

## **LONDON AC LTD** **SUB-CONTRACT TERMS AND CONDITIONS**

- “*Certifying Officer*” means the Client, the contract administrator, architect or engineer or other specified person appointed pursuant to the Principal Contract responsible for the issue of the Practical Completion Certificate.
- “*Client*” means the person or organisation with whom the Company has agreed to perform the Works pursuant to the Principal Contract.
- “*Company*” means London AC Limited (Company No. 10153269) whose trading address is 1 King Street, London EC2V 8AU.
- “*Confidential Information*” means all information in whatever form which relates to the Client and/or the Company save for information which is in the public domain other than by reason of a breach of this Contract.
- “*Construction Industry Scheme*” means [Chapter 3 Part 3 of the Finance Act 2004 and the Income Tax \(Construction Industry Scheme\) Regulations 2005 \(SI 2005/2045\) as amended from time to time.](#)
- “*Contract*” means the Purchase Order and any documents attached to or referred to therein, the Safety Policy and these terms and conditions.
- “*Due Date*” shall have the meaning ascribed to it in clause 8.4.5.
- “*Fees*” the sums to be paid to the Sub-Contractor in consideration for the proper performance of Sub-Contract Works in accordance with clause 8.3 or 8.4 (as applicable).
- “*Insolvent*” shall have the meaning set out in Section 113 of the Housing Grants Construction and Regeneration Act 1996 (as amended from time to time).
- “*Payment Notice*” shall have the meaning ascribed to it in clause 8.4.6.
- “*Practical Completion Certificate*” means the certificate issued on practical completion (or the equivalent stage of completion) of the Works in accordance with the Principal Contract.
- “*Principal Contract*” means the contract between the Company and the Client for the Works.
- “*Purchase Order*” means the order setting out the details of the Sub-Contract Works to be performed by the Sub-Contractor.
- “*Retention*” means the sum retained by the Company pursuant to paragraph 8.4.11.
- “*Safety Policy*” means the Company’s health and safety policy as may be amended from time to time.
- “*Scheme*” means Part 1 of the Scheme for Construction Contracts (England & Wales) Regulations 1998 (as amended);
- “*Site*” means the location at which the Works are to be carried out.
- “*Sub-Contractor*” means the party whose details are set out in the Purchase Order, whom the Company has engaged to provide the Sub-Contract Works.
- “*Sub-Contract Works*” means the works to be carried out by the Sub-Contractor including the provision of all necessary labour, plant, equipment and/or materials required to carry out the same as more particularly described in the Purchase Order.
- “*Worker*” means any agent, sub-contractor, employee or worker engaged by the Sub-Contractor in the performance of the Sub-Contract Works or any part thereof.
- “*Works*” means the works to be performed by the Company pursuant to the Principal Contract.

### 2. INTRODUCTION

- 2.1 The Company has engaged the Sub-Contractor to provide the Sub-Contract Works upon the terms and conditions set out in this Contract to enable the Company to carry out and complete the whole or part of the Works in accordance with the requirements of the Principal Contract.
- 2.2 The Sub-Contractor is deemed to have full knowledge of, and so far as applicable to the Sub-Contract Works, agrees to carry out the Sub-Contract Works in accordance with the requirements of and in such manner and at such times so as not to cause or contribute to any breach by the Company of the Principal Contract.
- 2.3 Any terms or conditions which may be referred to, endorsed or annexed to or otherwise contained or embodied in the Sub-Contractor's quotation and/or correspondence and/or other document or implied from any prior course of dealing between the Company and the Sub-Contractor shall not form part of this Contract unless specifically so stated as being applicable in the Purchase Order or other written order or acceptance document from the Company.

- 2.4 If there is any inconsistency between this Contract and the requirements of the Principal Contract, the terms of this Contract shall prevail.
- 2.5 The Sub-Contract Works act shall commence on the Anticipated Commencement Date set out in the Purchase Order or, if issued, the date set out in a Notice to Commence and shall be completed on or before the Completion Date set out in the Purchase Order (subject to any extensions).
- 2.6 The Completion Date set out in the Purchase Order may be extended by the Company by such period as may be fair and reasonable in the circumstances where completion of the Sub-Contract Works has been delayed and such delay is caused by a breach of this Contract by the Company and/or any instruction issued by the Company and/or a reason which results in the extension of the period for providing the Works under the Principal Contract, in each case, save where any such delay is caused or contributed to by any default by the Sub-Contractor.

### 3. SUB-CONTRACTOR'S STATUS

#### 3.1 The Sub-Contractor warrants that:-

- 3.1.1 it will be solely responsible for any acts, errors and/omissions by its Workers;
- 3.1.2 it does and will continue to comply with its obligations as an employer towards all Workers, including those relating to working time;
- 3.1.3 it does and will continue to account to the appropriate authorities for all tax (including VAT) and social security contributions payable in respect of sums paid to the Sub-Contractor under this Contract;
- 3.1.4 where the Sub-Contractor is an individual, he has the right to live and is eligible to work in in the United Kingdom;
- 3.1.5 all Workers are lawfully present in and are legally entitled to work in the United Kingdom; and
- 3.2 The Sub-Contractor shall indemnify the Company from and against any losses which the Company may incur (including those arising out of third party claims) as a result of the Sub-Contractor or its Workers claiming to be an employee or worker of the Company and/or the Client.
- 3.3 Nothing in this agreement shall serve to create any employer/employee relationship or principal/agent relationship between:
- 3.3.1 the Company and the Sub-Contractor;
- 3.3.2 the Company and the Workers;
- 3.3.3 the Client and the Sub-Contractor; or
- 3.3.4 the Client and the Workers.

### 4. PROVISION OF SUB-CONTRACT WORKS

- 4.1 The Sub-Contractor shall freely and independently arrange its activities and may schedule the Sub-Contract Works at its discretion subject to the terms set out in this Contract and the requirements of the Principal Contract but it warrants that it shall take all necessary steps to comply with any programme, timetable or other targets for progress as agreed with the Client and/or the Company.
- 4.2 In providing the Sub-Contract Works, the Sub-Contractor warrants that it shall satisfy the requirements stated in the Principal Contract or as otherwise notified by the Client and/or the Certifying Officer and/or the Company from time to time. It further warrants that it shall satisfy the requirements of the Company and shall comply with such obligations as the Company agrees with the Client from time to time or otherwise notifies to the Sub-Contractor.
- 4.3 The Sub-Contractor shall comply with such of the Client's and/or the Company's rules and regulations as are relevant to the provision of the Sub-Contract Works which shall include (without limitation) all applicable rules on confidentiality and those rules relating to health, safety, security and other matters relevant to the provision of the Sub-Contract Works applicable at the Site.
- 4.4 The Sub-Contractor will provide the Sub-Contract Works in accordance with all drawings, specifications and/or instructions supplied to it by the Company and/or the Client and shall complete the Sub-Contract Works to the satisfaction of the Company and the Certifying Officer. No inspection of the Sub-Contract Works, approval, comment (or failure to comment), direction, confirmation or other communication given by the Company or the Certifying Officer pursuant to the under any provision of this Contract or otherwise shall in any way exclude or limit the obligations and liabilities of the Sub-Contractor under this Contract.
- 4.5 The Sub-Contractor hereby warrants that:
- 4.6.1 all information regarding the Sub-Contractor and its Workers' identity, qualifications, expertise and experience provided to the Company is complete, accurate and up to date and that it shall provide evidence of the same upon request;
- 4.6.2 it has reviewed and familiarised itself with the requirements of the Principal Contract and has examined the Site the access to the Site the nature amount quality of materials and type of equipment and facilities needed to

carry out and complete the Sub-Contract Works and has satisfied itself as to any matters which affect or may affect the execution of the same and has allowed for all such matters in the Fees and/or (where applicable) the rates and prices set out in the Purchase Order;

4.6.3 the Sub-Contractor and its Worker(s) have the skill and competence to meet the Company's requirements;

4.6.4 the Sub-Contract Works to be provided pursuant to this Contract will be carried out and completed in a proper and workmanlike manner and of a quality satisfactory to the Company and/or the Client.

4.7 The Sub-Contractor will immediately notify the Company of any complaints made to it or its Workers by the Client and/or the Certifying Officer in relation to the Sub-Contract Works.

4.8 In the event that the Company wishes to vary or amend the Sub-Contract Works or omit any element of the Sub-Contract Works then the Company shall issue a Site Instruction Form to the Sub-Contractor and the Sub-Contractor shall carry out the works as identified therein in accordance with the terms of this Contract. No such variation or amendment shall vitiate this Contract.

## 5. SUB-CONTRACTOR'S RESPONSIBILITIES

5.1 The Sub-Contractor shall use its own tools, equipment and scaffolding as appropriate which shall remain its sole responsibility at all times and the Company shall have no responsibility or liability whatsoever for any damage, loss or theft of the same howsoever arising.

5.2 If necessary, the Sub-Contractor shall provide at its own expense and subject to the Company's consent, any temporary office or workshop accommodation, together with the necessary equipment, lighting, power, fuel etc.

5.3 All electric power supply for tools and equipment used on the Site shall not exceed the stated maximum voltage.

5.4 No cutting away is to be carried out without the prior written authority of the Company.

5.5 The Sub-Contractor shall satisfy itself before commencing the Sub-Contract Works, as to the suitability of any surfaces to which the Sub-Contractor or its Workers is to fix, apply or lay its work.

5.6 All materials and goods necessary for the Sub-Contract Works shall be of the kind and standard detailed in the Purchase Order or where not stated therein, as required by the Principal Contract. The Sub-Contractor shall not substitute any materials or goods without the prior written consent of the Company which, subject to compliance with the Principal Contract, shall not be unreasonably withheld.

5.7 The Sub-Contractor shall remove all its rubbish and/or surplus materials and plant to an approved position on the Site on a daily basis. If no approved location is available the Sub-Contractor must remove such waste off site to an approved waste disposal facility.

5.8 The Sub-Contractor will produce copies of all waste certification when requested.

5.9 The Sub-Contractor shall comply with the Safety Policy and all requirements of the Client and/or the Company on matters relating to safety and the conduct of workers applicable at the Site together with all legal requirements (including but not limited to all applicable statutes, bye-laws and regulations) affecting the Sub-Contract Works.

5.10 The Sub-Contractor shall ensure that its Workers register their presence on Site by signing in and out of the Company's Site Diary on a daily basis.

5.11 The Sub-Contractor shall ensure that its Workers attend any required inductions to the Site and are issued with and wear all necessary personal protection equipment (PPE) appropriate for the performance of the Sub-Contract Works. In the event that Workers attend the Site without the necessary personal protection equipment, the Company shall be entitled to require the immediate removal of any such Worker from the Site and/or may supply such equipment and recover the costs incurred from the Sub-Contractor as a debt.

5.12 If required by the Principal Contract then the Sub-Contractor shall ensure that insofar as relevant, its Workers have been subject to all appropriate Disclosure and Barring Service checks prior to their attendance at the Site and a copy of the results of such checks shall be disclosed to the Company and, where required by the Principal Contract to the Client. Any such checks shall be carried out at the Sub-Contractor's sole cost.

5.10 The Sub-Contractor will, at the Sub-Contractor's own cost, provide its full cooperation and assistance as may be necessary to the Company in resolving any dispute between the Client and the Company in relation to the Sub-Contract Works.

5.11 The Sub-Contractor shall complete the Sub-Contract Works by the Completion Date as identified in the Purchase Order. In the event that the Sub-Contract Works are not completed by the Completion Date then the Sub-Contractor shall indemnify and hold the Company harmless against any loss or damage or liability suffered or incurred by the Company whether arising under the Principal Contract or otherwise caused or contributed to by the failure of the Sub-Contractor to complete the Sub-Contract Works by the Completion Date of which loss or damage the Company shall at the earliest opportunity give reasonable notice to the Sub-Contractor that the same is being or has been suffered or incurred.

5.12 Without prejudice to and in addition to the Sub-Contractor's liability under clause 5.11, where liquidated damages are set out in the Purchase Order, in the event that the Sub-Contract Works are not completed by the Completion Date then the Sub-

Contractor shall pay liquidated damages at the rate identified in the Purchase Order for each week or part of a week for the period from the Completion Date until the Sub-Contract Works are completed in accordance with this Contract.

- 5.13 The Sub-Contractor shall provide to the Company within 14 days or written request any and all Collateral Warranties, Performance Bonds or Parent Company Guarantees as specified in the Purchase Order.
- 5.14 Within 7 days of request by the Company the Sub-Contractor shall supply to the Company at the Sub-Contractor's cost four copies of record drawings, certified drawings, wiring diagrams, manufacturers literature and operating and maintenance instructions relating to the Sub-Contract Works and provide all relevant Sub-Contractor Method Statements, Risk Assessments and COSHH data relevant to the Sub-Contract Works.

## 6. INSURANCE

- 6.1 The Sub-Contractor warrants that it will maintain at a level to be determined by the Company, at its own cost, the following:
- 6.1.1 public liability insurance;
  - 6.1.2 employers liability insurance;
  - 6.1.3 motor vehicle insurance that covers business use where it utilises a motor vehicle in connection with the provision of the Sub-Contract Works;
  - 6.1.4 such other insurance policies as shall be appropriate to the provision of the Sub-Contract Works
- 6.2 Such cover shall be maintained throughout the duration of this Contract and:
- 6.2.1 where the Principal Contract is signed underhand, for 6 years after the date of issue of the Practical Completion Certificate; or
  - 6.2.2 where the Principal Contract is executed as a deed, for 12 years after the date of issue of the Practical Completion Certificate.
- 6.3 The Sub-Contractor shall produce before commencement of the Sub-Contract Works and thereafter upon request, documentary evidence that such insurances have been properly effected and maintained.
- 6.4 In the event that the Sub-Contractor fails to maintain any insurances as required by this clause 6 the Company may take out such insurance on behalf of the Sub-Contractor and the Sub-Contractor shall be liable to the Company for any premia and/or costs in so doing.

## 7. TERMINATION

- 7.1 The Company may terminate the Contract immediately in the event of any of the following:
- 7.1.1 if the Company and/or the Certifying Officer finds the Sub-Contractor or its Workers to be negligent, inefficient or technically unsuitable;
  - 7.1.2 if in the reasonable opinion of the Company or the Client advises the Company that the Sub-Contractor has, in its reasonable view, committed an act of misconduct which makes it undesirable for the Sub-Contractor to continue to be present at the Site;
  - 7.1.3 if the Client fails to make payment to the Company in accordance with the Principal Contract for the Works;
  - 7.1.4 if the Sub-Contractor breaches any term of the Contract and fails to remedy any such breach (where capable of remedy) within seven days of notice being given by the Company to the Sub-Contractor requiring remedy and/or the Sub-Contractor commits persistent minor breaches of the Contract;
  - 7.1.5 the Works fail to commence for whatever reason;
  - 7.1.6 the Sub-Contractor and/or its Worker(s) are convicted of a criminal offence which, in the opinion of the Company, could affect the Company's reputation;
  - 7.1.7 a receiver, administrative receiver, administrator or similar officer be appointed to the Sub-Contractor or any part of its assets or undertaking, or the Sub-Contractor goes into liquidation or applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
  - 7.1.8 the Sub-Contractor is unable to fulfil its obligations under the Contract, as required, for any reason;
  - 7.1.9 the Company's employment under the Principal Contract is terminated for any reason;
  - 7.1.10 the Sub-Contractor fails to commence or to complete any work to remedy any defective workmanship and/or materials to the satisfaction of the Company and/or the Certifying Officer within such time period as the Company may specify or if no such time period is specified, within a reasonable time.

- 7.2 The Sub-Contract Works may be suspended at any time by the Company upon the provision of 7 days' notice in writing to the Sub-Contractor.
- 7.3 Without prejudice to clause 7.1, this Contract may be terminated at any time by the Company upon the provision of one months' notice in writing to the Sub-Contractor.
- 7.4 Upon termination of this Contract for any reason, the Sub-Contractor shall not be entitled to any further payment in relation to the Sub-Contract Works it has provided until the Sub-Contract Works have been completed.

## 8. PAYMENT

- 8.1 The Company may retain, deduct or withhold from any payment due to the Sub-Contractor and/or recover from the Sub-Contractor as a debt any of the following:-
- 8.1.1 costs incurred by the Company by reason of the failure of the Sub-Contractor or its Workers to comply with the requirements and/or instructions of the Company and/or the requirements of the Certifying Officer in relation to the Sub-Contract Works;
  - 8.1.2 insurance premiums paid by the Company as a result of the Sub-Contractor's failure to maintain adequate insurance, in accordance with the requirements of clause 6;
  - 8.1.3 liquidated and ascertained damages which are due to the Company as a result of the Sub-Contractor's failure to complete the Sub-Contract Works by the Completion Date;
  - 8.1.4 any expenses or losses and/or damage caused to the Company as a result of any breach of the Principal Contract caused or contributed to by the Sub-Contractor;
  - 8.1.5 any expenses or losses and/or damage caused to the Company as a result of the termination of the Contract;
  - 8.1.6 any sums which the Company is entitled to deduct, retain and/or withhold, set off or otherwise recover from the Sub-Contractor under this Contract;
  - 8.1.7 any loss resulting from the Sub-Contractor's breach(es) of the Contract; and/or
  - 8.1.8 any amount required in order for the Company to comply with its legal and statutory obligations.
- 8.2 It is a condition precedent that the first payment to the Sub-Contractor under this Contract shall only be due once the Purchase Order has been signed by the Sub-Contractor and returned to the Company.
- 8.3 In the event that the Sub-Contract Works are to be performed for a period of less than 45 days then the Fees shall be payable in accordance with the terms contained in the Purchase Order.
- 8.4 In the event that the Sub-Contract Works are to be performed for longer than 45 days then the Fees shall be payable by the Company in instalments in accordance with and subject to this clause 8.4:
- 8.4.1 The Company shall, subject to receipt of a valid payment application, pay the Fees due in accordance with the calculations and/or stage payments and/or instalments identified in the Purchase Order and any Site Instruction Form.
  - 8.4.2 Where the Company has:
    - i) issued a 'Sub-Contractor Payment Timetable' to the Sub-Contractor, the Sub-Contractor shall submit an application for interim payment on the dates stated in the column headed "Sub-Contract Application Date" in that document or where the date stated is not a working day, on the next working day. Each application for payment of an instalment of the Fees shall be accompanied by any relevant supporting documents as may be reasonably required to enable the Company to check the application (an "Application for Payment"). Each Application for Payment shall specify the sum which the Sub-Contractor considers has or will become due to him as at the date stated in the column headed "Works valued to date" (the "Valuation Date") and shall state the basis on which that sum has been calculated.
    - ii) not issued a 'Sub-Contractor Payment Timetable' to the Sub-Contractor. The Sub-Contractor shall from the date of the Purchase Order submit an application for interim payment on the 20<sup>th</sup> day of each calendar month or where the 20<sup>th</sup> is not a working day, on the next working day. Each application for payment of an instalment of the Fees shall be accompanied by any relevant supporting documents as may be reasonably required to enable the Company to check the application (an "Application for Payment"). Each Application for Payment shall specify the sum which the Sub-Contractor considers has or will become due to him as at the last day of the relevant calendar month (the "Valuation Date") and shall state the basis on which that sum has been calculated
  - 8.4.3 In the event that in any calendar month, the Sub-Contractor does not submit an Application for Payment on the relevant date required by clause 8.4.2, it shall not be a valid payment application for the purposes of clause 8.4.1 and shall, unless the Company specifically agrees otherwise in writing, be deemed to have been submitted to the Company until the following "Sub-Contract Application Date".

- 8.4.4 The amount due by way of each interim payment of the Fees shall be:
- i) The total value (subject to Retention pursuant to clause 8.2.11) of:
    - a) work properly executed by the Sub-Contractor and work so executed for which a value has been agreed in any Site Instruction Form or, where stated in the Site Instruction Form, has been valued at the rates and prices within the Purchase Order; and
    - b) materials or goods delivered to the Site for incorporation in the Sub-Contract Works provided that they are adequately protected against weather and other casualties and they are not delivered to the Site prematurely;
  - ii) Less
    - a) any amount which may be deducted and retained by the Company under clause 8.2.11 (Retention);
    - b) the amounts paid in previous interim payments;
    - c) any amounts which the Company is entitled to withhold or deduct or which are payable by the Sub-Contractor to the Company under this Agreement.
- 8.4.5 The payment due date (the "Due Date") for each instalment of the Fees shall be 30 days after the Valuation Date.
- 8.4.6 No later than 5 days after the Due Date, the Company shall give a notice (the "Payment Notice") to the Sub-Contractor stating the sum that the Company considers to be or to have been due to the Sub-Contractor at the Due Date and the basis on which that sum has been calculated.
- 8.4.7 The final date for payment of each instalment of the Fees shall be 30 days after the Due Date (the "Final Date for Payment").
- 8.4.8 Subject any Pay-Less Notice served under clause 8.4.9 the Company shall pay the Sub-Contractor the sum referred to in the Payment Notice (or if there is no such Payment Notice the sum referred to in the Application for Payment referred to in clause 8.4.2) on or before the Final Date for Payment.
- 8.4.9 Not less than 2 days before the Final Date for Payment the Company may give the Sub-Contractor notice (a "Pay-Less Notice") that it intends to pay less than the sum referred to in clause 8.4.8 and such Pay-Less Notice shall specify the sum which the Company considers to be due at the date the notice is given and the basis on which such sum has been calculated.
- 8.4.10 Where the Sub-Contractor becomes Insolvent after the date upon which the Company is entitled to serve a Pay-Less Notice in respect of any payment but before the relevant Final Date for Payment then the Company need not pay the sum due in respect of the relevant payment.
- 8.4.11 A 5% retention from each payment shall be made which shall be taken into account when calculating the sums due to the Contractor in accordance with this clause 8.4 (the "Retention").
- 8.4.12 One half of the Retention shall be included in the Sub-Contractor's Application for Payment to be submitted on the 20<sup>th</sup> day of the calendar month following completion of the Sub-Contract Works and the remaining half of the Retention shall be released at the later of:
- i) 18 months after the date stated in the Principal Contract as being the date upon which completion of the Works is required; and
  - ii) 1 month after the date upon which the Company confirms that there are no outstanding defects, shrinkages or other faults in the Sub-Contract Works.
- 8.4.13 The Company's interest in the Retention shall not be fiduciary as a trustee or in any other capacity for the Sub-Contractor or for any other person. The relationship of the Company and the Sub-Contractor with regard to the Retention shall be solely that of debtor and unsecured creditor, subject to the terms hereof and the Company shall have no obligation to invest the Retention or any part thereof or segregate in a separate banking account, or in any other manner whatsoever.
- 8.4.14 In respect of any Payment Notice to be given in accordance with this Clause 8 it is immaterial that the amount considered to be due may be zero.
- 8.4.15 Where the Company has issued a 'Sub-Contractor Payment Timetable' to the Sub-Contractor and the dates in the column "Sub-Contract Application Date" have been exhausted if the Company has not issued a further 'Sub-Contractor Payment Timetable', the Sub-Contractor shall submit further any applications for payment of the Fees in accordance with clause 8.4.2 ii).

8.3 Notwithstanding any other provision of this Contract, the Company's obligations to make payment under this Contract shall be subject to the provisions of the [Construction Industry Scheme](#).

- 8.4 If applicable, the Sub-Contractor will only receive payment for verified hours worked for variations to the scope of the works where stated so in a Site Instruction Form, any such works must be authorised by the Company in advance of them being undertaken and shall be paid in accordance with the rate stated in the Purchase Order or, if not stated therein, in the relevant Site Instruction Form.
- 8.5 The Sub-Contractor shall keep a record on weekly worksheets of the time spent by its Workers in performing the Sub-Contract Works.
- 8.6 Additional work or any changes in the scope of the Sub-Contract Works to be provided will not be paid for unless it has been approved in advance by the Company in a Site Instruction Form.
- 8.7 For the avoidance of doubt, the Company has no liability to pay the Sub-Contractor's Fees in the event it has not received the same from the Client as a result of it being or becoming Insolvent and the Company accepts no liability whatsoever arising from a failure to pay the Sub-Contractor's Fees where the Company has not been paid in full by the Client for the Sub-Contract Works in such circumstances.
- 8.8 No payment shall be made to the Sub-Contractor should the provision of the Sub-Contract Works under the Contract fail to commence upon the due start date or fail to commence at all for whatever reason.

## 9. LIABILITY

- 9.1 The Sub-Contractor accepts responsibility for and shall, as often as may be necessary, make good at its own cost and in accordance with any direction of the Company all defects, shrinkages and other faults in the Sub-Contract Works or in any part of them due to materials, goods or workmanship not in accordance with this Contract.
- 9.2 The Sub-Contractor shall be liable for and shall indemnify the Company against any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property (real or personal) in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Sub-Contract Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Sub-Contractor or its Workers.
- 9.3 The Sub-Contractor shall be liable for and shall indemnify the Company against any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Sub-Contract Works, except to the extent that the same is due to any act or neglect, breach of statutory duty, omission or default of the Company, the Client, the Certifying Officer and/or any person (other than the Sub-Contractor) for whom they are responsible under the Principal Contract.
- 9.4 The Sub-Contractor shall indemnify the Company against any claims for tax and national insurance made against the Company by HM Revenue and Customs or any third party in respect of the provision of the Sub-Contract Works and /or the Sub-Contractor or its Workers.
- 9.5 The Company may retain, deduct or withhold from any payment due to the Sub-Contractor and/or recover from the Sub-Contractor as a debt any amounts to the Company under this Clause 9.

## 10. CONFIDENTIALITY

The Sub-Contractor recognises and agrees that it will have access to Confidential Information belonging to the Company, the Client and the Company's other clients/customers and that it will keep secret and ensure that it does not divulge such information to any third party save for the purposes of providing the Sub-Contract Works or as is required by law.

## 11. PROVISION OF INFORMATION

- 11.1 The Company shall not be liable to the Sub-Contractor in respect of or in relation to any disruption or delay caused to the Sub-Contractor arising from or in connection with the late receipt or non-receipt by the Sub-Contractor of any instructions, drawings, levels or other information unless the Sub-Contractor has made written application to the Company for such instructions, drawings, levels or other information to be provided within a reasonable time frame.
- 11.2 Any instructions, drawings, levels or other information relating to the Sub-Contract Works which are requested from the Sub-Contractor must be provided promptly so as not to cause any disruption or delay to the Works.
- 11.3 If requested, before the first interim payment is made to the sub-contractor, the sub-contractor is required to provide a full quantified schedule of rates.

## 12. Dispute Resolution

- 12.1 If a dispute arises under or in connection with this Contract either party may refer the same to adjudication in accordance with the Scheme. For the purposes of the Scheme the nominating body shall be the Royal Institution of Chartered Surveyors.
- 12.2 Should any question or dispute arise on any matter, out of, or in connection with the Contract, the same shall (except where the Principal Contract provides for such to be subject to the final decision of the Certifying Officer) be referred to arbitration to a third party to be agreed, or in the absence of agreement, to a person appointed by the president for the time being of the Building and Engineering Services Association, or as otherwise provided in the Principal Contract. The decision of the nominated person shall be binding and conclusive on the parties.
- 12.3 No arbitration proceedings are to be commenced (unless the Company determines otherwise in writing) until after the Practical Completion Certificate has been issued.

## 13. GENERAL

- 13.1 The interpretation, construction, effect and enforceability of this agreement shall be governed by English law and the parties agree to submit to the exclusive jurisdiction of the courts of England & Wales.
- 13.2 The forbearance or failure of the Company to enforce any of its rights or remedies to which it is entitled under the Contract shall not be construed as a waiver of those rights or remedies and shall not restrict or prevent the Company enforcing or exercising those rights or remedies in any other instance at any time whether during or after the termination of the Contract.
- 13.3 The terms of this Contract and of any specification provided under the Contract may only be varied in writing by authorised representatives of both parties.
- 13.4 Save as otherwise stated in this Contract, the terms of the Contract represent the entire agreement between the parties and supersede any previous representations or agreements whether recorded in writing or otherwise.
- 13.5 If any provision of this Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this agreement had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the parties shall immediately commence good faith negotiations to remedy such invalidity.
- 13.6 Upon termination of the Contract, the Sub-Contractor shall return to the Client or the Company all property belonging to the Client or the Company as appropriate obtained whilst providing the Sub-Contract Works.
- 13.7 No rights shall accrue to any third party under this agreement pursuant to The Contracts (Rights of Third parties) Act 1999.
- 13.8 The Sub-Contractor shall not assign the Contract nor the whole or any part of the Sub-Contract Works without the prior written permission of the Company.
- 13.9 Title (but not risk) in all materials supplied by the Sub-Contractor shall pass to the Company upon the earlier of delivery to the Site or the Company making payment for the same.
- 13.10 Risk of damage in the materials will remain with the Sub-Contractor until Completion of the Sub-Contract Works.
- 13.12 Should parts of the Sub-Contract Works be omitted, the Company shall be entitled to instruct others to carry those parts of the Sub-Contract Works so omitted and the Sub-Contractor shall not be entitled to any payment whatsoever in respect of omitted parts including, without limitation, in respect of any preliminaries, loss of overhead recovery or loss of profit.

## 14. ANTI-BRIBERY AND CORRUPTION

The Sub-Contractor shall and procure that all staff, employees and all persons associated with it or any persons performing Sub-Contract Works shall comply with all applicable laws, statutes, regulations and codes in relation to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and any statutory modification or amendment thereto and not engage in any activity practice or conduct which would constitute an offence under any of the relevant legislation relating to such anti-bribery and anti-corruption laws.

## 15. MODERN SLAVERY

The Sub-Contractor shall and procure that all staff, employees and all persons associated with it or any persons performing Sub-Contract Works shall comply with all applicable laws, statutes, regulations and codes in relation to anti-slavery including but not limited to the Modern Slavery Act 2015 and any statutory modification or amendment thereto and not engage in any activity practice or conduct which would constitute an offence under any of the relevant legislation relating to such anti-slavery laws.

## 16. LIMITATION

- 16.1 The provisions of Section 5 of the Limitation Act 1980 do not apply to this Contract and neither the Sub-Contractor nor the Company will rely upon a defence pleading Section 5 of the Limitation Act 1980 in any proceedings commenced under this Contract nor will they contend in any proceedings or otherwise that the Contract and/or the Purchase Order is subject to a limitation period of 6 years.
- 16.2 Further to clause 16.1, the Purchase Order and this Contract however signed take effect as a deed. For the avoidance of doubt the time for bringing proceedings in respect of the Purchase Order and/or this Contract is extended to 12 years from the date of satisfactory completion or abandonment of the Sub-Contract Works.