it may have pursuant to this Agreement, the Contractor may in its absolute discretion serve a notice upon the Sub-Contractor:
 - 3.1.1. omitting any part of the Sub-Contract Works from this Agreement;
 - 3.1.2. requiring the Sub-Contractor to introduce additional resources to assist the Sub-Contractor in progressing and completing the Sub-Contract Works;
 - 3.1.3. notifying the Sub-Contractor that the Contractor intends to introduce its own resources to assist the Sub-Contractor in progressing and completing the Sub-Contract Works; and/or
 - 3.1.4. requiring the Sub-Contractor to take such steps as are necessary and/or specified by the Contractor to prevent the potential breach or remedy the breach and the consequences thereof (as applicable) within the time specified in the notice;and the Sub-Contractor shall forthwith comply with such notice.
- 3.2. In the event that the Contractor serves a notice pursuant to sub-clause 3.1 above, a fair and reasonable adjustment to the Price shall be made by the Contractor.
- 3.3. In the event that the Contractor serves a notice pursuant to sub-clause 3.1.3 above, the Sub-Contractor shall pay or allow to the Contractor all costs and expenses incurred by the Contractor in connection therewith which shall be immediately recoverable as a debt.
- 3.4. The service of a notice pursuant to sub-clause 3.1.2 or 3.1.3 above shall in no way affect or diminish the Sub-Contractor's obligations hereunder which shall in all respects continue to be construed on the basis that the Sub-Contractor is itself fully responsible for and shall perform the Sub-Contract Works as a whole.
- 3.5. The Sub-Contractor shall fully co-operate with the Contractor in connection with the exercise by it of its powers under sub-clause 3.1 above and in particular shall comply with all instructions and directions given by the Contractor and shall ensure full access for the Contractor to the Site or any part thereof to facilitate the expeditious and economical execution of any part of the Sub-Contract Works to be undertaken by the Contractor.

4. INSTRUCTIONS & VARIATIONS

- 4.1. All instructions issued by the Contractor to the Sub-Contractor in respect of the Sub-Contract Works shall be of no effect unless issued or confirmed in writing by the Contractor. The Sub-Contractor shall comply with all such instructions forthwith. If after issue of a written notice by the Contractor requiring compliance with an instruction the Sub-Contractor does not so comply within the period specified within the notice [or if no period is specified within 7 days] then the Contractor may employ and pay other persons to execute any work which may be necessary to give effect to such instruction. All costs and expenses incurred by the Contractor in connection with such employment shall be paid or allowed from the Sub-Contractor as a debt.
- 4.2. The Contractor may by written instruction to the Sub-Contractor, alter or modify the design, quantity or quality or the conditions under which the Sub-Contract Works shall be executed, and such alterations or modifications shall not violate this Sub-Contract. In the event that such alteration or modification constitutes a variation or change under the terms of the Main Contract then unless the same is due to the Sub-Contractors negligence, omissions or default, such variation or change shall be valued and paid for by the Contractor at the prices contained in the Sub-Contractor's tender or where the varied work differs from that originally tendered for, at prices or charges analogous thereto.
- 4.3. The Sub-Contractor may not claim payment for day-work and the Contractor shall not be obliged to pay for the same unless payment on a day-work basis is permitted under the Main Contract whereupon the Sub-Contractor shall give to the Contractor reasonable prior written notice of any work pursuant to any variation or change as referred to in clause 2.6 above for which he intends to apply for payment on a day-work basis and shall deliver to the Contractor by the Wednesday following the end of each week during which such work has been carried out substantiation in the form required by the Contractor giving full details of labour, materials and plant.
- 4.4. In the event a variation results in any works being omitted from the Sub-Contract Works (including but not limited to work against which there is a provisional sum), the Contractor shall deduct an appropriate sum from the Sub-Contract sum and shall be entitled to engage another contractor to carry out and complete such omitted work without terminating the Sub-Contractor's engagement under the Sub-Contract. The Contractor shall not be liable to the Sub-Contractor for any costs, losses, damages or expenses suffered or incurred by the Sub-Contractor arising from such omission. The act of giving work to a third party or instructing a third party to carry out or complete such work shall not be treated or construed as a breach of contract by the Contractor.
- 4.5. If instruction and/or variations are given orally, they shall, within 2 working days, be notified in writing by the Sub-Contractor to the Contractor.
- 4.6. Any variations issued by the Contractor in connection with the Sub-Contract Works shall be valued in accordance with the rates and prices used to arrive at the Sub-Contract Works. In the event that suitable rates and prices are not available then such variations shall be valued fairly and reasonably.

5. COMMENCEMENT & COMPLETION

- 5.1. The Sub-Contractor shall commence the Sub-Contract Works in accordance with the Contractor's requirements to so do and shall regularly and diligently carry out the Sub-Contract Works including the production of and the obtaining of all necessary approvals of any drawings, details of calculations for which he is responsible at such times and such periods as will suit the process of the works and as may be directed by the Contractor and shall complete the same within the Sub-Contract Period[s] as may be amended in accordance with clause 5.2.
- 5.2. Upon it becoming reasonably apparent that the completion of the Sub-Contract Works or any part thereof have been or likely to be delayed, the Sub-Contractor shall notify the Contractor in writing forthwith specifying the reason of the delay and the cause[s] and shall comply with the requirements of the Main Contract in relation to the giving of notice and any details required in relation to the same, if for such cause[s] the Contractor is granted an extension of time under the Main Contract or it is a cause within the control of the Contractor, the Contractor shall by written notice to the Sub-Contractor extend if necessary, the Sub-Contract Period[s] provided always that the Sub-Contractor has constantly used its best endeavours to prevent any delay or further delay to the carrying out or completion of the Sub-Contract Works and provided further that the Sub-Contractor shall not become entitled to an extension of time to the extent that the delay event or circumstance has been caused or contributed to by any error, omission, negligence or default of the Sub-Contractor or anyone for whom it is responsible.
- 5.3. The Sub-Contractor shall not hinder or prevent the progress of works undertaken by others and shall advise the Contractor as to the suitability and compatibility of any existing work or the existing condition of the Site in good time so as not to delay or disrupt the regular progress or the timely completion of the Sub-Contract Works.
- 5.4. If the Sub-Contractor fails to achieve completion of the Sub-Contract Works within the Sub-Contract Period the Sub-Contractor shall pay or allow to the Contractor as damages a sum equivalent to any and all costs, losses, damages, expenses suffered or incurred by the Contractor or for which the Contractor is or becomes liable, including but not limited to liquidated and ascertained damages under the Main Contract ("Damages") and caused by such failure and such sum may be deducted from amounts otherwise due to the Sub-Contractor and/or the Contractor may claim such costs, losses, damages and expenses from the Sub-Contractor as a debt. The Sub-Contractor hereby acknowledges that such Damages are reasonably foreseeable and within the reasonable contemplation of the parties at the time the Sub-Contract is entered into.

6. VESTING OF PROPERTY AND RISK IN THE SUB-CONTRACT

- 6.1. All equipment, materials and goods not for incorporation in the Sub-Contract Works brought on to the site by the Sub-Contractor shall be at the sole risk of the Sub-Contractor. All equipment, materials and goods properly on site for the incorporation in the Sub-Contract Works shall become the property of and vest in the Contractor from delivery to site whether or not payment has been made and whether fixed or unfixed. The Sub-Contractor shall have the use of such materials and goods until they are fully and finally fixed and shall be solely responsible for any damage to them and shall remain liable for their safe keeping until they are incorporated into the Works. The Sub-Contractor shall ensure that such equipment, materials and goods shall not be removed from the site unless the Contractor so instructs or permits, and the Sub-Contractor shall not have any right to exercise a lien over any of such materials or goods.
- 6.2. Risk in the Sub-Contract Works and each part thereof shall remain with the Sub-Contractor until completion of the Sub-Contract Works or the Contractor shall specifically agree in writing to the contrary. The Sub-Contractor shall protect the Sub-Contract Works and in each part thereof and all or any parts of the Main Contract works which may in any way be affected by the carrying out of the Sub-Contract Works or otherwise until completion of the Sub-Contract Works as may be directed by the Contractor without addition to the Price.

7. INDEMNITY & INSURANCE

- 7.1. The Sub-Contractor shall be liable for and shall indemnify the Contractor against the matters, which the Contractor undertakes to indemnify the Employer under the Main Contract insofar as such matters relate to the Sub-Contract Works. Without prejudice to the obligation to so indemnify the Sub-Contractor shall take out and maintain the necessary insurances against Employer's Liability and third-party liability risks for not less than the sums set out in the Contract. The Sub-Contractor shall produce documentary evidence to the Contractor if such insurance ceases to be available so that the parties can discuss the best measures of protecting their respective interests.
- 7.2. If required, the Sub-Contractor shall take out or maintain professional indemnity insurance for a period of 12 years from practical completion of the Main Contract Works for the amount set out in the Sub-Contract in respect of any negligence by the Sub-Contractor in the design of any works, goods and/or materials provided that the same is available at commercially reasonable rates. The Sub-Contractor shall inform the Contractor if such insurance ceases to be available so that the parties can discuss the best means of protecting their respective interests.
- 7.3. If the Sub-Contractor shall fail to take out or maintain the insurance required in clauses 9.1 and 9.2 then the Contractor may, without prejudice to any other rights or remedies if possesses, take out or maintain the insurances and the costs thereof including any premiums payable shall be recoverable from the Sub-Contractor as a debt and/or deducted from any sums due to the Sub-Contractor under the Sub-Contract.
- 7.4. The Contractor shall take out and maintain or procure that the Employer takes out and maintains the insurance of the works in accordance with the Main Contract and shall procure that either the Sub-Contractor is recognised as a joint names insured or that the insurers waive any rights of subrogation against the Sub-Contractor. The cover afforded to the Sub-Contractor in relation to the Sub-Contract Works will be limited to these parties as set out in the Main Contract and the Sub-Contractor shall observe and comply with the conditions contained in the Contractors or Employers' insurance policy relating to the works and shall [if required] pay the excess due if any claim arises due to the negligence, omission or default of the Sub-Contractor.

8. PAYMENT

- 8.1. The Sub-Contractor shall make application for payment monthly, unless specified otherwise in the Contract, for work properly executed in accordance with the Sub-Contract and for any unfixed equipment, materials and goods properly stored on the site for the incorporation in the Works accompanied by such documents as the Contractor may require. The application for payment shall specify the sum that the Sub-Contractor considers will become due on the payment due date in respect of the payment and the basis upon which that sum is calculated.
- 8.2. The due date for payment of any amount due to the Sub-Contractor pursuant to this clause shall be the last working day of the month (or nearest working day thereafter) following the month in which the Contractor receives the relevant and valid application for payment.
- 8.3. The final date for payment of any amount due to the Sub-Contractor pursuant to this clause shall be no later than 7 days after the due date for payment.
- 8.4. The Contractor shall value the Sub-Contract Works included in each application by the Sub-Contractor. The amount of each interim payment to the Sub-Contractor shall be the Contractor's gross valuation less any amounts which may be deducted as retention and trade discount as specified in the Sub-Contract and the total amount due in previous interim payments in respect of the Sub-Contract Works.
- 8.5. The Contractor shall be entitled to set off against any sums [including the retention] otherwise due to the Sub-Contractor under this Sub-Contract the amount of any damages, costs, debts, losses and expenses which have been incurred by the Contractor and/or the Employer or which the Contractor estimates are likely to be incurred by reason of any failure to observe the provisions of this Sub-Contract by the Sub-Contractor from any sums otherwise due or becoming due to the Sub-Contractor from the Contractor under this Sub-Contract.
- 8.6. The Contractor shall have power to omit from any determination of the value of work and materials included in a valid statement the value of any work done, goods or materials supplied or services rendered with which he may for the time being be dissatisfied and for that purpose or for any other reason which to him may seem proper may delete, correct or modify any sum previously determined by him as due for payment to the Sub-Contractor.
- 8.7. Notwithstanding any other provision of this Sub-Contract, if the Sub-Contractor becomes insolvent as defined in section 113 of part II of the Housing Grants, Construction and Regeneration Act 1996, as amended, the Contractor shall not be required to pay the Sub-Contractor on or before the final date for payment.
- 8.8. For the avoidance of doubt, the Contractor shall be entitled to recover from the Sub-Contractor any overpayments made at any time. All interim payments made to the Sub-Contractor shall be payments on account only of sums due under the Sub-Contract.
- 8.9. The Contractor shall not be required to pay any sum which is or would otherwise be due or payable under this Agreement if the Sub-Contractor becomes Insolvent. The Contractor may deduct, withhold or set off from any payment due to the Sub-Contractor under this Agreement any sum which is or may become due to the Contractor from the Sub-Contractor and any sum or liability in respect of which the Contractor may be or has become entitled to seek an indemnity from the Sub-Contractor, whether under this Agreement or otherwise.
- 8.10. If the Contractor intends to pay less to the Sub-Contractor than the sum stated as due from him in any notice given under this Agreement he shall not later than 1 day before the final date for payment (the "prescribed period") give notice to the Sub-Contractor of that intention. Any notice of intention to pay less under this sub-clause 8.10 must specify the sum that the Contractor considers to be due to the Sub-Contractor at the date the notice is given and the basis on which that sum has been calculated. The payment to be made on the final date for payment shall not be less than the amount stated in that notice, provided that the Contractor shall not be required to pay any sum that would otherwise be due under this sub-clause 8.10 if the Sub-Contractor becomes Insolvent after the prescribed period.
- 8.11. If the Contractor fails to pay the sum due to the Sub-Contractor by the final date for payment hereunder and no notice of intention to pay less has been served under sub-clause 8.10 the Sub-Contractor may give a written notice of its intention to suspend the performance of its obligations under this Agreement. If the Contractor's failure to make payment continues for 7 days after the giving of such notice, then the Sub-Contractor may suspend such performance until such payment in full occurs.
- 8.12. The Sub-Contractor must provide to the Contractor the Confirmation of Acceptance, any warranties required by the Contractor and proof of the Sub-Contractor's Employer's Liability, Public Liability, Contractor's All Risk and (where required) Professional Indemnity and/or Product Liability insurance policies before the Sub-Contractor is entitled to receive any payment under the terms of this Agreement. Notwithstanding anything to the contrary elsewhere in this Contract, where the Contractor has notified the Sub-Contractor that he is a "contractor" for the purposes of the CIS the Sub-Contractor shall provide vouchers in accordance with the requirements of the CIS in respect of all payments received. If the Sub-Contractor fails to do so the Contractor shall not be obliged to make any further payment to the Sub-Contractor until such time as the failure is remedied. All documents required from the Sub-Contractor for Value Added Tax purposes must be provided upon demand and if they are not provided then tax may be deducted or withheld from payment by the Contractor.
- 8.13. Reference in the Sub-Contract to amounts payable by the Contractor to the Sub-Contractor shall be construed as references to such amounts exclusive of any Value Added Tax thereon and in addition to such amounts, the Contractor shall pay to the Sub-Contractor this amount of Value Added Tax properly chargeable by the Commissioners of Customs and Excise on the Sub-Contractor by reference to such amounts.
- 8.14. The Construction Industry Scheme shall be applied for payment due in accordance with the Income and Corporation Taxes Act 1988 and any subsequent revisions thereof.
- 8.15. Unless otherwise stated in the Sub-Contract the price is fixed for the duration of the works. Whether or not the price for the Sub-Contract Works is subject to adjustment for fluctuations of the rest of labour and materials the Sub-Contractor shall immediately upon receipt of a request from the Contractor produce whatever documents are required by the Contractor to enable the Contractor to comply with any conditions in the Main Contract concerning such variation of such fluctuations.

9. VARIATION

- 9.1. The Contractor shall have the power to give instructions for:
 - 9.1.1. Any variation to the Sub-Contract Works including any addition or omission (whether or not any omitted Sub-Contract Works are to be carried out by others).
 - 9.1.2. Carrying out any test or investigation.
 - 9.1.3. The suspension of the Sub-Contract Works or any part thereof.
 - 9.1.4. Any changes in the intended sequence of the Sub-Contract Works.
 - 9.1.5. The removal and/or re-execution and/or acceptance of any works or materials not in accordance with the Agreement.
 - 9.1.6. The exclusion from the Site of any person employed thereon.
- 9.2. Save in relation to any addition to the Sub-Contract Works in accordance with sub-clause 9.3 the Sub-Contractor shall have no entitlement to be paid (whether by way of valuation, compensation, damages or howsoever otherwise) in relation to instructions issued by the Contractor.
- 9.3. No instruction shall vitiate this Agreement but the Sub-Contractor shall advise the Contractor in writing of all works involving an addition to the Sub-Contract Works within 7 days of such addition becoming apparent and at the same time submitting detailed and priced calculations based upon the Price showing such price adjustment if any and estimate of any delay. Wherever possible the value and delay consequences (if any) of each variation shall be agreed before the order is issued or before work starts. The Sub-Contractor shall not undertake additions to the Sub-Contract Works without written authority from the Contractor and the Sub-Contractor shall not be entitled to receive payment (whether by way of valuation, compensation, damages or howsoever otherwise) for such additions without such authority. Where additions cannot be valued by reference to the Price, the Sub-Contractor shall be paid such reasonable amounts as may be ascertained by the Contractor.

10. SUPERVISION

- 10.1. At all times whilst carrying out of the Sub-Contract Works the Sub-Contractor shall provide all necessary supervision to ensure the proper execution of the Sub-Contract Works and shall have a competent person in charge on the site who shall be authorised to accept instructions and direction on behalf of the Sub-Contractor.
- 10.2. In the event that in the opinion of the Contractor the Sub-Contractor has failed or is failing to provide adequate site supervision the Contractor shall be entitled to provide its own site supervision and the Sub-Contractor shall pay or allow to the Contractor the cost so suffered or incurred by the Contractor.

11. ACCESS AND USE OF SITE AND WORK OF OTHERS

- 11.1. The Sub-Contractor shall have access to such part or parts of the site as the Contractor may direct. The Sub-Contractor acknowledges that such access shall be in common with other Sub-Contractors and suppliers and the Sub-Contractor shall not impede such other Sub-Contractors and suppliers in the execution of their work on site.
- 11.2. The Sub-Contractor shall satisfy himself before commencing the Sub-Contract Works as to the work previously carried out by others which may affect the Sub-Contract Works and shall immediately notify the Contractor in writing of any difficulties with the same.
- 11.3. The Contractor shall at all times have access to the Sub-Contract Works and to any workshop or other place where any equipment materials or goods are being prepared for incorporation in the Sub-Contract Works.

12. VAT, TAX DEDUCTIONS, HEALTH & SAFETY, BRIBERY ACT ETC

- 12.1. The Sub-Contractor shall comply with all statutes, statutory instruments, regulations, rules, Codes of Practice, bylaws, or other laws or conditions which affect or relate to the Sub-Contract Works and shall provide the Contractor with such evidence of compliance or such information in connection therewith as the Contractor may reasonably require.
- 12.2. Without prejudice to tax obligations under clause 12.1, the Sub-Contractor shall ensure that the Sub-Contract Works are carried out in compliance with the Health and Safety at Work Act 1974 and all or any other Acts of Parliament, Codes of Practice, rules, orders or regulations in connection with health, safety and welfare matters including any amendment thereof and shall comply with policy affecting the safe execution of the works laid down by the Contractor's Standing Orders, Site Safety Plan and procedure, Specific Requirements and General Safety Conditions and shall comply with any request by the Contractor to comply with the same.
- 12.3. The Sub-Contractor shall, prior to commencement of the Sub-Contract Works and at any time thereafter upon request, submit to the Contractor a general policy and method of its specific policy for the Sub-Contract Works in relation to health, safety and welfare, including the appointment of a suitable person responsible for the safe execution of the Sub-Contract Works.
- 12.4. Notwithstanding the foregoing the Sub-Contractor shall:
 - 12.4.1. provide the Contractor with any information, which the Contractor considers is or may be necessary to ensure that the Contractor continues to comply with the CDM Regulations.
 - 12.4.2. comply at no cost to the Contractor with all reasonable requirements of the Contractor to the extent that such requirements are necessary for compliance with the CDM Regulations. Notwithstanding clause 5.2 no extension of time shall be given in respect of such compliance.
- 12.5. Without prejudice to sub-clause 12.1, the Sub-Contractor warrants that it has and will comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act. The Sub-Contractor shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act and shall have and maintain policies and procedures to ensure compliance with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption and will enforce them where appropriate. The Sub-Contractor shall provide written confirmation that it has complied with this sub-clause following any request from the Contractor.

- 12.6. The Contractor shall be entitled to notify any and all authorities dealing with anti-corruption and/or anti-bribery in the event of a breach or suspected breach of this provision and/or all applicable laws, statues, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act.
- 12.7. The Sub-Contractor shall indemnify the Contractor for all and any liabilities, costs, losses and/or expenses (howsoever arising) incurred by the Contractor as a result of:
 - 12.7.1. any failure by the Sub-Contractor to comply with this clause 12; and/or
 - 12.7.2. any failure by the Contractor to comply with any applicable legislation or any statutory requirements and rules (including without limitation those identified in the heading of this clause 12) which is caused by an act or omission of the Sub-Contractor.

13. LABOUR

- 13.1. The Sub-Contractor shall ensure that all labour engaged in connection with the Sub-Contract Works is employed in accordance with the Working Rule Agreement of the National Joint Council for the Building Industry or other Working Rule Agreement applicable to its trade to enable the Contractor to meet its obligations under said Agreement including those with regard to the recognition of and procedures relating to the Trade Unions, Trade Union Membership and Representation. The Sub-Contractor shall keep proper records and allow the Contractor to inspect the pay, national insurance and Holidays-with-Pay records of such labour.
- 13.2. The Sub-Contractor shall take all reasonable steps to encourage employees and agents of the Sub-Contractor and those engaged by him in the execution of the Sub-Contract Works to be registered as cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognized qualification scheme.

14. QUALITY / DEFECTS

- 14.1. The Sub-Contractor shall make himself familiar and comply with the requirements of quality control and monitoring under provisions of the main contract, Sub-Contractor works as well as the Contractors own quality control arrangements. The Sub-Contractor shall be deemed to have included in the Sub-Contract sum for all things including all such compliant staff as may be necessary to comply with such requirements and arrangements.
- 14.2. The Sub-Contractor shall rectify at its own cost any defects, or other faults in the Sub-Contract Works due to his failure to properly carry out and complete the Sub-Contract Works in accordance with the Sub-Contract and shall have the like obligations as the Contractor under the Main Contract to rectify any such defects or faults which may arise until the issue of the Certificate of Making Good Defects or any such similar certificate under the Main Contract. A decision by any architect, contract administrator, supervising officer or like under the Main Contract that works executed by the Sub-Contractor are not in accordance with the Main Contract shall be final and conclusive.
- 14.3. The Sub-Contractor shall be liable to make good at its own cost all defects, shrinkages and other faults in the Sub-Contract Works and in such timescales as directed by the Contractor and shall indemnify the Contractor in respect of such liability.
- 14.4. In the event that faults or defects are found to be the responsibility of the Sub-Contractor or any of the Representatives they will either be made good at the Sub-Contractor's own expense or an amount will be deducted from any retention monies previously withheld, as the Contractor may determine. In the event that the Contractors property becomes damaged in any way as a result of negligence on behalf of the Sub-Contractor or its representative, this will be made good out of retention monies held.

15. ASSIGNMENT & SUB-LETTING

- 15.1. The Sub-Contractor shall not assign the benefit of the Agreement or any right or interest thereunder, nor sublet or Sub-Contract the Sub-Contract Works in full or in part, without written consent first being obtained from the Contractor and for the avoidance of doubt such consent if given shall not relieve the Sub-Contractor from any of its obligations under this Agreement. The Contractor may assign the benefit of this Agreement without the Sub-Contractor's consent.
- 15.2. On instruction by the Contractor to sub-let any part of the works the Sub-Contractor shall immediately forward all relevant documentation including but not limited to - Method Statements, Risk Assessments, Insurance's etc. to the Contractor for approval prior to works commencing on site.
- 15.3. In the event the Sub-Contractor sub-lets part or all of the Sub-Contract Works, the Sub-Contractor shall remain responsible and liable for all works, products, materials and services performed and supplied by its Sub-Contractors and suppliers and any sub-letting of part or all of the Sub-Contract Works shall not relieve the Sub-Contractor of any of its obligations and duties and liabilities arising from the Sub-Contract.
- 15.4. No waiver, forbearance, release, inspection, approval, comment, review or consent or omission to inspect, approve, comment, review or consent by the Contractor or its employees, servants, Sub-Contractors or agents shall in any way derogate or reduce the Sub-Contractor's duties and liabilities arising from the Sub-Contract.

16. ATTENDANCE & SITE CLEARANCE

- 16.1. The Sub-Contractor will provide everything necessary to complete the Sub-Contract Works.
- 16.2. All surplus materials/waste arising from the Sub-Contract Works shall be cleared from the Site by the Sub-Contractor regularly during the course of the Sub-Contract Works and in any event following a request from the Contractor and immediately following completion of the Sub-Contract Works. In the event of the Sub-Contractor failing to meet or comply with this condition, the Contractor may clear and/or dispose of such materials/waste and set off the cost of so doing against sums which would otherwise be due to the Sub-Contractor.

17. TERMINATION

- 17.1. The Contractor may suspend or determine the Sub-Contractor's employment under this Agreement for any reason whatsoever upon 14 days prior written notice to the Sub-Contractor. Upon suspension or determination pursuant to this sub-clause 17.1, the Sub-Contractor shall:
- 17.1.1. subject to the terms of this Agreement, be paid a fair and reasonable amount in respect of the Sub-Contract Works properly performed by the Sub-Contractor in accordance with this Agreement prior to the date of suspension or determination; and
 - 17.1.2. within 7 days of the date of suspension or determination provide the Contractor with copies of all the Sub-Contractors Design Documents.
- For the avoidance of doubt, the Sub-Contractor shall not be entitled to any compensation whatsoever (which shall include, but not be limited to, any loss of profit, loss of anticipated earning, loss of contracts, Sub-Contractor demobilization costs and other breakage costs) from the Contractor arising out of or in connection with the Contractor's suspension or determination pursuant to this sub-clause 17.1.
- 17.2. The Contractor may without prejudice to any other of its rights or remedies summarily determine the Sub-Contractor's employment under this Agreement in respect of the whole or any portion of the Sub-Contract Works if the Sub-Contractor:
- 17.2.1. fails within seven days from the date of a notice in writing from the Contractor to proceed diligently with the Sub-Contract Works to the reasonable satisfaction of the Contractor and at all times in such manner as will not in the opinion of the Contractor prejudice the completion of the whole or any portion of the Works;
 - 17.2.2. fails within seven days from the date of a notice in writing from the Contractor to commence remedial work to any defective workmanship and/or materials or fails to proceed with the same with due diligence or to complete such remedial work to the satisfaction of the Contractor and/or the Employer within such period as the Contractor may specify in the said notice or if none is so specified within a reasonable time;
 - 17.2.3. fails within seven days from the date of a notice in writing from the Contractor to comply with any of the obligations on the part of the Sub-Contractor herein contained;
 - 17.2.4. repeats at any time any of the defaults noted in sub-Clauses 17.2.1–17.2.3 above (whether previously repeated or not);
 - 17.2.5. is the subject of an Insolvency Event;
 - 17.2.6. fails to complete and deliver up the whole or any portion of the Sub-Contract Works within the Sub-Contract Period
 - 17.2.7. or any person employed by the Sub-Contractor, or the Sub-Contractor's Sub-Contractors or suppliers of any tier, or any person acting on their behalf:
 - 17.2.7.1. commits an offence under the Bribery Act 2010; or
 - 17.2.7.2. where the Employer is a Local Authority, gives any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972
 - 17.2.8. fails to comply with:
 - 17.2.8.1. any notice given by the Contractor under sub-clause 3.1 of this Sub-Contract;
 - 17.2.8.2. clause 12 of this Sub-Contract; and/or
 - 17.2.9. prevents (or is likely to prevent) the Contractor from complying with any applicable legislation, statutory requirement or rules (including without limitation those identified in the heading of clause 12) and/or causes (or is likely to cause) the Contractor to be in breach of the same.
- 17.3. Notice of determination of the Sub-Contractor's employment shall be given in writing by the Contractor to the address identified in the Purchase Order (or such other address as is notified to the Contractor) and shall be delivered in writing.
- 17.4. Upon determination pursuant to sub-clause 17.2, the Sub-Contractor shall not be entitled to compensation and shall provide the Contractor with copies of all the Sub-Contractors Design Documents and shall not remove any of its equipment, materials or property from the Site and, notwithstanding anything contained elsewhere in this Agreement, shall be entitled to no further payment until completion of the Sub-Contract Works by the Contractor or by others, whereupon subject to sub-clause 8.9 the Sub-Contractor shall become entitled to payment for the work executed by the Sub-Contractor subject always to the right of the Contractor to set off all losses expenses and damages suffered or which may be suffered by the Contractor by reason of such determination and subject further to any other right to set off which the Contractor may have. For the purposes of completing the Sub-Contract Works the Contractor shall have free use of the Sub-Contractor's equipment materials and property on the Site without responsibility to the Sub-Contractor for fair wear and tear thereof and any materials or fabricated work lying at the Sub-Contractor's works or workshops which have been bought or fabricated for the purpose of carrying out the Sub-Contract Works.
- 17.5. In the event that the Main Contract is determined for whatsoever reason then the employment of the Sub-Contractor shall be treated as determined from the same date that the Main Contract was determined without any requirement for notice to be given in accordance with the terms of sub-clauses 17.1 or 17.2 and in those circumstances the entitlement of the Sub-Contractor will be that specified in sub-clause 17.4 above.

18. DISPUTES

- 18.1. Any dispute between the parties arising out of under or in connection with this agreement shall at the request of either party be referred to the adjudication of the person named in the Sub-Contract or if no such person has been named such person as shall be agreed by the parties or on the application of the party who is referring the Dispute to adjudication a person to be nominated as the Adjudicator by the President or Vice-President of the Royal Institute of Chartered Surveyors if not agreed by the parties within 3 days of the issue of the notice of adjudication.

19. NOTICE & TIME PERIODS

- 19.1. All notices required to be given hereunder by either party shall be in writing and shall be deemed to be duly given or made when dispatched [in the case of email transmission] or 2 days after posting if sent by post.
- 19.2. Any notice required to be given hereunder by the Sub-Contractor to the Contractor [except a notice sent by email transmission] shall be delivered or sent to the Contractor's principal office.
- 19.3. Any notice required to be given hereunder by the Contractor to the Sub-Contractor [except a notice sent by email transmission] shall be delivered or sent to the Sub-Contractor's registered office/principal office.
- 19.4. A written notice as a notice by email transmission. Any email transmission shall be sent to the parties' respective email addresses stated in the Sub-Contract or to such other email addresses as either party may hereafter specify for this purpose to the other party.
- 19.5. Where under this Agreement an act is required to be done within a specified period of days after or from a specified date the period shall begin immediately after that date. Where the period would include a day, which is a Public Holiday, that day shall be excluded.

20. CONFIDENTIALITY

- 20.1. Save with the Contractor's prior approval or as is reasonably necessary to enable the Sub-Contractor to perform its obligations under this Agreement, the Sub-Contractor shall treat all information in relation to this Agreement, the Main Contract, the Works and the Sub-Contract Works as confidential.
- 20.2. The Sub-Contractor may not without the prior written approval of the Contractor use or authorise the use of any photograph or drawing or other depiction of the Works or Sub-Contract Works or any part of the Works or Sub-Contract Works for publicity purposes or in any annual report or accounts or otherwise for any purpose other than in connection with the performance of the Sub-Contractor's obligations under this Agreement.

21. MODERN SLAVERY

- 21.1. The Sub-Contractor undertakes, warrants and represents that:
 - 21.1.1. Neither the Sub-Contractor nor any of its officers, employees, agents or Sub-Contractors has:
 - 21.1.1.1. Committed an offence under the Modern Slavery Act 2015 (a "Modern Slavery Offence"); or
 - 21.1.1.2. Been notified that it is subject to an investigation relating to an alleged Modern Slavery Offence or prosecution under the Modern Slavery Act 2015; or
 - 21.1.1.3. Is aware of any circumstances within its supply chain that could rise to an investigation relating to an alleged Modern Slavery Offence or prosecution under the Modern Slavery Act 2015; and
 - 21.1.1.4. It shall comply with the Modern Slavery Act 2015; and
 - 21.1.1.5. It shall notify the Contractor immediately in writing if it becomes aware or has any reason to believe that it or any of its officers, employees, agents or Sub-Contractors has breached or potentially breached any of the Sub-Contractor's obligations under this clause 21. Such notice to set out full details of the circumstances concerning the breach or the potential breach of the Sub-Contractor's obligations.
 - 21.1.2. Any breach of this clause 21 by the Sub-Contractor shall be deemed a material breach of this Sub-Contract and shall entitle the Contractor to terminate this Sub-Contract in accordance with the termination provisions of this Sub-Contract.

22. LIMITATION PERIOD

- 22.1. Notwithstanding the manner in which the Sub-Contract has been entered into, the limitation period in respect of the Sub-Contractor's obligations and liabilities in connection with the Sub-Contract shall extend to 12 years from the date of completion of the Works or such other period as may be prescribed by law, whichever is the later. For the avoidance of doubt the provisions of the Limitation Act 1980 (and any subsequent amendment or re-enactment) are excluded.

23. ACCEPTANCE

- 23.1. Signature by the Sub-Contractor on the face of this Sub-Contract indicates its acceptance of the terms and conditions of this Sub-Contract. In the event that the Sub-Contractor commences work without signing this Sub-Contract then such commencement will be deemed to constitute acceptance of the terms and conditions by the Sub-Contractor.
- 23.2. No other terms and conditions shall apply whether stated in a document referred to by this Sub-Contract or not.
- 23.3. No amendments to these terms and conditions will be effective unless confirmed in writing by a Director of the Contractor.

24. GOVERNING LAW

- 24.1. This Sub-Contract shall be governed by and constructed in accordance with the Laws of England and Wales and the English courts shall have exclusive jurisdiction with regard to all matters arising from it. All correspondence and documents arising from and in connection with the Sub-Contract shall be in English.