

# SUB-CONTRACT TERMS & CONDITIONS

## 1. DEFINITIONS

In these Terms and Conditions, the following word and expressions shall have the following meanings:

- 1.1 "Contractor" means Cold Clad Ltd.
- 1.2 "Employer" means the party or parties to the Main Contract other than the Main Contractor.
- 1.3 "Main Contract" means the contract between the Employer and the Main Contractor.
- 1.4 "Main Contractor" means the person whom the Contractor is employed pursuant to the Main Contract.
- 1.5 "Sub-Contractor" means the company, firm or person specified within the Sub-Contract, including any of his agents or third parties acting on his behalf.
- 1.6 "Sub-Contract" means the agreement between the Contractor and the Sub-Contractor which is governed by these Terms and Conditions.
- 1.7 "Sub-Contract Documents" means those documents described within the Sub-Contract Order, including these Terms and Conditions.
- 1.8 "Sub-Contract Order" means the Order to which these Terms and Conditions are attached.
- 1.9 "Sub-Contract Sum" means the sum stated in the Sub-Contract Order.
- 1.10 "Sub-Contract Works" means the works to be undertaken by the Sub-Contractor as defined in the Sub-Contract Order and carried out pursuant to these Terms and Conditions.
- 1.11 "Main Contract Works" means the works to be undertaken by the Main Contractor pursuant to the Main Contract.
- 1.12 "Commencement Date" means the date specified as the Commencement Date for the Site Works under this Subcontract.
- 1.13 "Notice to Commence" means a notice given by the Contractor to the Sub-Contractor requiring the Sub-Contractor to Commence the Sub-Contract Works on Site.

## 2. MAIN CONTRACT AND OTHER CONDITIONS

- 2.1 The Subcontractor shall observe perform and comply with all provisions of the Main Contract, and the Subcontract between the Main Contractor and the Contractor, that the Sub-Contractor has had reasonable opportunity to inspect (except for details of prices of the Contractor and/or Main Contractor included therein) so far as they relate to the Sub-Contract Works. The Main Contract and The Sub-Contract between the Main Contractor and the Contractor are both available for inspection upon request.
- 2.2 These Terms and Conditions shall apply to the Sub-Contract Order and all works carried out thereunder. No amendments to the Terms and Conditions shall apply unless agreed by both parties and confirmed in writing as an addendum to the Terms and Conditions.
- 2.3 Subject to Clause 2.2, any Terms and Conditions of Contract or other requirements or stipulations proposed by or on behalf of the Sub-Contractor or contained in any specification, quote or other documents proffered by or on behalf of the Sub-Contractor are excluded from and shall not become incorporated into or affect the Sub-Contract Order, or the Terms and Conditions and any reference in the Sub-Contract Order to any such document shall be solely for the purpose of identifying the Sub-Contract Works and/or the subject matter of the Sub-Contract Order.

## 3. GENERAL OBLIGATIONS

- 3.1 The Sub-Contractor shall with proper diligence carry out and complete the Sub-Contract Works in accordance with the Sub-Contract Order and any document referred to therein and in conformity with the reasonable directions of the Contractor whenever given, to the satisfaction of the Contractor and in accordance with the requirements of the Sub-Contract between

the Main Contractor and the Contractor so far as such requirements are applicable to the Sub-Contract Works.

- 3.2 If any conflict appears between any provisions of the Main Contract and the Sub-Contract, then the latter shall prevail. Should any conflict appear between these Conditions and any other Sub-Contract Documents then the former shall prevail.
- 3.3 The Sub-Contractor warrants that:
  - (a) All goods and materials supplied pursuant to the Sub-Contract Order shall be merchantable quality, fit for their intended purpose, not deviate from the specification set out in the Sub-Contract Order or any instruction given by the Contractor, and conform to all relevant British Standards and Codes of Practice.
  - (b) All workmanship shall be executed with proper skill and care and be the best of its kind.
- 3.4 Where the Sub-Contract Order requires and where the Sub-Contractor otherwise undertakes the design of the Sub-Contract Works or any part thereof:
  - (a) In carrying out such design, the Sub-Contractor shall exercise all the reasonable skill, care and diligence to be expected of a duly qualified and experienced designer undertaking the design of works similar in scope and character to the Sub-Contract Works.
  - (b) Such design shall be executed in accordance with such information and instructions provided by the Contractor.
  - (c) The Sub-Contractor shall satisfy itself that any information and instructions issued by the Contractor in accordance with Clause 3.4(b) is sufficient and accurate for the purpose of such design and shall notify the Contractor in writing of any inconsistency, insufficiency or inaccuracy within a reasonable time prior to the commencement of Sub-Contract Works on site save that where such information and/or instruction are issued after commencement of the Sub-Contract Works on site the Sub-Contractor shall notify the Contractor within a reasonable time after the receipt of thereof such inconsistency, insufficiency or inaccuracy.
  - (d) The Sub-Contractor shall accept full responsibility and liability for defects in the Design of the Sub-Contract Works or any part of thereof to the extent that the Sub-Contractor has carried out the Design, including any failure to meet or comply with information and instructions.
  - (e) The Sub-Contractor or any of his designers shall provide reasonable details of the PI insurance cover he has in place when requested by the Contractor.
- 3.5 Where the Sub-Contractor is responsible for or otherwise undertakes the design of the Sub-Contract Works or any part thereof the Sub-Contractor shall supply to the Contractor and any other parties specified by the Contractor such number of copies in such format as the Contractor may reasonably require of the Working Drawings. The Working Drawings shall be supplied in such time as to enable the Contractor to comply with the requirements of the Main Contract, and the Sub-Contract between the Main Contractor and the Contractor.
- 3.6 The copyright in all designs, drawings, details, specifications, reports, calculations and other documents prepared by the Sub-Contractor in connection with the Sub-Contract Works shall remain vested in the Sub-Contractor, but the Contractor shall have irrevocable, non-exclusive, royalty-free license (such license carrying the right to grant sub-licenses and to be transferable without the consent of the Sub-Contractor) to copy and use the Documents and to reproduce the designs and contents of them for any purpose relating to the Main Contract Works.
- 3.7 No approval, review, comment, consent, advice or indication of satisfaction given by or on behalf of the Contractor will reduce, extinguish, exclude, limit or modify the Sub-Contractor's obligations under the Sub-Contract Order. If the Sub-Contractor

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considers any comment given by or on behalf of the Contractor constitutes a variation, then the Sub-Contractor must request an instruction.

- 3.8 The Sub-Contract will be deemed to have commenced on the date when the Sub-Contractor began to carry out the Sub-Contract Works and any Sub-Contract Works carried out prior to the date of a Sub-Contract Order shall be treated as having been carried out under the terms of this Sub-Contract which shall supersede any previous agreements with regard to the Sub-Contract Works and any payments made shall be deemed to have been made on account of the Sub-Contract Sum.
- 3.9 The Sub-Contractor shall not assign the Sub-Contract or sub-let any portion of the Sub-Contract Works without the written consent of the Contractor provided always that if such consent is given it shall not relieve the Sub- Contractor from any of his obligations, duties or liabilities under the Sub-Contract.
- 3.10 The commencement of the Sub-Contract Works will be deemed to signify the acceptance by the Sub-Contractor that the conditions of the site are ready to receive the Sub-Contract Works and are satisfactory to enable the Sub- Contractor to properly carry out the Sub-Contract Works.
- 3.11 The Sub-Contractor shall exercise all proper care in the use of plant, equipment, materials or other property supplied by the Contractor to carry out the Sub-Contract Works. The plant, equipment, materials or other property belonging to the Sub-Contractor (other than materials or goods on site for use in the Sub-Contract Works) shall be at the sole risk of the Sub-Contractor and any loss or damage to the same, or caused by the same, shall be the sole liability of the Sub-Contractor who shall indemnify the Contractor against any loss, claims or proceedings arising therefrom.
- 3.12 It shall be a condition precedent to payment that Collateral Warranties will be provided by the Sub-Contractor as reasonably requested by the Contractor.
- 3.13 It shall be a condition precedent to payment that the Sub-Contractor provides the Contractor with all Operation and Maintenance documents, certifications, inspection and test records, any specialist manufacturer guarantees or warranties in relation to materials or goods supplied under the Sub-Contract Order, and all other documents and records that the Sub-Contractor is obliged to provide in accordance with the Sub-Contract Order.
- 3.14 The Sub-Contractor shall provide all notices and other particulars in respect of the Sub-Contract within a reasonable time so as to allow the Contractor to provide the same in accordance with the Main Contract.

## 4. PROGRAMME, EXTENSION OF TIME AND LOSS AND EXPENSE

- 4.1 Subject to Clause 4.2, the Sub-Contractor shall carry out and complete the Sub-Contract Works in conformity with the requirements of the Main Contract, and the Sub-Contract between the Main Contractor and the Contractor, and in such a manner as to avoid delay and/or hindrance to the progress of others.
- 4.2 Subject to clause 3.14, the Contractor shall grant to the Sub-Contractor an extension of time for completion of the Sub-Contract Works to the extent that delay has been caused to the Sub-Contract Works by reason of any event which can be grounds under the Main Contract and/or the Sub-Contract between the Main Contractor and the Contractor for an extension of time, provided always that the Contractor shall not be obliged to grant the Sub-Contractor an extension of time for completion of the Sub-Contract Works until such time as the Contractor has been awarded an extension of time under the Main Contract and/or the

Sub-Contract between the Main Contractor and the Contractor by reason of the said event.

- 4.3 The provisions of the Main Contract relating to the payment or allowance by the Contractor of direct loss and/or expense caused by the disturbance of regular progress shall apply like for like to the Sub-Contract as between the Contractor and the Sub-Contractor as if they were respectively the Employer and the Main Contractor.
- 4.4 The Sub-Contractor shall as soon as (and in any event no later than 14 days) such delay has or should reasonably have become apparent to the Sub-Contractor notify the Contractor in writing of any delay in or circumstances which may give rise to delay in the commencement, performance or completion of the Sub-Contract Works. Such notice shall give full details of the circumstances giving rise to the delay, an estimate of the extent of the anticipated delay in completion of the Sub-Contract Works, and an estimate of any loss and/or expense the Sub-Contractor anticipates they will incur as a result of the anticipated delay and shall give such other information as shall be required by the Contractor.
- 4.5 Subject to compliance by the Sub-Contractor of Clause 4.4, the Contractor shall grant such reasonable extension of time for the performance of the Sub-Contract Works as the Contractor considers reasonable in relation to delay arising from the act or default of the Contractor.
- 4.6 The operation of Clause 4.5 shall be subject to the proviso that the Sub-Contractor shall constantly use his best endeavours to prevent delay in the progress of the Sub-Contract Works or any part thereof however cause caused and to prevent any such delay resulting in the completion of the Sub-Contract Works being delayed or further delayed and shall do all that may be required to the satisfaction of the Contractor to proceed with the Sub-Contract Works and to avoid or reduce the extent of delay.
- 4.7 If the regular progress of the Sub-Contract Works is materially affected by a cause which entitles the Contractor to loss and/or expense under the Main Contract and/or the Sub-Contract between the Main Contractor and the Contractor, then subject to the Sub-Contractor complying with Clause 4.4 the Sub-Contractor shall have a right to loss and/or expense which shall not exceed the amount recovered by the Contractor from the Main Contractor in respect of the Sub-Contract Works provided always that the Sub-Contractor provides full substantiation of the amount claimed to the satisfaction of the Contractor. The Sub-Contractor's right to claim loss and expense under this Clause 4.7 are his only rights to claim any additional payment arising out of a delay to the Sub-Contract Works. Reimbursement of the Sub-Contractor for loss and/or expense under this Clause 4.7 shall be deemed to be full compensation for the Sub-Contractor in respect of the matter for which the loss and expense is paid and the Contractor shall have no further liability to the Sub-Contractor in respect of such matters arising under the Sub-Contract or generally at law.
- 4.8 Notwithstanding any other provisions of the Sub-Contract Terms and Conditions, the Sub-Contractor shall not be entitled to any extension of time or loss and/or expense where and to the extent that any delay is concurrent with another delay for which the Sub-Contractor is responsible.
- 4.9 If the Sub-Contractor fails to complete the Sub-Contract Works by the completion date stipulated in the Sub-Contract Order or as extended by the Contractor by any reason other than those entirely beyond the control of the Sub-Contractor, The Sub-Contractor shall pay or allow to the Contractor the amount of any actual loss and/or expense and/or damages incurred by the Contractor and/or a reasonable estimate of any loss and/or expense and/or damages anticipated to be incurred by the Contractor.

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## 5. PAYMENT

- 5.1 The sum to be paid to the Sub-Contractor in relation to the Sub-Contract Works shall be determined in accordance with this Clause 5.
- 5.2 The Contractor shall pay to the Sub-Contractor any properly chargeable VAT at the appropriate rate, except where the reverse charge applies (meaning that the recipient of a supply for VAT purposes, or a member of a VAT group of which the recipient of the supply is a member, is required to account to the relevant tax authority for the VAT chargeable in respect of the supply).
- 5.3 Unless otherwise specified within the Sub-Contract Order, the Sub-Contractor shall after the commencement of the Sub-Contract Works on Site on the relevant date set out in the Payment Matrix (or if no dates is specified in the Payment Matrix the date shall be 7 days before the relevant Valuation date), submit to the Contractor an Application for Payment setting out the sum the Sub-Contractor considers to be due at the Valuation date and the basis on which that sum is calculated. Providing always that the Sub-Contractor will not claim payment for work and materials that are not in accordance with the Sub-Contract Order. The parties agree that the Sub-Contractor's Application for Payment shall constitute a Payment Notice for the purpose of Section 110A of the Housing Grants Construction and Regeneration Act 1996 (as amended).
- 5.4 Notwithstanding the requirements of Clause 5.3, the Sub-Contractor's Application for Payment shall set out the value of the Sub-Contract Works completed less:
  - (a) Any retention.
  - (b) Deduction pursuant to Clause 5.2.
  - (c) Deduction pursuant to Clause 4.9.
  - (d) Payments in respect of sums previously due and paid.
  - (e) Any other sums which are due to the Contractor from the Sub-Contractor.
- 5.5 The Sub-Contractor's Application for Payment shall become due ("Due Date") to the Sub-Contractor on the relevant date set out in the Payment Matrix (or if no date is specified in the Payment Matrix the date shall be 25 days after the Valuation Date). If the Sub-Contractor's Application for Payment is not received in accordance with Clause 5.3, then the Sub-Contractor shall not be entitled to issue it later and shall not be entitled to payment until the procedure is repeated in relation to the next Valuation Date.
- 5.6 No later than 5 days after the due date, the Contractor shall issue a Payment Notice to the Sub-Contractor specifying the amount due to the Sub-Contractor. Failure to issue a Payment Notice by the Contractor will imply that the sum which the Sub-Contractor considers to be due as stated in the Sub-Contractor's Application for Payment shall be due to the Sub-Contractor unless the Contractor issues a Notice in accordance with Clause 5.8.
- 5.7 The Final Date of Payment of the sums due from the Contractor in accordance with Clause 5.6 shall be on the relevant date set out in the Payment Matrix (or if no date is specified in the Payment Matrix the date shall be 20 days after the due date).
- 5.8 The Contractor shall be entitled to issue a Notice setting out his intention to pay less than the sum notified in accordance with Clause 5.3 and 5.6. The Contractor's Payless Notice will specify the sum that the Contractor considers to be due on the date the notice is served and the basis on which that sum is calculated. The Contractor's Payless Notice must be issued no later than one day before the Final Date of Payment. For avoidance of doubt, the sum specified in the Contractor's Payless Notice will be the notified sum for payment.
- 5.9 In the event of the Contractor failing to pay any sum due to the Sub-Contractor by the final date for payment, the Contractor shall pay to the Sub-Contractor interest on such overdue sum at the rate

of 2% per annum above the official dealing rate of the Bank of England at the final date for payment.

- 5.10 It shall be a pre-condition of payment by the Contractor that the Sub-Contractor shall have complied with all CIS or similar requirements in force in respect of any payment and presented valid VAT documentation or any other documents reasonably required by the Contractor to enable payment to be made.
- 5.11 It shall be a condition precedent for payment that the Sub-contractor submits, alongside the Sub-contractor's Application for Payment, a Timesheet. The Timesheet must include, but is not limited to:
  - (a) The Date works were carried out,
  - (b) The Project Reference,
  - (c) The PO Reference,
  - (d) The timesheet is to be signed and verified by a member of Cold Clad Staff.
- 5.12 Notwithstanding any other provisions of the Sub-Contract Order, the Contractor shall be entitled to deduct Retention at 5% of any sums due to the Sub-Contractor and retain the sums deducted until the expiry of period specified within the Sub-Contract Order. All sums deducted in accordance with this Clause 5.11 will be released as follows:
  - (a) 2.5% released 6 months after Practical Completion
  - (b) 2.5% released 6 months after the expiry of Defect Liability Period

## 6. VARIATIONS

- 6.1 The Contractor may issue, and the Sub-Contractor shall comply with instructions for Variations additions or omissions to or from the Sub-Contract Works (including the alteration of the design quality or quantity thereof and the alteration of the kind or standard of any materials or goods) or for postponement or suspension of the commencement or execution thereof and any such instruction shall not vitiate the Order.
- 6.2 The amount to be paid or allowed to the Sub-Contractor for variations, additions or omissions shall be calculated in accordance with the Sub-Contract Terms and Conditions.
- 6.3 The Sub-Contractor, without delay, must comply with written instructions for variations in accordance with the Contractor's direction. Where possible, the value of such variations will be calculated using rates and prices, if any, set out in the Sub-Contract Order for similar work or, if there are no applicable rates or prices, the value shall be such as is fair and reasonable in all the circumstances.
- 6.4 The Contractor shall only be obliged to pay for those variations or additions as shall have been authorised by the Contractor, and for which a full detailed breakdown of the Sub-Contractor's valuation of that variation together with all supporting evidence has been supplied with or prior to the relevant Sub-Contractor's Application for Payment.

## 7. DEFECTS

- 7.1 The Sub-Contractor shall promptly comply with the Contractor's instructions to carry out all works of repair, rectification and making good of defects, imperfections, shrinkages or other faults in the Sub-Contract Works which may appear within the defects liability period (or its equivalent) under the Main Contract, and such work shall be carried out at the Sub-Contractor's own cost if the same is due to any failure on the part of the Sub-Contractor to comply with the provisions or requirements of the Sub-Contract.
- 7.2 In the event the Sub-Contractor fails to carry out such work within seven days of the date of the Contractor's written instruction to do so, the Contractor shall be entitled to carry out such work by his own workforce or by other Contractors, and if such work should have been carried out at the Sub-Contractor's expense the

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Contractor shall be entitled to recover the cost incurred from the Sub-Contractor

## 8. INDEMNITY

8.1 The Sub-Contractor shall be liable for and shall fully and effectively indemnify the Contractor against any expense liability, loss, claim, damage, or proceedings whatsoever arising out of or in any way connected with the Sub-Contract Works or arising out of the Sub-Contract Order and in particular against:

- (a) Personal injury to or the death of any person whomsoever
- (b) Any damage to property including the Main and Sub-Contract Works.
- (c) Any elements of design within the Sub-Contract Works for which the Sub-Contractor is responsible.

Except where the same is due to any neglect of the Contractor.

## 9. WORKS ON SITE

9.1 The Sub-Contractor shall be deemed to have examined the Site and to be informed and satisfied as to the nature and extend of the Sub-Contract Works the physical condition of and around the Site, the materials and types of equipment and facilities needed and to have obtained all necessary information as to any risks, contingencies, and all other circumstances which may influence or affect the Sub-Contract Works. The Sub-Contractor shall bear the risk of the conditions of the Site and no failure on the part of the Sub-Contractor to discover or foresee any condition, risk, contingency or circumstance, whether the same ought to be reasonably to have been discovered or foreseen or not, shall entitle the Sub-Contractor to claim damages or any additional payment or extension of time. The Sub-Contractor shall not rely on any survey, report, data or other document prepared or provided by the Contractor.

9.2 The Sub-Contractor shall be responsible for the proper unloading, storage handling and distribution of all materials delivered to the Site for the Sub-Contract Works, whether supplied by the Contractor or Sub-Contractor. The Sub-Contractor shall arrange the timings of all deliveries to comply with the directions of the Contractor's Site Manager.

9.3 The Sub-Contractor shall at his own expense supply all necessary lighting, watching and attendances for the purposes of the Sub-Contract Works and shall provide and remove all necessary temporary workshops, sheds, offices, latrines and such other buildings as shall be reasonably required by the Contractor at such places on Site as the Contractor may from time to time direct. The Sub-Contractor shall ensure that all shared welfare facilities provided by the Contractor are always kept clean and tidy.

9.4 All excess materials, packing cases, empty containers and general rubbish arising from the Sub-Contract Works shall be collected regularly by the Sub-Contractor and removed from the Site, access routes and surrounding areas shall be kept free from all debris and waste at no expense to the Contractor failing which the Contractor may after 24 hours' notice to the Sub-Contractor effect such removal and recover the cost thereof from the Sub-Contractor.

9.5 The Sub-Contractor shall provide, free of charge to the Contractor, samples of workmanship and materials for approval.

9.6 The Sub-Contractor shall supply all labour, tools, plant, equipment and materials necessary for the execution of the Sub-Contract Works.

9.7 The Sub-Contractor shall be liable for the storage and safekeeping of the Sub-Contractor's own tools, plant and equipment brought to Site. The granting of permission to the Sub-Contractor to use the Contractor's storage facilities shall not render the Contractor liable for the security of those items or any loss and/or damage thereof.

9.8 All electrical plant and equipment supplied by the Sub-Contractor must have valid Portable Appliance Test certificate dated within

the prior three months, and evidence of such testing must be affixed to the item.

9.9 Were required, the Contractor will issue the Sub-Contractor branded clothing and/or PPE to be worn on site whilst completing the Sub-Contract Works for the purposes of safety.

## 10. INSURANCE

10.1 The Sub-Contractor shall take out and maintain insurance in respect of his liability under Clause 8, and such insurance shall be for the level of cover as set out within the Sub-Contract Order (or, if no amount is specified within the Sub-Contract Order, a minimum of £5,000,000.00 per occurrence) and the Sub-Contractor shall produce on demand the policy or policies of insurance covering such liability.

10.2 Insurance in respect of personal injury or death shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or amendment or re-enactment thereof.

10.3 Insurance in respect of Professional Indemnity and/or Product Liability shall be taken out and maintained for a period as set out in the Sub-Contract Order (or, if no period is specified within the Sub-Contract Order, a period of 15 years) following practical completion of the Sub-Contract Works.

10.4 In the event of any claim being made against the Contractor in respect of which the Sub-Contractor is or may be liable under the Sub-Contract Terms and Conditions, and the Sub-Contractor failing promptly to settle such a claim (which in the opinion of the Contractor is a bona fide claim) the Contractor may settle such claim and recover the amount of such settlement including all costs and expenses from the Sub-Contractor

## 11. ENTIRE AGREEMENT

11.1 The Sub-Contract Order represents the entire agreement between the Contractor and the Sub-Contractor and supersedes all and any other agreements or arrangements that may have existed between them. The Sub-Contractor confirms that in accepting the Order he has not relied upon any warranty, representation, agreement, statement, or undertaking other than as expressly set out in the Sub-Contract Order and that (in the absence of fraud) he will not have any claim, right or remedy whatsoever arising out of such warranty, representation, agreement, statement, or undertaking including, without limitation, any claim for rescission or damages in respect of innocent or negligent misrepresentation.

11.2 No payment shall become due to the Sub-Contractor under the Order unless and until unqualified acceptance by the Sub-Contractor of the Order has been received by the Contractor in writing, and the Order has been executed as a deed by the Sub-Contractor where the Sub-Contract Order requires. Commencement of the Sub-Contract Works by the Sub-Contractor shall constitute acceptance of the Sub-Contract Order where acceptance has not previously been received by the Contractor.

## 12. DETERMINATION

12.1 The Contractor shall be entitled to determine the Sub-Contractor's employment under the Sub-Contract Order at any time by service of 7 days' written notice. Determination under this Clause 12 may be for any reason at all, including that the Contractor wishes to have the Sub-Contract Works or any part thereof carried out by others instead of the Sub-Contractor. If the Contractor terminates under this Clause 12.1, payment will be made by the Contractor in accordance with Clause 12.4.

12.2 Without prejudice to any other rights of the Contractor, if the Sub-Contractor shall:



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- (a) Suspend performance of the sub-Contract Works other than pursuant to the Housing Grants Construction and Regeneration Act 1996 (as amended).
- (b) Fails to proceed with the Sub-Contract Works with due diligence or in accordance with the directions of the Contractor; or,
- (c) Refuse or persistently neglect after notice in writing from the Contractor to remove, repair or reinstate (as the Contractor shall require) defective work materials; or,
- (d) Do or omit to do any act or thing which would or might occasion or give rise to forfeiture or determination of the Main Contract or the Contractor's Employment; or,
- (e) Without prejudice to (a) to (d) above in any manner breach the Sub-Contract; or,
- (f) Become bankrupt or compound with his creditors or in the event of a resolution being passed or proceedings being commenced for the winding up of the Sub-Contractor or if a Provisional Liquidator, Administrative Receiver, Receiver or Manager appointed of all or part of any of the assets or undertaking of the Sub-Contractor or possession taken by the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge or otherwise comes insolvent.

12.3 The Contractor may at his option and sole discretion determine the Sub-Contractor's employment under the sub-Contract Order forthwith by notice and shall be under no obligation to give any warning notice, but in the event the Contractor shall serve any such warning notice the Contractor shall not thereby be regarded as having waived his rights under this Clause or otherwise.

Additionally, the Contractor may supplement the Sub-Contractor's resources in order to fulfil his obligations under the Main Contract and set off any costs thereby incurred against any sum due to the Sub-Contractor. If such default shall continue for 10 days after a notice from the Contractor to the Sub-Contractor specifying the same, the Contractor may without prejudice to any other rights which the Contractor may possess thereupon determine the employment of the Sub-Contractor under the Sub-Contract Order.

12.4 If for any reason the Contractor's employment under the Main Contract is determined (whether by the Contractor or by the Employer and whether due to any default of the Contractor or otherwise) then the employment of the Sub-Contractor under the Sub-Contract Order shall thereupon also determine, and the Sub-Contractor shall be entitled to be paid:

- (a) The value of the Sub-Contract Works completed at the date of such determination.
- (b) The value of work begun and executed but not completed at the date of such determination.
- (c) The value of any unfixed materials and goods delivered on site and for use in the Sub-Contract Works the property in which has passed to the Employer under the terms of the Main Contract.

12.5 Notwithstanding any other provisions of the Sub-Contract Terms and Conditions, if the Sub-Contractor's employment is determined under Clause 12.2(f), no further sum shall become due to the Sub-Contractor under the Sub-Contract Order.

12.6 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 Order for any reason.

## 13. BRIBERY AND ANTI-SLAVERY

13.1 In performing its obligations under the Sub-Contract Order, the Sub-Contractor shall and shall ensure that each of its Sub-Contractors and Consultants shall comply with all applicable laws, statutes, regulations and codes from time to time in force including but not limited to the Bribery Act 2010, Modern Slavery Act 2015 and the Anti-Slavery Policy.

13.2 The Sub-Contractor represents and warrants that neither the Sub-Contractor or any of its officers, employees or other persons associated with it has been convicted of any offence involving slavery and/or human trafficking, and to the best of his knowledge has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with Slavery and Human Trafficking.

13.3 The Sub-Contractor shall implement due diligence procedures for his own Suppliers, Sub-Contractors, Consultants, and other participants in his supply chain, to ensure that there is no Slavery or Human Trafficking in his supply chain.

13.4 The Sub-Contractor shall indemnify the Contractor against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Contractor as a result of any breach by the Sub-Contractor, or any of his servants or agents, of the Anti-Slavery Policy.

## 14. ADJUDICATION

14.1 If any dispute or difference arises between the Sub-Contractor and the Contractor under the Sub-Contract Order, either party may give written notice at any time of his intention to refer the dispute to adjudication. Adjudications shall be conducted in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended) and, unless the parties agree otherwise, the adjudicator shall be the person named in the Sub-Contract Order or, if no individual is so named, then the referring party shall make an application to the Royal Institute of Chartered Surveyors. The adjudicator shall be required to provide reasons for his decision.

## 15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

15.1 Other than such third-party rights as take effect pursuant to Clause 3, the parties hereby confirm that notwithstanding any other provisions of the Sub-Contract Terms and Conditions, the Sub-Contract Order shall not and shall not purport to confer on any third party any right to enforce any term of the Sub-Contract Order for the purposes of the Contracts (Rights of Third Parties) Act 1999.

## 16. ENGLISH LAW

16.1 The Subcontract Order and any dispute or claim arising out of or in connection with it or its subject matter or information (including non-contractual disputes or claims) shall be construed in accordance with English Law and in so far as any matter arising out of the Sub-Contract Order is required to be referred to a court of law the courts of England and Wales shall have exclusive jurisdiction (save that proceedings may be brought in the courts of other jurisdiction in order to enforce any decision of the courts of England and Wales).