

## GENERAL TERMS AND CONDITIONS OF SUB-CONTRACT

### 1. Definitions

- 1.1. **"Business Day"** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.2. **"Contractor"** means John Radcliffe & Sons Limited trading as 'Radcliffe Construction', with company number 05330619 of Project House, 246b Lockwood Road, Lockwood, Huddersfield, West Yorkshire, HD1 3TG.
- 1.3. **"Conditions"** means the terms and conditions set out in this document.
- 1.4. **"Deliverables"** means all documents, products and materials developed by the Sub-Contractor or its agents, sub-contractors and employees as part of or in relation to the Sub-Contract Works in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
- 1.5. **"Force Majeure Event"** means an event beyond the reasonable control of the Contractor including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Contractor or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 1.6. **"Goods"** means the goods (or any part of them), materials, plant and equipment provided by the Sub-Contractor (including the any hire of plant and/or equipment), as set out in the Sub-Contract Order.
- 1.7. **"Intellectual Property Rights"** means copyright, patents, know-how, trade secrets, trade-marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case (a) whether registered or not; (b) including any applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future; (e) to which the relevant party is or may be entitled; and (f) in whichever part of the world existing.
- 1.8. **"Pre-Start Meeting Minutes"** means the written record of the meeting (if applicable) attended by the Sub-Contractor and the Contractor prior to starting work on Site.
- 1.9. **"Sub-Contract Order"** means the Contractor's Sub-Contract order issued to the Sub-Contractor for the supply of Goods and/or provision of Services.
- 1.10. **"Rectification Period"** means the defects rectification period stated in the Sub-Contract Order during which the Sub-Contractor is obliged to remedy defects in the Sub-Contract Works.
- 1.11. **"Services"** means the services (or any part of them), including any Deliverables, to be provided by the Sub-Contractor to the Contractor as set out in the Sub-Contract Order and where included, the Service Specification.
- 1.12. **"Service Specification"** the description or specification for Services and/or Goods specified within the Sub-Contract Order, or as agreed in writing by the Contractor and the Sub-Contractor.
- 1.13. **"Site"** means the address identified within the Sub-Contract Order or the Pre-Start Meeting Minutes.
- 1.14. **"Sub-Contract"** means the contract between the Contractor and the Sub-Contractor for the supply of Goods and/or provision of Services in accordance with the Sub-Contract Order, Pre-Start Meeting Minutes (if any), these Conditions, Schedule of Attendances (if any) and the Service Specification (if any).
- 1.15. **"Sub-Contractor"** means the company, firm or person named within the Sub-Contract Order and from whom the Contractor purchases Goods and/or Services.
- 1.16. **"Sub-Contract Works"** means the supply of Goods and/or provision of Services to be carried out by the Sub-Contractor, as described in the Sub-Contract.

### 2. Basis of Sub-Contract

- 2.1. These Conditions apply to and form part of the Sub-Contract between the Contractor and the Sub-Contractor.
- 2.2. The Sub-Contract constitutes the entire agreement between the parties. The Sub-Contractor acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Contractor which is not set out in the Sub-Contract.
- 2.3. These Conditions apply to the Sub-Contract to the exclusion of any other terms or conditions that the Sub-Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. These Conditions prevail over any terms and conditions submitted by the Sub-Contractor.
- 2.4. Any reference in the Sub-Contractor's quotation, sales conditions, confirmation of order, specification or other document to the Sub-Contractor's own terms and conditions is of no effect and the Sub-Contractor acknowledges and agrees that the Sub-Contractor's terms and conditions do not apply and are not incorporated into the Sub-Contract.
- 2.5. Upon commencement of the Sub-Contract Works, the Sub-Contractor is deemed to have accepted these Conditions even if the Sub-Contractor has not acknowledged or signed the Contractor's Sub-Contract Order in writing.
- 2.6. No variation of these Conditions, or otherwise to the Sub-Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Contractor.
- 2.7. The Sub-Contractor shall comply forthwith with all instructions of the Contractor in relation to the Sub-Contract Works, whether written or oral.

### 3. Supply of Goods

- 3.1. The Sub-Contractor shall ensure that the Goods shall:
  - 3.1.1. correspond and confirm with their description or any specifications supplied or advised by the Contractor to Sub-Contractor;
  - 3.1.2. be new, of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Sub-Contractor or made known to the Sub-Contractor by the Contractor, expressly or by implication, and in this respect the Contractor relies on the Sub-Contractor's skill and judgement;
  - 3.1.3. where they are manufactured products, be free from defects in design, materials and workmanship;
  - 3.1.4. where they are plant or equipment on hire, be in good working order, safe and free from defects or faults; and
  - 3.1.5. be safe and comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2. The Contractor may inspect and test the Goods at any time before delivery. The Sub-Contractor shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Sub-Contractor's obligations under the Sub-Contract.
- 3.3. The Sub-Contractor shall not use or permit to be used in the Sub-Contract Works any materials which by their nature or application contravene any British Standard or European Union equivalent, or which are generally considered to be deleterious or not in accordance with good building practice.
- 3.4. If following such inspection or testing the Contractor considers that the Goods do not comply or are unlikely to comply with the Sub-Contractor's undertakings at clause 3.1, the Contractor shall inform the Sub-Contractor and the Sub-Contractor shall immediately take such remedial action as is necessary to ensure compliance. The Contractor may conduct further inspection and tests after the Sub-Contractor has carried out its remedial actions.

#### 4. Delivery of Goods

- 4.1. The Sub-Contractor shall ensure that:
- 4.1.1. the Goods are properly packed and secured in such a manner as to enable them to reach their destination in good condition;
  - 4.1.2. Prior notice of delivery of Goods is given to the Contractor.
- 4.2. The Sub-Contractor shall deliver the Goods:
- 4.2.1. on the date specified in the Sub-Contract Order or, if no such date is specified, then within three (3) days of the date of the Sub-Contract Order unless otherwise instructed by the Contractor, and time of delivery is of the essence.
  - 4.2.2. to the Site or such other location as the parties may agree; and
  - 4.2.3. during the Contractor's normal hours of business (07:30 to 16:30) on a Business Day, or as otherwise instructed by the Contractor.
- 4.3. Any rejected Goods shall be returnable at the Sub-Contractor's risk and expense.
- 4.4. Title in the Goods shall pass to the Contractor on completion of delivery. The passing of title shall not prejudice any of the Contractor's rights and remedies.
- 4.5. Unfixed Goods and any materials delivered to, placed on or adjacent to the Sub-Contract Works by the Sub-Contractor, its servants, agents, suppliers or independent contractors shall not be removed from the Site unless the Contractor has given its prior written consent.
- 4.6. Goods and any materials intended for incorporation into the Sub-Contract Works shall become the property of the Contractor, but the Sub-Contractor shall be responsible for all necessary unloading, storage, protection, movement and lifting of materials and goods including their delivery to Site, and risk in the Goods shall remain with the Sub-Contractor until such time as they are finally incorporated into the Sub-Contract Works.

#### 5. Supply of Services

- 5.1. The Sub-Contractor shall supply the Services to the Contractor in accordance with the terms of the Sub-Contract.
- 5.2. The Sub-Contractor shall meet any programme or performance dates for the Services specified in the Sub-Contract Order or that which the Contractor notifies to the Sub-Contractor and time is of the essence in relation to any of those performance/programme dates.
- 5.3. In providing the Services, the Sub-Contractor shall:
- 5.3.1. on the date or dates for commencement stated in the Sub-Contract Order, or as otherwise instructed, the Sub-Contractor shall commence the Sub-Contract Works on site and proceed regularly and diligently and complete the Sub-Contract Works in accordance with the Contractor's programme and requirements, or as otherwise instructed from time to time. The Sub-Contractor shall constantly use its best endeavours to prevent or minimise any delay in the progress of the whole or any part of the Sub-Contract Works and shall do all that is reasonably required by the Contractor to proceed with the Sub-Contract Works;
  - 5.3.2. co-operate with the Contractor in all matters relating to the Services, and comply forthwith with all instructions of the Contractor;
  - 5.3.3. perform the Services with the due diligence, in a good and workmanlike manner and in accordance with current best practice in the Sub-Contractor's industry, profession or trade to the reasonable satisfaction of the Contractor;
  - 5.3.4. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Sub-Contractor's obligations are fulfilled in accordance with the Sub-Contract;
  - 5.3.5. ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, Sub-Contract Order and/or Pre-Start Meeting Minutes, and that the Deliverables shall be fit for any purpose that the Contractor expressly or impliedly makes known to the Sub-Contractor.
  - 5.3.6. provide all plant, equipment, tools, access equipment and vehicles and such other items as are required to provide the Services;
  - 5.3.7. use good quality goods, materials, standards and techniques, and to ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Contractor, will be free from defects in workmanship, installation and design;
  - 5.3.8. obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
  - 5.3.9. comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Contractor's company policies;
  - 5.3.10. observe all health and safety rules and regulations and any other security requirements that apply at any of the Contractor's premises and/or at the Site;
  - 5.3.11. hold all materials, equipment and tools, drawings, specifications and data supplied by the Contractor to the Sub-Contractor ("**Company Materials**") in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Contractor, and not dispose or use the Company Materials other than in accordance with the Contractor's written instructions or authorisation;
  - 5.3.12. not do or omit to do anything which may cause the Contractor to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Sub-Contractor acknowledges that the Contractor may rely or act on the Services; and
  - 5.3.13. comply with any additional obligations as set out in the Pre-Start Meeting Minutes, Service Specification and/or Sub-Contract Order.
- 5.4. Where the Sub-Contract Order states that the Sub-Contractor is responsible for design, the Sub-Contractor shall be fully responsible in all respects of the design of the Sub-Contract Works, and the Sub-Contractor warrants that there has been exercised and will be exercised in the design of the Sub-Contract Works and each and every part of the Sub-Contract Works all the skill and care reasonably to be expected of duly qualified and experienced professional designers undertaking the design of works similar in scope and character to the Sub-Contract Works or such part of the Sub-Contract Works. The Sub-Contractor shall indemnify the Contractor against any and all costs, loss, expense or other sums which the Contractor may incur as a consequence of the failure of the Sub-Contract Works to comply with this design warranty.
- 5.5. The Sub-Contractor shall not withdraw labour from the site without the prior written approval of the Contractor.
- 5.6. Site working hours shall be Monday to Friday between 7:30 a.m. and 4:30 p.m. unless otherwise expressly agreed in writing by the Contractor.
- 5.7. The Sub-Contractor shall remove all residual waste, rubbish and packaging resulting from the Sub-Contract Works from Site, which shall be disposed of safely and responsibly by the Sub-Contractor. Failure to comply with this clause 5.7 will result in the Contractor removing the waste etc. and any costs and expenses incurred being recovered by the Contractor from the Sub-Contractor payable as a debt.
6. Defects
- 6.1. Any defects, shrinkages, or other faults in the Sub-Contract Works (or any part thereof due to materials or workmanship not in accordance with the Sub-Contract), which may appear at any time (whether prior to, during or after the Rectification Period) shall be remedied and/or made good by the Sub-Contractor at its own expense and at no cost to the Contractor.
- 6.2. Prior to practical completion, the Contractor may issue directions requiring the Sub-Contractor to open up for inspection any work covered up or to carry out tests of any materials, Goods or executed work. The cost of such opening up (including the cost of making good) shall be met by the Sub-Contractor unless the inspection or testing shows that the materials, Goods or work are in accordance with the Sub-Contract.

- 6.3. The Contractor may notify the Sub-Contractor of defects at any time providing details of the remedial work to be undertaken and the response time required and the Sub-Contractor shall carry out the necessary remedial works within the time limit specified subject to being granted reasonable access.
- 6.4. After practical completion and during the Rectification Period, the Contractor may, at any time, issue a schedule of defects to the Sub-Contractor which the Sub-Contractor shall make good within 14 days of being instructed by the Contractor. The Sub-Contractor shall notify the Contractor when the remedial work is complete.
- 6.5. Should the Sub-Contractor fail to make good any defects as required under clause 6.4 to a satisfactory standard, or at all, the Contractor may carry out the necessary remedial works itself or engage others to carry out such work and, without limiting or affecting the Contractor's other rights or remedies, deduct any costs so incurred from retention monies held by the Contractor and/or recover such costs from the Sub-Contractor as a debt.
- 6.6. If the Sub-Contractor fails to deliver the Goods and/or perform the Services by the applicable date, the Contractor shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
- 6.6.1. to terminate the Sub-Contract with immediate effect by giving written notice to the Sub-Contractor;
  - 6.6.2. to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Sub-Contractor attempts to make;
  - 6.6.3. to recover from the Sub-Contractor any costs incurred by the Contractor in obtaining substitute goods and/or services from a third party;
- 6.7. If the Sub-Contractor has delivered Goods that do not comply with the undertakings set out in Clauses 3.1 and/or 3.2, then, without limiting or affecting other rights or remedies available to it, the Contractor shall have one or more of the following rights, whether or not it has accepted the Goods:
- 6.7.1. to reject the Goods and obtain a full refund of any monies paid;
  - 6.7.2. to refuse to accept any subsequent delivery of the Goods which the Sub-Contractor attempts to make;
  - 6.7.3. to recover from the Sub-Contractor any expenditure incurred by the Contractor in obtaining substitute goods from a third party; and
  - 6.7.4. to claim damages for any additional costs, loss or expenses incurred by the Contractor arising from the Sub-Contractor's failure to supply Goods in accordance with Clause 3.1.
- 6.8. The Subcontractor shall immediately rectify any breakdown, unsatisfactory working or failure of plant supplied, or provide replacement plant within 24 hours of notification by the Contractor. The Contractor is not obliged to pay hire charges to the Sub-Contractor for any plant or equipment stood idle due to stoppages, breakdown or fault. The Sub-Contractor shall be responsible and reimburse the Contractor for all and any costs or expenses, including the hire costs of obtaining replacement plant or equipment, arising from the breakdown, unsatisfactory working or faulty plant/equipment supplied.
- 6.9. The Contractor's rights under the Sub-Contract are in addition to its rights and remedies implied by statute and common law.
- 7. Payment and Valuation**
- 7.1. The price for the Sub-Contract Works is a fixed price and shall be the price set out in the Sub-Contract Order subject only to any adjustment for authorised variations under clause 8.
- 7.2. The obligation of the Contractor to make any payment under this Sub-Contract is subject to the provisions of the Construction Industry Scheme (CIS).
- 7.3. The Contractor shall pay to the Sub-Contractor any properly chargeable VAT at the appropriate rate subject to receipt of a valid VAT invoice. Where VAT is applicable, it shall be a condition precedent to payment that the Sub-Contractor provides a valid VAT invoice to the Contractor.
- 7.4. Unless stated otherwise within the Sub-Contract Order, the Sub-Contractor may submit interim applications for payment to the Contractor on a monthly basis specifying the sum that the Sub-Contractor considers to be or have been due at the payment due date and the basis on which that sum is calculated ("**Payment Application**").
- 7.5. All Payment Applications shall be sent to the Contractor by post and email to [accounts@radcliffeconstruction.co.uk](mailto:accounts@radcliffeconstruction.co.uk) marked for the attention of **Accounts**. Failure to submit Payment Applications via both of the aforementioned methods of service will invalidate the Payment Application concerned and no sum shall become due.
- 7.6. Each Payment Application shall specify the sum the Sub-Contractor considers will be due at the due date for payment and the basis on which that sum is calculated and shall be accompanied by full substantiation of the sum claimed (covering the valuation of measured works, approved variations, the valuation of materials on site and any other reasonably necessary details to enable the same to be considered by the Contractor). When calculating the sum due, the Sub-Contractor shall only include work carried out in accordance with the Sub-Contract in the period of time prior to the date of the application.
- 7.7. The first and subsequent interim Payment Applications shall become due on the final date of the month in which the relevant Payment Application is submitted to the Contractor (the "**due date**").
- 7.8. No later than five (5) days after the due date, in each case the Contractor shall give notice to the Sub-Contractor of the sum the Contractor considers to be or have been due to the Sub-Contractor at the due date for payment and the basis on which sum is calculated (a "**Payment Notice**").
- 7.9. The final date for payment of the first and any subsequent interim payments shall be thirty-five (35) days after the due date for payment.
- 7.10. If the Contractor intends to pay less than the sum stated as due from him in the Payment Notice or Payment Application, as the case may be, the Contractor shall not later than one (1) day before the final date for payment give the Sub-Contractor notice of that intention specifying the sum the Contractor considers to be due on the date that the notice is served and the basis on which that sum is calculated (a "**Pay Less Notice**").
- 7.11. Retention monies shall be withheld from all payments to the Sub-Contractor at the percentage rate specified within the Sub-Contract Order. Unless stated otherwise within the Sub-Contract Order, the first half of the retention shall become due to the Sub-Contractor upon practical completion of the Sub-Contract Works and the remaining half of retention shall become due to the Sub-Contractor twelve (12) months after practical completion of the Sub-Contract Works, providing that all defects have been rectified by the Sub-Contractor to the satisfaction of the Contractor. A Payment Application is required to request retention release.
- 7.12. The Sub-Contractor shall within 30 days of the date of practical completion of the Sub-Contract Works submit a final account application to the Contractor stating the amount that the Sub-Contractor considers to be or have become due to him under this Sub-Contract and the basis on which that sum has been calculated ("**Final Account**"). If the Final Account is not submitted within the prescribed period, then no further monies are due to the Sub-Contractor and payment for the Sub-Contract Works is deemed settled in full.
- 7.13. The Final Account shall become due for payment on the date upon which the Sub-Contractor submits the Final Account to the Contractor.
- 7.14. The Final Account shall be sent to the Contractor by post and email to [accounts@radcliffeconstruction.co.uk](mailto:accounts@radcliffeconstruction.co.uk) marked for the attention of **Accounts**. Failure to submit the Final Account via both of the aforementioned methods of service will invalidate the Final Account and no sum shall become due.
- 7.15. Not later than five (5) days after the due date for payment of the Final Account, the Contractor shall issue a payment notice specifying the sum the Contractor considers to be or have been due at the due date for payment and the basis on which that sum is calculated ("**Final Payment Notice**"). The final date for payment of the Final Account shall be forty (40) days after the due date for payment.
- 7.16. If the Contractor intends to pay less than the sum set out in the Final Payment Notice or the Final Account, as the case may be, it shall give a pay less notice not later than one (1) day before the final date for payment, specifying the sum it considers to be due on the date the pay less notice is given and the basis on which that sum is calculated ("**Final Pay Less Notice**").

- 7.17. In the event of the Contractor failing to pay any sum properly due to the Sub-Contractor by the final date for payment, the Contractor shall pay interest on such overdue sum at the rate of 2% per annum above the official dealing rate of the Bank of England current at the relevant final date for payment. For the avoidance of doubt, the Sub-Contractor expressly agrees that the interest charged pursuant to this clause 7.17 shall represent a substantial contractual remedy pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.18. The Contractor shall be entitled to set off any payment due from the Sub-Contractor to the Contractor against any payment due from the Contractor to the Sub-Contractor whether under the Sub-Contract or any other contract between the parties.
- 7.19. Notwithstanding any other provision in this Sub-Contract, the Contractor shall be under no obligation whatsoever to make any payment to the Sub-Contractor in respect of the whole or any part of the Sub-Contract Works where payment in respect of such works has not been received by the Contractor due to an employer or any third person or any other person from whom such payment is to be made either directly or indirectly to the Contractor, being insolvent. For the avoidance of doubt the term "insolvent" shall have the meaning ascribed to it by section 113 of the Housing Grants, Construction and Regeneration Act 1996 as may be amended, re-enacted or consolidated from time to time. In the event of such insolvency, any payment made subsequently to the Sub-Contractor by the Contractor will be at the absolute discretion of the Contractor.
- 7.20. Notwithstanding anything to the contrary in this Sub-Contract, if the Sub-Contractor becomes insolvent (within the meaning ascribed to it by section 113 of the Housing Grants, Construction and Regeneration Act 1996 as may be amended, re-enacted or consolidated from time to time) after the date by which a pay less notice may be served in accordance with clause 7.10 and/or 7.16, the Contractor shall not be obliged to pay the sum due.
- 7.21. Payment and release of retention is strictly subject to the Sub-Contractor providing to the Contractor complete Operation and Maintenance manuals including 'as-built' drawings, testing and commissioning certificates and the like.
- 7.22. Where retention does not apply, the Contractor is entitled to retain 2.5% of the Sub-Contract Sum, or £2,000.00 (whichever is the greater), from the Sub-Contractor until the Sub-Contractor provides to the Contractor complete Operation and Maintenance manuals including 'as-built' drawings, testing and commissioning certificates and the like (where applicable).

## **8. Variations to the Sub-Contract Works**

- 8.1. Variations to the Sub-Contract Works shall not vitiate the Sub-Contract. The Sub-Contractor shall only carry out variations to the Sub-Contract Works if ordered to do so by the Contractor confirmed in writing.
- 8.2. The Contractor may order any variation to the design, quality or quantity of the Sub-Contract Works (including the addition, omission or substitution of any work and the alteration of the standard of materials to be used) or to the manner in which the Sub-Contract Works are to be carried out.
- 8.3. It shall be a condition precedent to payment for any variation that the Sub-Contractor provides a written variation instruction from the Contractor, together with adequate substantiation of the cost incurred by the Sub-Contractor in carrying out the variation.
- 8.4. Within 3 days from the date a variation is instructed by the Contractor, the Sub-Contractor shall prepare a written quotation setting out the anticipated cost of the variation and shall submit the quotation, along with full particulars of the extra cost to which the Sub-Contractor claims it is entitled, to the Contractor for approval.
- 8.5. Properly authorised variations shall be valued by reference to the quotation provided by the Sub-Contractor under clause 8.4, providing that the quotation is agreed by the Contractor. If the quotation is not agreed, then properly authorised variations shall be valued by reference to the rates and prices, if any, specified in the Sub-Contract for similar work or, if there are no similar rates or prices, the value shall be such as is considered fair and reasonable by the Contractor. Any disagreement by the Sub-Contractor with the value of the variation shall not relieve the Sub-Contractor of his obligation to proceed with the variation as instructed.

## **9. Intellectual Property Rights**

- 9.1. The Sub-Contractor grants to the Contractor or shall procure the direct grant to the Contractor of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Company Materials) for the purpose of receiving and using the Services and the Deliverables. All Company Materials are the exclusive property of the Contractor.

## **10. Indemnity**

- 10.1. The Sub-Contractor shall indemnify the Contractor against all liabilities, costs, expenses, damages and losses, including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses suffered or incurred by the Contractor arising out of or in connection with:
- 10.1.1. any claim made against the Contractor for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Company Materials);
  - 10.1.2. any loss, injury or damage whatsoever to any property real or personal arising out of or in the course of the Sub-Contract Works to the extent that the same is due to the negligence, breach of statutory duty, omission or default of the Sub-Contractor or any of his employees, agents or sub-sub-contractors;
  - 10.1.3. any claim made against the Contractor by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and
  - 10.1.4. any claim made against the Contractor by a third party arising out of or in connection with the supply of the Goods, as delivered, and/or the Services to the extent that the same is due to the negligence, breach of statutory duty, omission or default of the Sub-Contractor.
  - 10.1.5. any costs, fines or charges which the Contractor is required to pay to the Health and Safety Executive ("HSE"), as a result of or in consequence of any breach of health and safety law caused by the Sub-Contractor which requires any intervention from the HSE, including any letter, e-mail, visit, instant visit report or notice from the HSE, or a prosecution.
- 10.2. The Contractor shall be entitled, at any time, to set-off under the Sub-Contract any liability of the Sub-Contractor to the Contractor against any liability of the Contractor to the Sub-Contractor, whether either liability is present or future, liquidated or unliquidated and whether or not either liability arises under this Sub-Contract. Any exercise by the Contractor of its rights under this clause shall not limit or affect any other rights or remedies available to it.
- 10.3. This clause 10 shall survive termination of the Sub-Contract.

## **11. Insurance and CIS**

- 11.1. Without prejudice to its liability to indemnify the Contractor pursuant to clause 10, during the term of the Sub-Contract and for a period of 12 years thereafter, the Sub-Contractor shall maintain in force, with a reputable insurance company, employer's liability insurance, product liability insurance, public liability insurance and (where the Sub-Contractor is responsible for design) professional indemnity insurance to cover the liabilities that may arise under or in connection with the Sub-Contract, and shall, on the Contractor's request, produce the insurance certificates giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 11.2. The Sub-Contractor as necessary will produce Construction Industry Scheme registration certificates and other relevant HMRC information requested (including but not limited to VAT number and UTR number where applicable) to the Contractor for inspection. Payment shall not be made until the Sub-Contractor has complied with the requirements of clauses 11.1 and 11.2 to the satisfaction of the Contractor.

## 12. Extension of Time

- 12.1. If the Sub-Contractor is delayed in completing the Sub-Contract Works by the completion date or within the period stated in the Sub-Contract Order due to (“**Relevant Events**”):
- 12.1.1. a variation to the Sub-Contract pursuant to clause 8;
  - 12.1.2. an instruction to open up or test any work, materials or good pursuant to clause 6.2, unless the inspection or test shows that the work, material or goods are not in accordance with the Sub-Contract;
  - 12.1.3. suspension by the Sub-Contractor pursuant to section 112 of the Housing Grants, Construction and Regeneration Act 1996 (as amended); and
  - 12.1.4. any impediment, prevention or default by the Contractor or any of his employees, agents or other sub-contractors.
- the Sub-Contractor shall give written notice to the Contractor as soon as, and in any event not later than seven (7) days after, such delay has or should reasonably have become apparent to the Sub-Contractor, specifying the cause of the delay and the anticipated effect thereof. The Sub-Contractor shall, as soon as practicable thereafter, submit full and detailed particulars of the extension of time to which the Sub-Contractor considers he is entitled. It shall be a condition precedent to the Sub-Contractor’s entitlement under this clause, or clause 12.2, that the Sub-Contractor has complied fully with all the requirements of this clause 12.1.
- 12.2. Following receipt of the Sub-Contractor’s notice and particulars under clause 12.1, the Contractor shall within a reasonable time thereafter shall grant such extension of time (if any) as is reasonable in the circumstances, provided always that the Sub-Contractor has complied fully with the notice requirements of clause 12.1 and taken reasonable measures to mitigate the effects of any such delays.
- 12.3. The Sub-Contractor’s entitlement to an extension of time is subject to the provision that the Sub-Contractor constantly uses his best endeavours to prevent delay and do all that may reasonably be required by the Contractor to proceed with the Sub-Contract Works including employing additional resources.
- 12.4. The Sub-Contractor shall not be entitled to any extension of time on account of any delay to the Sub-Contract Works arising by reason of any error, omission, negligence or default of the Sub-Contractor or his employees, agents or sub-sub-contractors. Any delay caused by a Relevant Event which is concurrent with another delay for which the Sub-Contractor is responsible shall not be taken into account when granting an extension of time.
- 12.5. Where the Sub-Contract Order states that liquidated damages apply, if the Sub-Contractor fails to complete the Sub-Contract Works by the date stated in the Sub-Contract Order (or where there is more than one date stated in the Sub-Contract Order, the relevant part(s) of the Sub Contract Works), the Sub-Contractor shall pay or allow to the Contractor liquidated damages at the rate specified in the Sub-Contract Order from the date(s) until the date of practical completion of the Sub-Contract Works or relevant part(s) thereof.
- 12.6. Where the Sub-Contract Order states that liquidated damages do not apply, if the Sub-Contractor fails to complete the Sub-Contract Works by the completion date stated in the Sub-Contract Order, or as extended by the Contractor under clause 12.2, then the Sub-Contractor shall pay or allow the Contractor a sum equivalent to the amount of the costs, losses, expenses and/or damages suffered or incurred by the Contractor as a result of such failure to complete on time.

## 13. Force Majeure

- 13.1. The Contractor shall not be liable to the Sub-Contractor in any manner or be deemed to be in breach of the Sub-Contract because of any failure to take delivery of the Goods and/or accept performance of the Services and/or any failure to pay for Sub-Contract Works and/or any cancellation of the Sub-Contract as a result of a Force Majeure Event.

## 14. Health & Safety

- 14.1. It is the responsibility of the Sub-Contractor to ensure that all necessary and appropriate health and safety measures are implemented whilst carrying out the Sub-Contract Works and during the remedying of any defects following practical completion. The Sub-Contractor shall:
- comply with all statutory requirements, regulations, HSE codes of practice and standards relating to health & safety, including the Health & Safety at Work etc. Act 1974 and the Construction (Design and Management) Regulations 2015;
  - 14.1.1. comply and cooperate with the Contractor’s health & safety plan and/or any health & safety plan for the main contract works;
  - 14.1.2. supply timeously any documentation in relation to health and safety including risk assessments, method statements (RAMS), lifting plans and COSHH assessments to the Contractor for approval prior to carrying out the work to which they relate;
  - 14.1.3. ensure that all of its operatives have appropriate Personal Protective Equipment (PPE) and it is worn at all times and maintained in a good serviceable condition;
  - 14.1.4. supply valid construction certification skills cards (CSCS), lifter training certificates and other relevant training/qualification/competence documentation to the Contractor for approval prior to commencing the Sub-Contract Works. Any Sub-Contractor operative who is not CSCS approved will not be allowed access to the Site.
- 14.2. The Contractor may instruct the removal from the Site of any person for whom the Sub-Contractor is responsible and to whom the Contractor has reasonable objection.
- 14.3. All of the Contractor’s sites are strictly NO SMOKING areas at all times. Smoking is not permitted on Site at any time.
- 14.4. The Sub-Contractor shall comply with all site rules, directives and other regulations, as specified within the Sub-Contract Order and Pre-Start Meeting Minutes.

## 15. Termination

- 15.1. Without affecting any other right or remedy available to it, the Contractor may terminate the employment of the Sub-Contractor under the Sub-Contract:
- 15.1.1. for convenience by giving the Sub-Contractor 7 days written notice.
  - 15.1.2. with immediate effect by giving written notice to the Sub-Contractor if:
    - 15.1.2.1. there is a change of control of the Sub-Contractor; or
    - 15.1.2.2. the Sub-Contractor’s financial position deteriorates to such an extent that in the Contractor’s opinion the Sub-Contractor’s capability to adequately fulfil its obligations under the Sub-Contract has been placed in jeopardy; or
    - 15.1.2.3. the Sub-Contractor commits a material breach of any term of the Sub-Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of three (3) days after being notified in writing to do so; or
    - 15.1.2.4. the Sub-Contractor (being an individual) becomes bankrupt or makes a composition with his creditors or (being a company) takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
    - 15.1.2.5. the Sub-Contractor suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- 15.1.2.6. the Sub-Contractor becomes insolvent within the meaning of sections 113(2) to 113(5) of the Housing Grants, Construction and Regeneration Act 1996, as amended; or
- 15.1.2.7. the Sub-Contractor is failing to proceed regularly and diligently with the Sub-Contract Works, or any part thereof, and does not remedy that failure within a period of five (5) days after being notified in writing by the Contractor to do so; or
- 15.1.2.8. the Sub-Contractor fails to rectify or remedy any defect within its Sub-Contract Works within a period of five (5) days after being notified in writing by the Contractor to do so; or
- 15.1.2.9. the Sub-Contractor fails to comply with a written instruction of the Contractor within five days after receipt of the instruction;
- 15.1.2.10. the Sub-Contractor suspends the carrying out of the Sub-Contract Works without reasonable cause; or
- 15.1.2.11. the Sub-Contractor fails to otherwise perform the Sub-Contract Works in accordance with the provisions of the Sub-Contract.

## **16. Consequences of Termination**

- 16.1. On termination of the Sub-Contractor's employment under clause 15.1.1 or clause 15.1.2:
- 16.1.1. the Sub-Contractor shall leave the Site and immediately deliver to the Contractor all Deliverables whether or not then complete and return all Company Materials. If the Sub-Contractor fails to do so, then the Contractor may enter the Sub-Contractor's premises and take possession of them. Until they have been returned or delivered, the Sub-Contractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Sub-Contract;
  - 16.1.2. The Contractor shall be entitled to employ other persons to carry out and complete the Sub-Contract Works.
- 16.2. If the Sub-Contractor's employment under the Sub-Contract is terminated pursuant to clause 15.1.1, the Sub-Contractor shall be entitled to be paid (in addition to any amounts which have become due under clause 7) a fair and reasonable amount for work carried out up to the date of termination but in respect of which no amount has become due under clause 7, and may submit an application for payment of such amount, which shall become due at the end of the month in which the Sub-Contractor submitted the application and will thereafter be treated as if it were an interim payment in accordance with the provisions of clause 7. Such payment shall be the Sub-Contractor's sole entitlement to compensation for termination of his employment under the Sub-Contract.
- 16.3. If the Sub-Contractor's employment under the Sub-Contract is terminated pursuant to clause 6.6.1 or clause 15.1.2 the Contractor shall be entitled to recover from the Sub-Contractor:
- 16.3.1. the additional costs the Contractor incurs in completing the Sub-Contract Works; and
  - 16.3.2. any direct loss or expense incurred by the Contractor as a result of the termination.
- the Contractor's entitlement under this clause 16.3 shall be deducted from any amount payable to the Sub-Contractor, and if any shortfall remains following such deduction, the Contractor may claim it as a debt due from the Sub-Contractor. Upon termination, no further payment (if any) shall become due to the Sub-Contractor until after completion of the Sub-Contract Works and expiry of the Rectification Period.
- 16.4. Notwithstanding any other provision of the Sub-Contract, if the Sub-Contractor's employment is terminated pursuant to clause 15.1.2.4 or clause 15.1.2.6, no further sum shall become due to the Sub-Contractor under the Sub-Contract and the Contractor need not pay any sum that that has already become due to the Sub-Contractor where the Sub-Contractor became insolvent after the last date on which a Pay Less Notice could be given by the Contractor in respect of that sum.
- 16.5. The Contractor shall not be liable to the Sub-Contractor for any loss of profit or indirect or consequential losses arising out of, under or in relation to the termination of the Sub-Contractor's employment under the Sub-Contract (under any circumstances).
- 16.6. Termination of the Sub-Contractor's employment shall not affect the Contractor's rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Sub-Contract which existed at or before the date of termination.
- 16.7. Any provision of the Sub-Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Sub-Contractor's employment under the Sub-Contract shall remain in full force and effect.

## **17. Assignment and Other Dealings.**

- 17.1. The Contractor may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Sub-Contract.
- 17.2. The Sub-Contractor shall not assign, transfer, mortgage, charge, sub-subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Sub-Contract in whole or in part without the written consent of the Contractor. Where such consent is given, the Sub-Contractor shall remain responsible for the performance of any sub-subcontracted obligations as if he had performed such obligations himself.

## **18. General**

- 18.1. If any provision or part-provision of the Sub-Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 18.1 shall not affect the validity and enforceability of the rest of the Sub-Contract.
- 18.2. A waiver of any right or remedy under the Sub-Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Sub-Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Sub-Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.3. Nothing in the Sub-Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 18.4. A person who is not a party to the Sub-Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provisions of the Sub-Contract.
- 18.5. Except as set out in these Conditions, no variation of the Sub-Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives

## **19. Governing Law and Jurisdiction**

- 19.1. Either party has the right, at any time, to refer any dispute or difference arising under the Sub-Contract to adjudication and the adjudication shall be conducted in accordance with Part I of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended). The adjudicator nominating body shall be the Royal Institution of Chartered Surveyors.

19.2. The Sub-Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to clause 19.1, each party agrees that the courts in England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Sub-Contract or its subject matter or formation (including non-contractual disputes or claims).