

Subcontractor Terms & Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions, the following definitions apply:

"Assessment" has the meaning given in clause 4.9.

"Construction Act": The Housing Grants and Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

"Company": T & B (Contractors) Limited, a company registered in England No. 01667869 with the registered office address at Riverside House 1 Place Farm, Wheathampstead, St. Albans, Hertfordshire AL4 8SB.

"Company Policies": the policies of the Company outlined in the Company's Supply Chain Portal, and with which the Sub-Contractor shall comply.

"Due Date": means any of the Due Dates indicated on any payment schedule issued to the Sub-Contractor by the Company relevant to the Sub-Contract Works. If no payment schedule was issued, or if it has expired, then Due Date shall mean any of such other Due Dates as may be indicated in the Order. If the Order does not indicate any such dates then the Due Date shall fall on the last Friday of each calendar month.

"Group": in relation to a company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of any holding company of that company. A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

"Main Contract": the contract entered into by the Company to carry out the Main Contract Works of which the Sub-Contract Works form part.

"Main Contract Works": the works to be carried out under the Main Contract.

"Order" : the order given by the Company to the Sub-Contractor to carry out the Sub-Contract Works together with any check-list specifications, schedule of rates or other documents contained or referred to in the Order.

"Period for Completion" : either the number of weeks as stated in the Order by which the Sub-Contract Works are to be carried out and completed or the fixed date by which the Sub-Contract Works are to be carried out and completed (subject to any adjustments confirmed or notified by the Company in writing) as identified in the Order.

"Subcontract Pre Order Meeting": the meeting held by the Company with the Sub-Contractor in advance of the commencement of the Sub-Contract Works, to discuss the details and specification of the Sub-Contract Works.

"Sub-Contract": the sub-contract between the Company and the Sub-Contractor consisting of the Order and the Sub-Contract Documents.

"Sub-Contractor": the person(s), firm or company identified in the Order to whom the Sub-Contract Works package is awarded.

"Sub-Contract Documents": the Company's Health, Safety and Environmental Standards, these terms and conditions and any details, drawings, specifications, programme or other documents relating to the Sub-Contract Works and identified or referred to, or issued to the Sub-Contractor contemporaneously with, the Company's invitation to tender, the minutes of the Pre-Commencement Meeting and/or the Order (including any addition or variation thereto and either confirmed or notified to the Sub-Contractor by the Company in writing).

"Sub-Contract Sum": the sum stated in the Order for carrying out the Sub-Contract Works which is a lump sum unless stated otherwise in the Order.

"Sub-Contract Works": the works identified in the Order including (where appropriate) design services, the supply of goods, materials, labour and installation to be carried out in accordance with these terms and conditions.

"Supply Chain Portal": the electronic portal containing the Company's policies and procedures, to which the Sub-Contractor has, or is deemed to have, access via log in details issued by the Company. The Company will also issue such log in details to the Sub-Contractor within a reasonable time of any request from the Sub-Contractor.

"Valuation Date" shall mean 14 days before the Due Date.

Any reference in these terms and conditions to a 'clause' shall include reference to any related sub-clause(s), as the context requires.

Clause headings and sub-headings shall not affect the interpretation of these terms and conditions.

General

1.2 These terms and conditions shall be deemed to be incorporated in any contract, agreement or Order between the Company and the Sub-Contractor and shall be in substitution for any other terms and conditions introduced before or after the date of the Order (unless expressly identified and agreed in writing by the Company). Furthermore, any action undertaken by the Sub-Contractor in pursuit of their obligations under this Sub-Contract will be deemed an explicit agreement to these Sub-Contract terms and conditions and cannot be rescinded, altered or amended in any way without mutual agreement by the parties to this Sub-Contract.

- 1.3 It shall be a condition precedent to the Sub-Contractor's entitlement to any payment under the Sub-Contract, that the Sub-Contractor signs and returns the Sub-Contract Order to the Company in advance of commencing the Sub-Contract Works. Where this is not possible because the Sub-Contract Works start prior to issue the Order (whether pursuant to a letter of intent or otherwise) it shall be a condition precedent to the Sub-Contractor's entitlement to further payments under the Sub-Contract that the Sub-Contract Order is signed and returned to the Company within a reasonable time (not more than 14 days) of its issue. For the avoidance of doubt unless and until the Order is signed in accordance with this clause, the Sub-Contractor shall not be entitled to payment for any Sub-Contract Works completed since the issue of the Order.
- 1.4 Property in all materials and goods provided by the Sub-Contractor for incorporation into the Sub-Contract Works shall pass to the Company immediately upon their delivery to site or, if earlier, upon the date of payment for such materials and goods by the Company.
- 1.5 Notwithstanding the point at which property in any materials and goods or other things passes to the Company such items shall remain at the risk of the Sub-Contractor who shall be responsible for any loss or damage of such items until completion of the Sub-Contract Works. The Sub-Contractor shall ensure that such items are properly protected against any loss or damage and adequately covered for their full reinstatement value by a suitable policy of insurance.
- 1.6 The Company gives no guarantee of continuity of work or that the Sub-Contractor will be afforded the opportunity to carry out and complete the Sub-Contract Works in a continuous manner. The Company may at its discretion amend the timing or programme of the Sub-Contract Works to suit its requirements without adjustment to the Sub-Contract Sum or incurring any liability to the Sub-Contractor for additional costs, losses or expense.
- 1.7 The Sub-Contractor shall be deemed to have full knowledge of the provisions of the Main Contract with the exception of the Company's rates and prices included therein and the Company shall, within a reasonable time and if so requested in writing by the Sub-Contractor, make available for inspection a copy of the Main Contract with the exception of the Company's rates and prices included therein.
- 1.8 Unless otherwise expressly instructed; the Sub-Contractor shall carry out and complete the Sub-Contract Works so as not to constitute, cause or contribute to any breach by the Company under the Main Contract, and the Sub-Contractor shall assume and perform all of the obligations and liabilities of the Company under the Main Contract in relation to the Sub-Contract Works.
- 1.9 The Sub-Contractor shall be deemed to have visited the site and to be fully satisfied with all local conditions, means of access, feasibility of deliveries, unloading, storage, the location of all services and drainage and all other matters which may affect the carrying out of the Sub-Contract Works and the Sub-Contractor shall not be entitled to any adjustment of the Sub-Contract Sum for any costs, losses or expenses incurred by reason of such matters.
- 1.10 The Sub-Contractor shall indemnify the Company against all costs, losses, expenses, damages, claims and demands incurred by the Company as a result of (a) any breach by the Sub-Contractor or any of its servants or agents of any of these terms and conditions, or (b) any act, omission, default, breach of statutory duty or otherwise on the part of the Sub-Contractor or any of its servants or agents.

2. COMMENCEMENT AND COMPLETION

- 2.1 The Sub-Contractor shall commence the Sub-Contract Works either:
 - 2.1.1 on the date specified in the Order; or
 - 2.1.2 on the expiry of the period of notice to commence the Sub-Contract Works identified in the Order.
- 2.2 The Sub-Contractor shall carry out and complete the Sub-Contract Works to the satisfaction of the Company:
 - 2.2.1 Expeditiously, diligently and in a proper and workmanlike manner in compliance with the Sub-Contract.
 - 2.2.2 In accordance with all relevant legislation, regulations, British Standards and Codes of Practice, Company Policies, consents and approvals and (where appropriate) the technical requirements and performance standards of the National House Building Council.
 - 2.2.3 In accordance with any programme notified in writing by the Company to the Sub-Contractor or referred to or contained within the Sub-Contract or any amended or revised programme which the Company may from time to time notify in writing to the Sub-Contractor.
 - 2.2.4 All workmanship, materials and goods shall be of the kinds and standards described or referred to in the Sub-Contract; or to the extent that no such standards are described shall be of a reasonable standard having regard to the nature of the Main Contract Works and the Sub-Contract Works.
 - 2.2.5 Where and to the extent that the Sub-Contract Works require the Sub-Contractor to undertake any design or the selection or specification of any materials or goods:
 - 2.2.5.1 the Sub-Contractor shall be fully responsible in all respects for the design of such part or parts of the Sub-Contract Works including any related design, selection or specification prepared and/or provided by (or on behalf of) the Company and referred to or contained within the Sub-Contract;
 - 2.2.5.2 the Sub-Contractor shall exercise all reasonable skill and care in the design of such part or parts of the Sub-Contract Works as is to be expected of a properly qualified and competent design sub-contractor

- experienced in carrying out work such as its duties under the Sub-Contract in relation to developments of similar scope, size, nature, timescale and complexity and on a similar site or at a similar location to the development as described or referred to in the Order;
- 2.2.5.3 the Sub-Contract Works will comply with any performance specification or requirement referred to or contained within the Sub-Contract; and
- 2.2.5.4 such part or parts of the Sub-Contract Works shall be designed or specified using appropriate up-to-date practice.
- 2.2.6 The Sub-Contractor further warrants it has not used or specified for use and shall not use or specify for use in connection with the Sub-Contract Works any goods, materials, substances or products not in accordance with relevant British and European Standards and Codes of Practice or otherwise generally known or suspected within the construction or engineering industries at the time of use or specification (as appropriate) to be deleterious to health and safety or to the durability of the Sub-Contract Works in the particular circumstances in which they are used.
- 2.3 The Sub-Contractor shall complete the Sub-Contract Works within the Period for Completion. The Sub-Contractor shall notify the Company in writing of the date when in their opinion the Sub-Contract Works are complete and that they have complied sufficiently with their obligations under clause 2.2. The completion of the Sub-Contract Works will not be deemed to have taken place until the date thereof has been confirmed by the Company in writing and until all health and safety, fire safety and/or environmental information relevant to the Sub-Contract Works and requested by the Company has been provided to the Company in the requested format (whichever is the later); save always that completion in any event will be deemed to have taken place no later than the practical completion date under the Main Contract.
- 2.4 If at any time it becomes reasonably apparent to the Sub-Contractor that:
- 2.4.1 the progress of the Sub-Contract Works is being delayed; and/or
- 2.4.2 the Sub-Contract Works will not be completed within the Period for Completion; and/or
- 2.4.3 the Sub-Contractor has incurred or reasonably expects to incur additional costs / direct loss and expense,
- the Sub-Contractor shall, within 14 days of any such matter becoming reasonably apparent, inform the Company in writing notifying the reasons for, together with the anticipated duration of, any delay, if applicable; and/or any additional costs / direct loss and expense that the Sub-Contractor has incurred or (if it is not possible to provide a full assessment of such costs and/or direct loss and expense at the time) his best estimate of what he reasonably expects to incur as a result of the matter. When notifying of delay in accordance with this clause 2.4 the Sub-Contractor must also provide its impacted programme analysis and shall detail any steps it is taking or which could be taken in mitigation of such delay, together with detail of its labour levels for the period of the delay.
- 2.5 If following the receipt of such notice as referred to in clause 2.4, the Company is of the opinion that the cause of the matter referred to in the notice is due to:
- 2.5.1 any circumstances or occurrence (other than a breach of the Sub-Contract by the Sub-Contractor) entitling the Contractor to an extension of time for completion of the Main Contract Works and/or additional costs / direct loss and expense under the Main Contract; or
- 2.5.2 the ordering of any variation of the Sub-Contract Works to which clause 2.5.1 does not apply; or
- 2.5.3 any breach of the Sub-Contract by the Contractor,
- then in any such event the Sub-Contractor shall be entitled to such extension to the Period for Completion and to such proportion of its additional costs / direct loss and expense as may in all the circumstances be fair and reasonable, provided that it shall be a condition precedent to the Sub-Contractor's entitlement to any such extension of time and/or additional cost / direct loss and expense that the Sub-Contractor has provided notice in accordance with clause 2.4. In the event the Sub-Contractor fails to provide such notice, it shall lose its entitlement to any such extension of time and/or additional cost/direct loss and expense. Further, in no circumstances shall the relief to which the Sub-Contractor is entitled pursuant to clauses 2.5.1 or 2.5.2 exceed the relief to which the Company is properly entitled under the Main Contract.
- 2.6 For the avoidance of doubt the issue by the Company (or its agreement to) a revised programme for the Main Contract Works or Sub Contract Works does not constitute the Company's agreement that the Sub-Contractor is entitled to any extension of time without further express confirmation by the Company.
- 2.7 The Sub-Contractor shall indemnify the Company against all costs, losses, expenses, damages, claims and demands incurred by the Company or to which the Company may become liable as a result of any failure by the Sub-Contractor to complete the Sub-Contract Works within the Period for Completion including, without prejudice to the generality of the foregoing, all damages, costs, losses, payments and charges which may, in the reasonable opinion of the Company, be incurred under the Main Contract.
- 2.8 If the Sub-Contractor does not maintain progress in carrying out the Sub-Contract Works in accordance with any current programme issued or approved by the Company, the Company may supplement the Sub -Contractor's labour force or such other of the Subcontractor's resources as the Contractor may decide and the costs thereof may be deducted from payments due to the Sub-Contractor.

Liability for Defects

- 2.9 Any material defects, shrinkages or other material defaults in the Sub-Contract Works which appear within 24 months of the date of completion of the Main Contract Works (as confirmed by the practical completion certificate or similar issued in terms of the Main Contract) or such other rectification period as may be specified in the Order and which are due to design, materials or workmanship not in accordance with the Sub-Contract shall be made good by the Sub-Contractor at its own cost and to the satisfaction of the Company within 7 days (or 24 hours in the case of an emergency or other such reasonable period as instructed by the Company) after written notification from the Company.
- 2.10 The Sub-Contractor shall indemnify the Company against all costs, losses, expenses, damages, claims and demands incurred by the Company as a result of any defects in the Sub-Contract Works.

3. CONTROL OF THE WORKS

Company's Obligations

- 3.1 Where applicable, the Company shall for the purposes of the Construction (Design and Management) Regulations 2015 ("the Regulations") be the Principal Contractor (unless the Sub-Contractor is otherwise notified in writing) and shall comply with its obligations under the Regulations and all relevant health and safety legislation.
- 3.2 The Company shall provide free of charge such facilities and attendances as may be identified in the Sub-Contract (if any) PROVIDED THAT where such facilities or attendances are provided by the Company no warranty is given as to their condition or suitability for use with the Sub-Contract Works and the Sub-Contractor must satisfy himself that any such facilities and attendances are suitable for its requirements and comply with any relevant statutory requirements and codes of practice.

Sub-Contractor's Obligations

- 3.3 The Sub-Contractor shall employ only competent staff in connection with the Sub-Contract Works, and shall:
 - 3.3.1 Participate in, support and abide by the Company's ID process;
 - 3.3.2 Take all reasonable and appropriate precautions to ensure that any staff who will be placed in a position to influence vulnerable persons as a result of the Sub-Contract Works will have all relevant background checks and/or are adequately supervised;
 - 3.3.3 Ensure that all operatives attending site to carry out work on its behalf are in possession of an appropriate CSCS card and are entitled to carry out such works in compliance with any applicable immigration legislation. T&B may at its absolute discretion refuse entry to any of the Sub-Contractor's operatives who do not possess a valid CSCS card; and
 - 3.3.4 Comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015.
- 3.4 At all times during the progress of the Sub-Contract Works the Sub-Contractor shall provide a foreman or charge hand on site to supervise the Sub-Contract Works and receive instructions from the Company or the Company's site representative.
- 3.5 The Sub-Contractor shall provide all plant, tools and any other equipment including generators and temporary lighting (where appropriate) required to carry out and complete the Sub-Contract Works.
- 3.6 The Sub-Contractor shall at all times keep the site of the Sub-Contract Works and access thereto in a clean and tidy condition and shall clear away all rubbish and waste arising from the Sub-Contract Works and return all surplus usable material to a suitable store or compound in accordance with the instructions of the Company's site representative. Without prejudice to any other rights or remedies it may have the Company reserves the right to charge the Sub-Contractor for any undue wastage of the Company's materials and goods and/or any costs incurred by the Company as a result of any breach by the Sub-Contractor of the provisions of this clause.
- 3.7 Access to the site of the Sub-Contract Works shall not be exclusive and the Sub-Contractor shall liaise and co-operate with the Company's site representative and other contractors to ensure that the Sub-Contract Works are fully co-ordinated and integrated with sub-contract works undertaken by others.
- 3.8 The Sub-Contractor shall not sub-sub-contract any part of the Sub-Contract Works without the Company's prior written approval and consent. Where the Company consents to such sub-sub-contracting the Sub-Contractor shall remain wholly responsible for carrying out and completing the Sub-Contract Works in all respects and the Company shall bear no obligation or duty to any sub-sub-contractor.
- 3.9 The Sub-Contractor shall comply with its obligations under the Construction (Design and Management) Regulations 2015 and all relevant Health and Safety regulations and codes of practice and prior to commencing the Sub-Contract Works shall provide the Company with such risk assessments and method statements as the Company may, in their sole discretion, require relating to the carrying out of the Sub-Contract Works. The Sub-Contractor shall also provide evidence of compliance with the Construction (Design and Management) Regulations 2015 and all relevant Health and Safety or environmental regulations and/or codes of practice in a format as directed by the Company. This shall be provided promptly on any Company request.

- 3.10 Unless otherwise stated in the Sub-Contract, working hours on site shall be as agreed prior to commencement between the Company and the Sub-Contractor, or such other times as may be required by any relevant authority or as may be varied by the Company.
- 3.11 Where the Sub-Contractor is responsible for managing waste (either as a Sub-Contractor or waste management contractor), it shall:
- 3.11.1 Manage (including collection, storage, segregation and treatment/disposal) the different types of waste in line with the agreed waste management method outlined at the Pre-Order Meeting; and
 - 3.11.2 Monitor and report at least monthly to the Company waste manager the quantities of the different types of waste managed, the split of each different type of waste according to waste management method – re-use, recycling, recovery (on or off site) and the quantity of waste materials sent to landfill.

Variations

- 3.12 The Company may issue to the Sub-Contractor such instructions as it sees fit to vary and modify the quantity or quality of the Sub-Contract Works (including any design, where applicable) or any other matter which may affect the carrying out of the Sub-Contract Works including, but not limited to the following:
- 3.12.1 any addition, omission or substitution of work.
 - 3.12.2 the alteration of the kind or standard of any materials or goods for use in the Sub-Contract Works; and
 - 3.12.3 obligations or restrictions relating to access, working space or working hours.
- 3.13 Any instruction issued by the Company shall be effective if:
- 3.13.1 it is in writing from the Company; or
 - 3.13.2 a verbal instruction is confirmed in writing by the Company within 7 days of the date of the verbal instruction.
- 3.14 No instructions issued by the Company or subsequently sanctioned by it shall vitiate this contract. The Sub-Contractor shall comply with any instruction from the Company immediately upon receipt.
- 3.15 The Company and the Sub-Contractor may agree in writing an appropriate adjustment to the Sub-Contract Sum resulting from an instruction by the Company at any time prior to or after compliance with such instruction and any payment due to the Sub-Contractor shall be made in accordance with these terms and conditions, provided that it shall be a condition precedent to payment of any additional amount as a result of an instruction under clause 3.12 that the instruction satisfies the requirements of clause 3.13. The Sub-Contractor shall not be entitled to loss of profit on any part of the Sub-Contract Works that are omitted.
- 3.16 Where the Company and the Sub-Contractor have not agreed or cannot agree an appropriate adjustment to the Sub-Contract Sum under clause 3.15 above the Sub-Contract Sum shall be adjusted as follows:
- 3.16.1 where any additional, substituted or omitted work is of a similar nature or character to any parts of the Sub-Contract Works such works shall be valued by reference to the appropriate figures and/or methodology referred to or contained within the Sub-Contract (if any);
 - 3.16.2 otherwise, such work shall be valued at fair rates and prices as determined by the Company, and any payment due to the Sub-Contractor shall be made in accordance with these terms and conditions.

Dayworks

- 3.17 No payment shall be made on a daywork basis unless the extent and nature of such work and rates and prices have been agreed by the Company in writing prior to the Sub-Contractor commencing any such works.
- 3.18 Where the Company has agreed to make payments on a daywork basis the Sub-Contractor shall submit daywork sheets/vouchers containing such details as the Company may require within 5 days of carrying out such work.
- 3.19 The Sub-Contractor shall ensure that all daywork sheets/vouchers are signed by the Company's site representative and/or contracts manager before including such daywork sheets/vouchers in any application for payment in accordance with these terms and conditions.
- 3.20 Signature by the Company's site representative and/or contracts manager of any daywork sheets/vouchers shall be for the sole purpose of verifying the amount of time spent and shall not be deemed to amount to any authorisation or confirmation of cost or that such works have been carried out satisfactorily.
- 3.21 It shall be a condition precedent to the Sub-Contractor's entitlement to payment on a daywork basis that clauses 3.17, 3.18 and 3.19 have been fully complied with. If the Sub-Contractor has not so complied it will lose its entitlement to be paid for the relevant dayworks, to the extent of such non-compliance.

Bribery/corruption

- 3.22 The Sub-Contractor shall, and shall procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Sub-Contract shall:
- 3.22.1 not commit any act or omission which causes or could cause it or the Company to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;

- 3.22.2 keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with this Sub-Contract and the steps it takes to comply with this clause 3.22, and permit the Company to inspect those records as reasonably required;
- 3.22.3 promptly notify the Company of:
 - 3.22.3.1 any request or demand for any corrupt financial or other advantage received by it; and
 - 3.22.3.2 any corrupt financial or other advantage it gives or intends to give whether directly or indirectly in connection with this Sub-Contract; and
 - 3.22.3.3 any breach of this clause 3.22.

4. PAYMENT

- 4.1 The Company shall pay the Sub-Contractor the Sub-Contract Sum (together with any proper adjustments) for carrying out the Sub-Contract Works:
 - 4.1.1 In accordance with clauses 4.4 to 4.8 ("Final Account"); and/or
 - 4.1.2 Where and to the extent that the Sub-Contract is a construction contract within the meaning of the Construction Act, then payment shall be made in accordance with either clause 4.2 or 4.3 below (whichever is applicable, subject to any contrary provision stated in the Order or the Pre-Commencement Meeting minutes).
- 4.2 Where the Period for Completion is less than 45 working days the Sub-Contractor shall not be entitled to receive any stage or interim payments and any such stage or interim payments shall be entirely at the Company's discretion and dealt with in line with clause 4.3.
- 4.3 Where it is stated in the Order that the Period for Completion is 45 days or more:
 - 4.3.1 The Sub-Contractor shall be entitled to interim payments.
 - 4.3.2 The amount of each interim payment shall be the aggregate of the value of all work properly performed and all other sums properly incurred from the date of commencement of the Sub-Contract Works up to the Due Date calculated in accordance with these terms and conditions LESS the aggregate sum of the amounts paid or due to be paid in all previous interim payments and any other sums which the Company may be entitled to deduct or claim under these terms and conditions or otherwise.
 - 4.3.3 The Sub-Contractor shall submit a fully detailed application for payment ("the Application for Payment") together with all reasonable substantiation to the Company, and shall ensure that such Application for Payment is received by the Company on or before the relevant Valuation Date identifying the value of the Sub-Contract Works completed and all sums properly projected to be due at the relevant Due Date.
 - 4.3.4 It is a condition precedent that the Application for Payment is received by the Company in accordance with clause 4.3.3.
 - 4.3.5 If the Company receives the Application for Payment later or otherwise than is required by clause 4.3.3, then that Application for Payment shall be invalid and of no effect.
 - 4.3.6 An Application for Payment submitted in accordance with clause 4.3.3 is not eligible to become a default Payment Notice unless: a) it provides full details of, and reasonable substantiation for, the net sum due and the basis upon which it has been calculated; and b) the Sub-Contractor can provide evidence that it was received by the Company no later than the Valuation Date.
 - 4.3.7 Within 5 days of each Due Date the Company may give a Payment Notice to the Sub-Contractor specifying the amount of the payment to be made and the basis on which such amount is calculated (a "Payment Notice").
 - 4.3.8 An Application for Payment submitted in accordance with clause 4.3.3 or any final payment due pursuant to clause 4.7 or any request for retention release pursuant to clause 4.11 shall be paid within 35 days of its Due Date or Final Due Date as appropriate ("the Final Date for Payment").
 - 4.3.9 If the Company intends to pay less than the amount stated in a Payment Notice (or any form of final valuation/ascertainment by the Company, any Application for Payment or any form of default payment notice or similar) then the Company shall give a Pay Less Notice to the Sub-Contractor not later than 1 day before the Final Date for Payment specifying the revised amount of the payment to be made and the basis on which such amount is calculated.
 - 4.3.10 Where any Due Date, Final Due Date, Final Date for Payment and/or deadlines for valid Payment or Pay Less Notices are varied by the Order such variation shall take effect, save that the period of 5 days for the issuing of the Payment Notice after the Due Date cannot be amended by the Order.
 - 4.3.11 Notwithstanding any other provision of the Sub-Contract, save in circumstances where the Sub-Contractor has 'self-billing' status for the purposes of VAT, it shall be a condition precedent to the Sub-Contractor's entitlement to any payment under the Sub-Contract that he shall have issued to the Company a valid VAT invoice within 7 days of the relevant Due Date. In the event that there is no such invoice, the relevant Due Date shall be delayed until the date which is 14 days after provision of such invoice and interest shall not be payable in respect of any such delay.

- 4.3.12 All interim payments shall be on account, shall be subject to adjustment and review following completion of the Sub-Contract Works and shall not signify any approval by the Company of workmanship or materials.
- 4.3.13 All and any right(s) to interim payments shall cease on the Due Date falling in the calendar month after completion of the Sub-Contract Works.

Final Account

- 4.4 Within 2 months of the date of completion of the Sub-Contract Works the Sub-Contractor shall submit its proposed final account (which shall be in accordance with clause 4.5) representing the Sub-Contractor's calculation of the total value of the Sub-Contract Works carried out by the Sub-Contractor and calculated in accordance with the Sub-Contract for the Company's ascertainment of the value of the Sub-Contract Works. The Company shall notify the Sub-Contractor of its valuation of the Sub-Contract Works within 60 days of the end of the calendar month in which the Sub-Contractor's account representing the value of the Sub-Contract Works was received.
- 4.5 The Sub-Contractor's proposed final account shall contain all reasonable substantiation for the sum claimed, together with such details and/or records as the Company may reasonably require in order to properly ascertain the value of the Sub-Contract Works and calculate the final payment.
- 4.6 If the Sub-Contractor fails to submit the documents or information required in clauses 4.4 and/or 4.5 within 2 months of the date of completion of the Sub-Contract Works the Company may value the Sub-Contract Works from the information then in its possession and notify such valuation to the Sub-Contractor. If the Sub-Contractor does not dissent from the Company's valuation (pursuant to either clause 4.4 or this 4.6, as the case may be) ("the Company's Valuation") within 3 months of the date of its submission to the Sub-Contractor, then the Company's Valuation shall have effect in any proceedings under or arising out of or in connection with the Sub-Contract as conclusive evidence that any necessary effect has been given to all the terms of the Sub-Contract which require an amount to be added to or subtracted from the Sub-Contract Sum and that all and only such extensions of the Period for Completion as are due under clause 2.5 have been given. For the avoidance of doubt if the Sub-Contractor does not challenge the Company's Valuation in accordance with this clause 4.6 it shall lose its entitlement to do so.
- 4.7 Any interim payments paid or due to be paid to the Sub-Contractor by the Company under clause 4.3 or otherwise shall be deducted from the Company's Valuation as applicable and any balance shall be the final payment due to the Sub-Contractor from the Company or the final payment due to the Company from the Sub-Contractor as appropriate.
- 4.8 The due date for payment of the final payment calculated under clause 4.7 ("Final Due Date") shall be 24 months after the date of completion of the Sub-Contract Works. Payment thereafter will be dealt with in accordance with clause 4.3.7 to 4.3.11.

Discretionary Assessment

- 4.9 Notwithstanding any other provision of the Sub-Contract, the Company may at any time whatsoever (including without limitation between Due Dates), but without obligation; make an assessment of the aggregate of the value of all work properly performed and all other sums properly incurred and/or owing in relation to the Sub-Contract Works up to the selected assessment date (which shall be an additional Due Date), and otherwise calculated in accordance with the Sub-Contract (the "Assessment"). To the extent that any Assessment shows that a sum is due and owing to the Company, such difference shall be a debt due and payable by the Sub-Contractor by a final date for payment which shall fall 7 days after the additional Due Date. That sum shall be paid by the Sub-Contractor without any right of set-off and/or deduction.

Interest

- 4.10 In the event that the Company fails to make payment in accordance with these terms and conditions the Sub-Contractor shall in addition to the outstanding sum be entitled to simple interest thereon at the rate of 3% per annum above the base rate of the Bank of England current at the date of payment calculated from the date the sum became overdue to the date payment is received. The Parties confirm and agree that the foregoing provisions of this clause 4.10 constitute a "substantial remedy" for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

Retention

- 4.11 Subject to this clause 4.11 the Company may deduct from any interim payment due to the Sub-Contractor a sum equivalent to 5% (or such other amount as may be identified in the Order) of each such payment by way of retention. This retention shall be released in two stages and subject always to clause 4.11.3:
 - 4.11.1 The Sub-Contractor shall make a written request for release of the first half of retention upon or following practical completion of the Sub-Contract Works. The due date for payment of such amount shall be 6 months after the date of receipt by the Company of the written request and payment thereafter will be dealt with in accordance with clause 4.3.7 to 4.3.11. The Company may, at its discretion, release these monies earlier.
 - 4.11.2 No earlier than (a) 21 months following practical completion of the Sub-Contract Works, or (b) 14 days after any earlier expiry of such other rectification period as may be identified in the Order; the Sub-Contractor shall make a written request for release of the second half of the retention. Any balance of retention due to the Sub-Contractor from the Company shall then become due with the Final Account and in accordance with clauses 4.3.7 to 4.3.11 and 4.8. The Company may, at its discretion, release all or part of these monies earlier.
 - 4.11.3 At all times any sum due pursuant to clause 4.11 shall be subject to the agreement of the Company that any defects in the Sub-Contract Works have, as at the relevant due date, been completed to its satisfaction and in accordance with clause 2.9, and subject also to any sums as may be properly deductible pursuant to clauses 2.9, 2.10 or otherwise. To the extent that any sums properly deductible from the retention exceed the balance

of the retention held by the Company, the Sub-Contractor shall repay the same to the Company within 7 days of written request from the Company, after which time the same shall be recoverable from the Sub-Contractor as a debt.

Set-Off

- 4.12 The Company may at any time, set-off any liability of the Sub-Contractor to the Contractor (whether established following an Assessment or otherwise) against any liability of the Company to the Sub-Contractor, whether any such liability is present or future, liquidated or unliquidated, and whether or not any such liability arises under the Sub-Contract or any other contract between the Company and the Sub-Contractor. Any exercise by the Company of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Sub-Contract or otherwise.
- 4.13 The Company's rights of deduction or set-off set out at clause 4.12 shall be in addition to all common law rights of set-off or deduction and any other rights, remedies, actions, claims or demands which the Company may have against the Sub-Contractor and shall not affect the Company's right to recover any further sums due to it under this agreement or generally.

Construction Industry Scheme

- 4.14 Notwithstanding any other provisions under these terms and conditions, the Company shall not be under any obligation to make any payments to the Sub-Contractor, unless the Sub-Contractor has provided the Company with written confirmation of its registered status under the Construction Industry Scheme pursuant to the Income Tax (Sub-Contractors in the Construction Industry) (Amendment) Regulations 1998 (or any amendments thereto).

Value Added Tax

- 4.15 The Company shall pay to the Sub-Contractor any value added tax properly chargeable on the supply to the Company of any goods and services under this agreement to the extent that the same is payable by the Company pursuant to the domestic VAT reverse charge.
- 4.16 The Company may at any time request appropriate evidence of the Sub-Contractor's current VAT registration status. Where the Sub-Contractor fails to provide such evidence within 14 days of its request the Company may withhold any amounts attributable to VAT on any outstanding payments.

5. STATUTORY OBLIGATIONS

- 5.1 The Sub-Contractor shall at its own expense comply with and give all notices or obtain all consents required by any statute, statutory regulations, orders or the like required in connection with the Sub-Contract Works and shall provide all relevant details to the Company.
- 5.2 The Sub-Contract Sum shall include the cost of obtaining and/or complying with all appropriate regulations and consents and the Sub-Contractor shall indemnify the Company against all costs, losses and expenses it may incur as a result of any breach by the Sub-Contractor of such regulations and consents.

6. INJURY DAMAGE AND INSURANCE

- 6.1 The Sub-Contractor shall be liable for and shall indemnify and save harmless the Company against and from any loss, expense, claim or proceedings whatsoever in respect of:
- 6.1.1 Any breach, non-observance or non-performance by the Sub-Contractor, his servants or agents of the said provisions of the Sub-Contract or any of them;
 - 6.1.2 Any act or omission of the Sub-Contractor, his servants, or agents which involves the Company in any liability to the Employer under the Main Contract;
 - 6.1.3 All claims which may be made whether under statute or common law or otherwise howsoever arising out of or in connection with the Sub-Contract Works by any person or corporation whomsoever including the Company in respect of injuries to or the death of any person or in respect of damage to property including (without limitation) the Main Contract Works and the Sub-Contract Works not caused by the negligence of the Company; and
 - 6.1.4 Any loss or damage resulting from any claim under any statute in force for the time being or at common law or otherwise by an employee, servants and/or agents of the Sub-Contractor in respect of personal injury arising out of or in the course of his employment.
- 6.2 The Sub-Contractor shall also be liable for and shall indemnify and save harmless the Company against and from liability for loss or damage to the Sub-Contract Works and/or materials goods or plant.
- 6.3 Plant, tools, equipment or other property belonging to or provided by or on behalf of the Sub-Contractor, his servants or agents and any materials which are not property on site for incorporation into the Sub-Contract works shall be at the sole risk of the Sub-Contractor and any loss or damage to the same shall be the liability of the Sub-Contractor save where the terms of clause 6.5 below applies.
- 6.4 The Sub-Contractor shall adequately insure against risks of loss or damage to the Sub-Contract Works, temporary works not intended for incorporation into the Sub-Contract works, materials, goods or plant for the full re-instatement value of the Sub-Contract works including the physical loss or damage to the works executed and site materials, the removal of

debris and shoring and propping of the works which results from physical loss or damage and professional fees and shall produce on demand policies for such insurance, together with receipts for premium for inspection by the Company.

- 6.5 The exception to the responsibility under clause 6.3 relates to loss or damage to the Sub-Contract Works and materials for incorporation therein only, insofar as loss of or damage caused by fire, storm, tempest, lightning, flood, escape of water, earthquake, aircraft or anything dropped therefrom, aerial objects, riot, civil commotion, is concerned, where, the Sub-Contractor will be granted full access to the insurances taken out by either the Employer under the Main Contract or the Company up (policy excesses excepted) until completion of the Sub-Contract works.
- 6.6 Unless indicated otherwise in the Sub-Contract, the cover requirements upon the Sub-Contractor are as follows:
- 6.6.1 Public liability - £10,000,000 for any one event or series of events arising from incident in relation to scaffolding, piling, asbestos, demolition and cladding works, or £5,000,000 for each and every occurrence or series of occurrences arising from any other one event;
- 6.6.2 Employer's liability - £10,000,000 for each and every occurrence or series of occurrences arising from one event; and
- 6.6.3 If the Sub-Contractor has any design responsibility under the Sub-Contract, Professional Indemnity to cover any design responsibilities for an amount of at least £2,000,000 for any one occurrence or series of occurrences arising out of any one event shall be held and maintained by the Sub-Contractor for a period of 12 years from practical completion of the Sub-Contract Works.
- 6.7 When required to do so, the Sub-Contractor shall provide such evidence as the Company may reasonably require that the insurances referred to in this clause 6 are being maintained. If the Sub-Contractor is unable to provide the evidence that the Company reasonably requires that such insurances are being maintained the Company may itself take out any such insurances and set off against any payment otherwise due to the Sub-Contractor or deduct from any payment otherwise due to the Sub-Contractor or otherwise recover from the Sub-Contractor the premiums for such insurance.

7. DETERMINATION

- 7.1 If the Sub-Contractor shall make default in any of the following respects:
- 7.1.1 Wholly or substantially suspends the carrying out of the Sub-Contract Works without reasonable cause;
- 7.1.2 Fails to proceed regularly and diligently with all or any part of the Sub-Contract Works;
- 7.1.3 Sub-contracts the whole or any part of the Sub-Contract Works without the Company's prior written approval and consent;
- 7.1.4 Fails to comply with an instruction requiring the removal of work, materials or goods which are not in accordance with the Sub-Contract;
- 7.1.5 Fails to comply with any programme or any amendments or revisions to such programme or any instructions or requests from the Company;
- 7.1.6 Fails to proceed with the rectification of any defects arising during the execution of the Sub-Contract Works or the defects liability period set out at clause 2.8 with reasonable diligence;
- 7.1.7 Fails to provide and maintain sufficient or adequate labour on site to comply with any programme or to remedy any delay in respect of all or any part of the programme;
- 7.1.8 Causes or fails to prevent any loss or damage to all or any part of the Sub-Contract Works or the Main Contract Works as a result of any act, omission or default on the part of the Sub-Contractor;
- 7.1.9 Fails to comply with any duties or obligations in respect of health and safety legislation, regulation and/or codes of practice; or
- 7.1.10 Commits any other breach of any of its obligations or duties contained within the Sub-Contract, the Company may (without prejudice to any other rights or remedies), issue a written notice to the Sub-Contractor specifying the default or defaults (the 'specified default or defaults').
- 7.2 If the Sub-Contractor continues a specified default for 7 days from receipt of the notice under clause 7.1 (or such shorter period as the notice may specify) the Company may on, or within 21 days from, the expiry of the specified notice period by a further notice to the Sub-Contractor terminate the Sub-Contractor's employment under the Sub-Contract.
- 7.3 If the Company does not give the further notice referred to in clause 7.2 (whether as a result of the ending of any specified default or otherwise) but the Sub-Contractor repeats a specified default (whether previously repeated or not), then upon or within a reasonable time after such repetition, the Contractor may by notice to the Sub-Contractor terminate the Sub-Contractor's employment under the Sub-Contract.
- 7.4 Forthwith upon determining the Sub-Contractor's employment under the Sub-Contract pursuant to clauses 7.2, 7.3 or 7.6 and thereupon the Company may take possession of all goods and materials, Sub-Contractor's equipment and other things whatsoever brought on to the site by the Sub-Contractor and may use them for the purpose of carrying out,

completing and maintaining the Sub-Contract Works and may, if he thinks fit, sell all or any of them and apply the proceeds in or towards the satisfaction of monies otherwise due to the Company from the Sub-Contractor.

- 7.5 If the Company's employment under the Main Contract is determined for any reason the Sub-Contractor's employment under the Sub-Contract shall thereupon also determine with immediate effect.
- 7.6 If the Sub-Contractor:
- 7.6.1 makes a proposal for a voluntary arrangement or is subject to an Administration Order or has a Provisional Liquidator appointed or has a Winding Up Order made or passes a resolution for voluntarily winding up (other than for amalgamation or reconstruction) or is otherwise "insolvent" for the purposes of Section 113 (2) of the Housing Grants, Construction and Regeneration Act 1996 (as amended); or
 - 7.6.2 is, in the reasonable opinion of the Company, in breach of the Company Policies or any other obligations under clause 3.22; or
 - 7.6.3 is, in the reasonable opinion of the Company, believed to have engaged in anti-competitive behaviour, such that the actions of the Sub-Contractor would be in contravention of the Competition Act 1998 and/or the Enterprise Act 2002; or
 - 7.6.4 commits a breach of contract which is considered by the Company to be of a fundamental or repudiatory nature; the Company may at any time thereafter by written notice determine this agreement, such determination to be effective upon receipt of such notice.
- 7.7 Without affecting any other right or remedy available to it, the Company may terminate the Sub-Contract at will on giving written notice to the Sub-Contractor.

Effect of Determination

- 7.8 Upon determination of the Sub-Contractor's employment under the Sub-Contract, howsoever caused, the Sub-Contractor shall (save as otherwise provided for in clause 7.4) remove from the site of the Works all its temporary works, plant, tools, goods and materials not intended for incorporation into the Sub-Contract Works provided that property in any such items shall not have passed to the Company under these terms and conditions.
- 7.9 Upon determination of the Sub-Contractor's employment under the Sub-Contract pursuant to clauses 7.2, 7.3, 7.5 (where the determination of the Main Contract was caused by an act, omission or default of the Sub-Contractor) or 7.6 and notwithstanding anything contained in these terms and conditions:
- 7.9.1 The Sub-Contractor shall not be entitled to receive any further payments until the Company has completed the remainder of the Sub-Contract Works and has agreed the total cost of carrying out any such works with an alternative contractor;
 - 7.9.2 the Company shall be entitled to set-off and/or recover from the Sub-Contractor all costs, losses, damages and expenses incurred or which have or may in the opinion of the Company be incurred by the Company by reason of the determination of the Sub-Contractor's employment under the Sub-Contract including (without limitation) the costs incurred in completing the remainder of the Sub-Contract Works;
 - 7.9.3 within 3 months of completing any remaining Sub-Contract Works and agreeing the total cost of such works with an alternative contractor the Company may, or upon receipt of a written request from the Sub-Contractor will, provide an account to the Sub-Contractor identifying any balance owing to either the Company or the Sub-Contractor. Such balance shall become due 45 days after submission of the Company's account to the Sub-Contractor; and
 - 7.9.4 the Sub-Contractor shall not be entitled to loss of profit.
- 7.10 The rights and remedies set out in clauses 7.4, 7.8 and 7.9 shall be in addition to any other rights, remedies, actions, claims or demands which the Company may have against the Sub-Contractor and shall not affect the Company's right to recover any further sums due to it under this agreement or generally.
- 7.11 Upon determination of the Sub-Contractor's employment under the Sub-Contract pursuant to clauses 7.5 (where the determination of the Main Contract was not caused or materially contributed to by an act, omission or default of the Sub-Contractor) or clause 7.7, the Sub-Contractor shall submit a final account to the Company in accordance with the procedures set out in 4.4 to 4.8 (such clauses shall apply equally as from the date of determination in lieu of completion).
- 7.12 If the employer under the Main Contract becomes "insolvent" for the purposes of Section 113 (2) of the Housing Grants, Construction and Regeneration Act 1996 (as amended) then no further sums shall become due to the Sub-Contractor after the date of such insolvency, and the Company shall not be required to make any further payment to the Sub-Contractor whatsoever.

8. SETTLEMENT OF DISPUTES

- 8.1 If any dispute or difference shall arise between the parties at any time in connection with this agreement then either party may refer such dispute or difference to Adjudication and the Scheme for Construction Contracts (England and Wales) Regulations 1998 Part 1 (as amended) shall apply. The Adjudicator nominating body shall be the Royal Institution of Chartered Surveyors.

- 8.2 The decision of the Adjudicator shall be binding on the parties until the dispute or difference is finally determined by legal proceedings, Arbitration (if agreed) or by an agreement in writing between the parties made after the decision of the Adjudicator.
- 8.3 The parties shall without prejudice to their other rights under this agreement, comply with the decision of the Adjudicator and shall ensure that the decision of the Adjudicator is given effect.
- 8.4 If either party does not comply with the decision of the Adjudicator or give effect to such decision the other party shall be entitled to take court proceedings to secure such compliance pending any final determination of the dispute or difference.

9. COLLATERAL WARRANTIES

- 9.1 Wherever the Sub-Contract Works include design by the Sub-Contractor, and/or where it is stated in the Order that collateral warranties are required the Sub-Contractor shall within 14 days of receipt of the Company's written request (or such other period as is specified in the Order):
 - 9.1.1 enter into collateral warranties in the form(s) appended to the Sub-Contract and/or provided for in the Main Contract (or such other similar form(s) as the Company may reasonably require) in favour of any employer, developer, purchaser, tenant and/or funder in connection with the Sub-Contract Works; and
 - 9.1.2 procure that any approved sub-contractor or sub-consultant engaged by the Sub-Contractor enters into collateral warranties in the form(s) appended to the Sub-Contract (or such other similar form(s) as the Company may reasonably require) in favour of the Company and any employer, developer, purchaser, tenant and funder in connection with the elements of the Works and/or Sub-Contract Works for whom they are responsible.
- 9.2 Until such time as the Sub-Contractor has provided any collateral warranties required by the Company pursuant to clause 9.1, the Company may withhold all payments that would otherwise be due to the Sub-Contractor.

10. COPYRIGHT LICENCE & CONFIDENTIALITY

- 10.1 The Sub-Contractor hereby grants to the Company an irrevocable royalty free non-exclusive licence to use and reproduce all drawings, details, plans, specifications, schedules, reports, calculations and other work and the designs contained in them which have been or are hereafter written, originated or made by or on behalf of the Sub-Contractor for any purpose whatsoever connected with the Works including but without limitation the execution, completion, maintenance, letting, management, sale, advertisement, extension, alteration, reinstatement and repair thereof. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.
- 10.2 The Sub-Contractor shall not shall not (at any time during the Works or for five years after completion or termination of them) disclose to any person any confidential information concerning the Company's business, affairs, customer, clients or suppliers except:
 - 10.2.1 To the extent necessary for the Sub-Contractor to price, resource and/or carry out the Sub-Contract Works;
 - 10.2.2 To the extent expressly authorised in writing by the Company; and/or
 - 10.2.3 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11. NOTICES

Any notice under these terms and conditions shall be given in writing and shall be sent by either pre-paid registered first class post to the relevant party's address stated in the Order (and shall be deemed to have been received 48 hours after the date of posting) or transmitted by e-mail to an e-mail address agreed between the parties, and still in active use at the time the notice is sent.

12. THIRD PARTY RIGHTS

- 12.1 Nothing in the Sub-Contract shall confer any rights to enforce any term of the Sub-Contract under the Contracts (Rights of Third Parties) Act 1999 on any person who is not named as a party to this agreement.

13. LIMITATION PERIOD

- 13.1 It is acknowledged that whatever the manner in which this agreement may have been executed the period of limitation applicable to any claim or claims arising out of or in connection with this agreement shall be twelve years from the date of practical completion of the Main Contract Works pursuant to the provisions of the Main Contract and accordingly the Sub-Contractor shall not be entitled to rely upon a defence pursuant to section 5 or section 8 of the Limitation Act 1980.
- 13.2 Notwithstanding any other provision of the Sub-Contract, the Sub-Contractor agrees that it shall not be entitled to contend in defence of proceedings under the Sub-Contract or otherwise that clause 13.1 is void or unenforceable by virtue of the Unfair Contract Terms Act 1977.

14. GOVERNING LAW AND JURISDICTION

14.1 Subject to any specific agreement to the contrary contained in the Order, any contract governed by these terms and conditions shall be governed by and construed in accordance with the laws of England, and the parties hereby submit to the exclusive jurisdiction of the English courts.

15. ASSIGNMENT

15.1 The Sub-Contractor shall not assign, transfer, mortgage, charge, subcontract, factor, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Sub-Contract without the Company's prior written consent.

15.2 The Company may, assign, transfer or charge any or all of its rights and obligations under this Sub-Contract without the consent of the Sub-Contractor.

16. WAIVER

16.1 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 breach or default.

16.2 A failure or delay by the Company to exercise any right or remedy provided under 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.