

TERMS AND CONDITIONS OF SUPPLY
Corinthia Ltd
(hereinafter referred to as "the Contractor")

1 Interpretation

- 1.1 In these Conditions:
- 'Conditions'** means the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Employer and the Contractor
- 'Contract'** means the contract made between the Employer and the Contractor
- 'Contract Sum'** means the agreed VAT exclusive sum to be charged by the Contractor for providing the Goods and Services referred to in the Contract.
- 'Employer'** means, without prejudice to the generality of the term, the party requesting the Goods and Services to be provided which may be a Main Contractor or other Contractor.
- 'Employer's Equipment'** means any equipment, systems, cabling or facilities provided by the Employer and used directly or indirectly in the supply of the Goods and Services
- 'Deliverables'** means all documents, products, materials and plant developed by the Contractor or its agents, sub-contractors, consultants and employees in relation to the Goods and Services including any deliverables specified in the Contract or Quotation
- 'Document'** includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form
- 'Goods'** means the goods and materials (including any instalment of the goods or any parts for them) which the Contractor is to deliver in accordance with these Conditions
- 'Intellectual Property Rights'** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade, dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection worldwide
- 'Material'** means all documents, information and materials provided by the Employer relating to the Services including (without limitation) computer programmes, data, reports, specifications, surveys and any other such information required to enable the Contractor to effectively carry out the Services
- 'Pre-Existing Materials'** means all Documents, information and materials provided by the Contractor relating to the Goods and Services which existed prior to the commencement of the Contract.
- 'Provisional Sum'** includes a sum provided for work that the Employer may or may not decide to have carried out, or which cannot be accurately specified in the Contract
- 'Quotation'** means the quotation for Goods and Services provided by the Contractor
- 'Services'** means the services (including any part performance thereof) to be provided by the Contractor under the Contract together with any other services which the Contractor provides or agrees to provide to the Employer
- 'Site'** means the site where the Contractor will provide the Services set out in the Contract
- 'Statutory Requirements'** means any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Goods or Services or the performance of any obligations under the Contract and any regulation or bye-law of any local authority or statutory undertaker which has jurisdiction with regards to the Goods and Services
- 'Contractor's Equipment'** means any equipment, including tools, systems, cabling or facilities, provided by the Contractor or its sub-contractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which the title passes to the Employer.
- 'Variation'** means the alteration or modification of the design, quality or quantity of the work included in the Contract and accompanying specification including the addition, omission or substitution of any work and the alteration of the kind or standard of any of the Materials or Goods to be used in the work
- 'VAT'** means value added tax chargeable under English law for the time being and any similar additional tax
- 'Writing/Written'** includes facsimile transmission, electronic mail and comparable means of communication.

- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. The headings in these Conditions are for convenience only and shall not affect interpretation.

2 Applicability of Conditions

- 2.1 These Conditions shall:-
- 2.1.1 Apply to and be incorporated into the Contract; and
- 2.1.2 Prevail over any inconsistent terms and conditions contained, or referred to, in the Employer's purchase order, confirmation of order, acceptance of a Quotation, or specification or other Document supplied by the Employer, or implied by law, trade custom, practice or course of dealing.
- 2.1.3 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter
- 2.1.4 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty, whether made negligently or innocently (other than for breach of contract) as expressly provided in the Contract.
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorized representatives of the Employer and the Contractor.
- 2.3 Any advice or recommendation given by the Contractor or its employees or agents to the Employer or its employees or agents as to the storage, application of use of the Goods which is not confirmed in writing by the Contractor is followed or acted upon entirely at the Employer's own risk, and accordingly the Contractor shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.4 Any typographical, clerical or other error or omission in any sale literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Contractor shall be subject to correction without any liability on the part of the Contractor.

3 Documents and Specifications

- 3.1 The Employer shall be responsible to the Contractor for ensuring the accuracy of the terms of any documentation (including any applicable specification) submitted by the Employer, and for giving the Contractor any necessary information relating to the Goods and Services within a sufficient time to enable the Contractor to perform the Contract in accordance with its terms.
- 3.2 The quantity, quality and description of, and any specification for, the Goods and Services shall be those set out in the Contract and accompanying specification (where applicable).
- 3.3 If the Goods are to be manufactured or any process is to be applied to the Goods or the Services are to be provided by the Contractor in accordance with a specification submitted by the Employer, the Employer shall indemnify the Contractor against all loss, damages, costs and expenses awarded against or incurred by the Contractor in

connection with or paid or agreed to be paid by the Contractor in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Contractor's use of the Employer's specification.

- 3.4 The Contractor reserves the right to make any changes in the specification of the Goods and Services which are required to conform with any applicable statutory or EC requirements or, where the Goods and Services are to be supplied to the Contractor's specification, which do not materially affect their quality or performance or provision.

4 Charges and Payment

- 4.1 In consideration of the provision of the Goods and Services by the Contractor, the Employer shall pay the Contract Sum, adjusted as necessary, in the manner agreed, including the payment of any deposit if required, and the payment of all instalments, if payment by instalments has been agreed
- 4.2 The Employer shall pay each and every payment in full by the date agreed, either by cheque or into a bank account nominated by the Contractor
- 4.3 Without prejudice to any other right or remedy that it may have, if the Employer fails to pay the Contractor in accordance with these Conditions the Contractor may:
- 4.3.1 Suspend all services until payment has been made in full; and
- 4.3.2 Claim interest on any outstanding payments at a rate of 8% per annum above the current base lending rate from time to time of the Bank of England, accruing on a daily basis
- 4.4 Time for payment shall be of the essence of the Contract
- 4.5 All sums payable to the Contractor under this Contract shall become due immediately on its termination
- 4.6 The Contractor may, without prejudice to any other rights it may have, set off any liability of the Employer to the Contractor against any liability of the Contractor to the Employer
- 4.7 Subject to Clause 12.1 should the Employer's default in payment continue for a continuous period of 7 days, the Contractor shall be entitled to terminate the Contract on giving the Employer written notice of termination. The Contractor shall in addition be entitled to claim from the Employer the loss of profit suffered by the Contractor on the work left to complete at the date of termination

5 Commencement, Duration and Performance

- 5.1 The Goods and Services supplied under the Contract shall be provided by the Contractor to the Employer from the date specified in the Contract or as otherwise agreed between the parties. The Contractor shall not be obliged to continue to provide Services or deliver any Goods to the Employer until any outstanding payments in respect of the Goods or Services have been paid by the Employer in full and in cleared funds.
- 5.2 The Goods and Services supplied under the Contract shall continue to be supplied until the Services have been completed in accordance with the Contract or, if earlier, until the Contract is suspended or terminated in accordance with these Conditions
- 5.3 Delivery of the Goods shall be completed on the Goods arrival at the site
- 5.4 Any dates quoted for delivery of the Goods and performance of the Services are approximate only and the Contractor shall not be liable for any delay in delivery of the Goods and performance of the Services however caused. Time for delivery and performance shall not be of the essence of the Contract unless previously agreed by the Contractor in Writing. The Goods may be delivered and the Services performed by the Contractor in advance of the quoted date upon giving reasonable notice to the Employer.
- 5.5 The Contractor may deliver the Goods by instalments, and any delay in delivery or defect in an instalment shall not entitle the Employer to cancel any other instalment of the Goods.

6 Risk and property

- 6.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Employer until the Contractor has received in cash or cleared funds payment in full of the price of the Goods and all other goods and services agreed to be sold by the Contractor to the Employer for which payment is then due.
- 6.2 Until such time as the property in the Goods passes to the Employer, the Employer shall hold the Goods as the Contractor's fiduciary agent and bailee, and shall keep the Goods separate from those of the Employer and third parties and properly stored, protected and insured and identified as the Contractor's property.
- 6.3 Until such time as the property in the Goods passes to the Employer the Contractor shall be entitled at any time to require the Employer to deliver up the Goods to the Contractor and, if the Employer fails to do so forthwith, to enter upon any premises of the Employer or any third party where the Goods are stored and repossess the Goods. The Employer shall give information relating to the whereabouts of the Goods as the Contractor may from time to time require.
- 6.4 The Employer shall not be entitled to sell or pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Contractor, but if the Employer does so all moneys owing by the Employer to the Contractor shall (without prejudice to any other right or remedy of the Contractor) forthwith become due and payable.

7 Liability

- 7.1 Nothing in this condition shall limit or exclude any liability for fraud.
- 7.2 The Contractor's total liability to the Employer for claims made by the Employer against the Contractor in contract, tort and/or common law, including negligence or breach of statutory duty, arising in connection with the performance of the Contract shall be limited to a sum not exceeding twice the Contract Sum or £50,000, whichever is lower. This clause does not apply to claims made against the Contractor involving death, personal injury or fraud
- 7.3 The Contractor shall be under no liability in respect of any defect in the Goods and Services arising from any drawing, design or specification supplied by the Employer;
- 7.4 The Contractor shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Contractor's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Contractor's approval;
- 7.5 Subject to Clause 12.1 the Contractor shall be under no liability under any warranty, condition or guarantee provided to the Employer if the total price for the Goods and Services has not been paid by the final date for payment;
- 7.6 Any warranty provided by the Contractor shall not extend to parts, materials or equipment not manufactured by the Contractor, in respect of which the Employer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Contractor and which is capable of transfer to the Employer.
- 7.7 Where any valid claim in respect of any of the Goods and Services which is based on any defect in the quality or condition of the Goods or the provision of the Services or the failure to meet specification is notified to the Contractor in accordance with these conditions, the Contractor shall be entitled to replace the defective Goods (or the part in question) or provide again the Services free of charge and the Contractor's liability shall not exceed the price charged by the Contractor in respect of the defective Goods or Services
- 7.8 The Contractor shall not be liable to the Employer or be deemed to be in breach of the

- Contract by reason of any delay in performing, or any failure to perform, any of the Contractor's obligations in relation to the Goods and Services, if the delay or failure was due to any cause beyond the Contractor's reasonable control.
- 7.9 The Employer shall be responsible for any unforeseen ground conditions (including without limitation, underground services, pipes and cables and running sand) which the Contractor may encounter during the provision of the Goods and Services. The Employer shall pay any costs incurred by the Contractor arising from the unforeseen ground conditions in accordance with the Contractor's rates where applicable or reasonable rates where not applicable.
- 8 Default by the Contractor**
- 8.1 If, before practical completion of the works, the Contractor without reasonable cause, wholly or substantially suspends the carrying out of the Services or commits a material breach of contract the Employer may serve a notice in writing specifying the default and requiring the Contractor to remedy the breach within 14 days. If the Contractor fails to remedy the breach, the Employer may by notice in writing terminate the Contract
- 9 Default by the Employer**
- 9.1 If the Employer shall commit a material breach of the Contract, the Contractor may by notice in writing to the Employer require the breach to be remedied within 7 days. If the Employer fails to remedy the breach as required the Contractor may by notice in writing terminate the Contract. A material breach shall include, but not be exclusive to:
- 9.1.1 Repeatedly breaching any of the terms of the Contract in such a manner as to reasonably justify the opinion that the Employer's conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- 9.1.2 The Employer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Company) is deemed unable to pay its debts within the meaning of section 123 Insolvency Act 1986;
- 9.1.3 Commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party
- 9.1.4 A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up or, being an individual, bankruptcy proceedings, of the Employer other than for the sole purpose of a scheme of solvent amalgamation with one or more other companies or the solvent reconstruction of the Employer
- 9.1.5 An application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Employer's assets
- 9.1.6 A floating charge holder over the assets of the Employer has become entitled to appoint or has appointed an administrative receiver
- 9.1.7 A person becomes entitled to appoint a receiver over the assets of the Employer or a receiver is appointed over the assets of the Employer
- 9.1.8 A creditor or encumbrancer of the Employer attaches or takes possession of, or a distress execution sequestration or other such process is levied or enforced or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days
- 9.1.9 Any event occurs or proceedings are taken with respect to the Employer in any jurisdiction to which it is subject but has an effect equivalent or similar to any of the events mentioned in condition 9.1.3 to 9.1.9 (inclusive)
- 9.1.10 The Employer suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business
- 9.1.11 There is a change of control of the Employer (as defined in section 574 of the Capital Allowances Act 2001)
- 9.2 On termination of the Contract:**
- 9.2.1 The Employer shall immediately pay to the Contractor all of the Contractor's outstanding unpaid sums. Where Goods and Services have been supplied by the Contractor since the last payment date, the Contractor may submit an invoice for the value of the Goods and Services supplied up to the date of termination, which shall be payable immediately on receipt. Where termination has occurred due to a material breach of the Contract by the Employer, the Contractor shall additionally be entitled to claim a loss of profit on the Goods and Services remaining to be performed by the Contractor at the date of termination.
- 9.2.2 The Employer shall immediately return all of the Contractor's equipment, pre-existing Materials and Deliverables. If the Employer fails to do so, then the Contractor may enter the site and take possession of them. Until they have been returned or repossessed the Employer shall be solely responsible for their safe-keeping
- 9.2.3 The accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.
- 10 Contractor's Obligations**
- 10.1 The Contractor shall use reasonable endeavours to provide the Goods and Services in accordance, in all material respects, with the Contract.
- 10.2 The Contractor shall use reasonable endeavours to meet any performance dates but such dates shall be estimates only and time shall not be of the essence of delivery of the Goods or performance of the Services.
- 10.3 The Contractor shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirement that applies at the Employer's premises and that have been communicated to it by the Employer.
- 11 Employer's Obligations**
- 11.1 The Employer shall:
- 11.1.1 Co-operate with the Contractor in all matters relating to the Contract;
- 11.1.2 Provide the Contractor, its agents, sub-contractors, consultants and employees, in a timely manner and at no charge to the Contractor, with access to and from the Site throughout the course of the Services. Access shall include scaffolding, waste disposal facilities, fencing, water, power, welfare and storage facilities.
- 11.1.3 Provide to the Contractor, in a timely manner, such material and other information as the Contractor may require and ensure its accuracy in all material respects;
- 11.1.4 Inform the Contractor of all healthy and safety rules and regulations and any other reasonable security requirements that apply at the Site
- 11.2 If the performance of the Contractor's obligations under the Contract is prevented, delayed or otherwise affected by any act or omission of the Employer, its agents, sub-contractors, consultants or employees and the Contractor incurs any costs, charges or losses as a result, the Employer shall reimburse the Contractor for the costs, charges or losses sustained
- 11.3 The Employer shall not, without the prior written consent of the Contractor, at any time from the date of the Contract to the expiry of 6 months after the last date of supply of the Services, solicit or entice away from the Contractor or employ (or attempt to employ) any person who is, or has been, engaged as an employee or sub-contractor of the Contractor in the provision of the Goods and/or Services.
- 11.4 The Employer acknowledges that the Contractor has relied and continues to rely on the Employer to make full disclosure of all known, assumed and suspected structures, tanks, utilities, pipe lines, discharges, spillages or any hazardous substances at, under or near

- the Site and if the Contractor's inspection reveals any such matters which were not disclosed, the Contractor reserves the right to increase the price of the Contract accordingly
- 11.5 The Employer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Employer by the Contractor, its employees, agents, consultants or sub-contractors and any other confidential information concerning the Contractor's business or its products which the Employer may obtain.
- 11.6 The Employer may disclose such information:
- 11.6.1 to its employees, officers, representatives, advisers, agents or sub-contractors who need to know such information for the purposes of carrying out the Employer's obligations under the Contract; and
- 11.6.2 as may be required by law, court order or any governmental or regulatory authority
- 11.7 The Employer shall ensure that its employees, officers, representatives, advisers, agents or sub-contractors to whom it discloses such information comply with these conditions
- 11.8 The Employer shall not use any such information for any purpose other than to perform its obligations under the Contract.
- 11.9 All materials, equipment and tools, drawings, specifications and data supplied by the Contractor to the Employer (including pre-existing materials and the Contractor's equipment) shall, at all times, be and remain the exclusive property of the Contractor, but shall be held by the Employer in safe custody at its own risk and maintained and kept in good condition by the Employer until returned to the Contractor, and shall not be disposed of or used other than in accordance with the Contractor's written instruction or authorisation
- 12 General**
- 12.1 If the Contract between the Employer and the Contractor is defined as a "Construction Contract" for the purposes of the Housing Grants Construction and Regeneration Act 1996 ("the Construction Act") the terms implied into a Construction Contract by the Construction Act and the Scheme for Construction (England and Wales) Regulations 1998 (as amended) ("the Scheme") shall, where considered to be applicable, be incorporated into these Conditions, but subject to any amendments to those implied terms made in these Conditions, which amendments where permissible shall take precedence.
- 12.2 Variations shall be valued as agreed between the Contractor and the Employer. In default of agreement, a reasonable sum shall be payable. The value of any variation shall be included in the payments claimed by the Employer in accordance with these terms.
- 12.3 The Contractor may, from time to time, change the Services in order to comply with any applicable safety or statutory requirements
- 12.4 The Contractor shall obtain and maintain during the execution of the works such insurance policies as the Contractor deem to be appropriate for the works. The insurances shall be subject to the limitations and exceptions contained in the insurance policies.
- 12.5 As between the Employer and the Contractor, all intellectual property rights and all other rights in the Deliverables and the pre-existing Materials shall be owned by the Contractor. Subject to payment in full made by the Employer to the Contractor, the Contractor licenses all such rights to the Employer free of charge and on a non-exclusive worldwide basis to such extent as is necessary to enable the Employer to make reasonable use of the Deliverables and the Services. If the Contract is terminated, this Licence shall also automatically terminate.
- 12.6 Neither the Employer nor the Contractor shall be entitled to assign the Contract
- 12.7 The Contractor may perform any of its obligations or exercise any of its rights hereunder by itself or through a competent subcontractor selected by the Contractor.
- 12.8 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any notice may be served either by hand, first class letter post, facsimile transmission or electronic mail. Notice shall be deemed served if by hand upon delivery if by first class letter post 48 hours after posting and if by facsimile transmission or electronic mail upon being so transmitted. Any notice served shall be acknowledged in writing by the receiving party within 7 days of receipt.
- 12.9 No waiver by the Contractor of any breach of the Contract by the Employer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.10 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 12.11 The Contract shall be governed by the laws of England, and the Employer agrees to submit to the non-exclusive jurisdiction of the English courts.
- 12.12 These conditions do not confer or purport to confer on any third party any benefit or the right to enforce any term of the Contract between the Employer and the Contractor.
- 12.13 Under The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, the Employer may have the right to withdraw, without charge, within fourteen working days of the date on which the Contract comes into effect. However, if the Employer requires the Contractor to begin the performance of the services during the cancellation period, the Employer shall pay the Contractor an amount which is in proportion to what has been performed until the Employer has communicated to the Contractor the cancellation from the Contract, in comparison with the full coverage of the Contract. The Employer's acceptance of these terms and conditions will amount to such a consent. If the Employer seeks to withdraw instructions, the Employer shall give notice by telephone, email or letter to the Contractor. The Regulations require the Contractor to inform you that the work involved is likely to take more than 30 days.
- 13 Dispute Resolution**
- 13.1 Before engaging in formal proceedings the parties shall firstly consider any appropriate form of Alternative Dispute Resolution.
- 13.2 Adjudication is available as a dispute resolution procedure in accordance with the Construction Act and the Scheme.
- 13.3 The adjudicator will be entitled to make a ruling as to their own jurisdiction;
- 13.4 Notwithstanding the above the Contractor and Employer both have the right to bring proceedings at Court.

TERMS AND CONDITIONS OF ENGAGEMENT OF SUBCONTRACTORS & SUPPLIERS
Corinthia Ltd
(hereinafter referred to as "the Contractor")

1. Interpretation

1.1 In these Conditions

'Conditions' means the standard terms and conditions of purchase set out herein (unless the context otherwise requires) includes any special terms and conditions specified in the Order.

'Goods' means the goods (if any) described in the Order.

'Main Contract' means the contract and conditions imposed on the Contractor by any Authority, Developer, Builder or Employer (if any).

'Order' means the Contractor's purchase order to which these Conditions are annexed.

'Price' means the charge for the Services and/or the price of the Goods.

'Sub-Contract' means the contract for supply and acquisition of the Services and/or the sale and purchase of the Goods including the Order, these Conditions and any annexed documentation.

'Sub-Contractor' means the person so described in the Order.

'Services' means the services described in the Order.

'Site' means the site specified in the Order.

'Specification' includes any plans, drawings, data or other information relating to the Services or Goods.

'Variation' means the alteration or modification of the design, quality or quantity of the Services included in the Contract and accompanying specification including the addition, omission or substitution of any work and the alteration of the kind or standard of any of the materials or Goods to be used in the work

'Writing' includes electronic mail and facsimile transmission.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2. Basis of purchase

2.1. The Subcontractor shall be bound by the terms and conditions of the Main Contract in full. Where a discrepancy occurs between the provisions of the Main Contract and the Subcontract and these Conditions, the Subcontract and these Conditions shall prevail. A copy of the Main Contract can be viewed at The Old Brewery, Castle Eden, County Durham, TS27 4SU upon request between the hours of 9am and 5pm Monday to Friday.

2.2. The Order constitutes an offer by the Contractor and commencement of works by the Sub-Contractor constitutes an acceptance of that Offer subject to these Conditions.

2.3. These Conditions and the Order shall apply to the Sub-Contract to the exclusion of any other terms and conditions on which any quotation or tender has been given to the Contractor or subject to which the Order is accepted or purported to be accepted by the Sub-Contractor.

2.4. The Services shall be subject to a program of works being agreed by the Contractor prior to the Sub-Contractor commencing the Services.

2.5. No variation to the Order or these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Contractor and the Sub-Contractor.

3 Specifications

3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Contractor to the Sub-Contractor or agreed in Writing by the Contractor.

3.2 No Variation to the Sub-Contract shall be binding unless agreed between the authorised representatives of the Contractor and the Sub-Contractor.

3.3 The Sub-Contractor shall provide all labour, plant and/or materials to carry out and complete the Services in accordance with the drawings, details and specifications described in the invitation to tender and any amendments thereto.

3.4 The Sub-Contractor shall provide, where expressly stated in the Sub-Contract, design services for the Services and shall include for the integration of his design with other designs required to complete the Main Contract.

3.5 Any Specification supplied by the Contractor to the Sub-Contractor, or specifically produced by the Sub-Contractor for the Contractor, in connection with the Sub-Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Contractor. The Sub-Contractor shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Sub-Contractor, or as required for the purpose of the Sub-Contract.

3.6 The Sub-Contractor shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

3.7 The Sub-Contractor shall comply in all respects with the Contractor's current Health & Safety Policy and all relevant Acts, Regulations & Approved Code of Practice. On or before 7 days prior to the commencement of Services or delivery of Goods the Sub-Contractor is to provide the Contractor with a copy of the Sub-Contractor's Health & Safety Policy and the necessary Risk Assessments applicable to the scope of the Services.

3.8 The Sub-Contractor shall take out and keep in force insurance policies for Public Liability, Employers Liability, Contractors All Risks, Professional Indemnity where appropriate, and any other insurance defined in the Main Contract, and to the limits and time periods defined in the Main Contract. The Sub-Contractor is to provide on request documentary evidence to prove that satisfactory insurance cover is in place.

4. Price of the goods and services

4.1 The Price shall be as stated in the Order and, unless otherwise so stated, shall be exclusive of any applicable value added tax (which shall be payable by the Contractor subject to receipt of a VAT invoice).

4.2 Variations shall be valued as agreed between the Contractor and the Sub-Contractor. In default of agreement, a reasonable sum shall be payable. The value of any Variation shall be included in the payments claimed by the Sub-Contractor in accordance with these terms.

4.3 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Contractor in Writing.

5 Terms of payment

5.1 The Sub-Contractor shall be entitled to invoice the Contractor on or at any time after performance of the Services or delivery of the goods, as the case may be, and each invoice shall quote the number of the Order.

5.2 Unless otherwise stated in the Order, the Contractor shall pay the Price of the Goods and the Services within 30 days after the end of the second month of receipt by the Contractor of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Contractor.

5.3 Payment is subject to, and will only be made when the Goods or Services have been inspected by the Contractor and are considered by the Contractor to have been completed to a satisfactory and acceptable standard and/or the Goods supplied are of expected and acceptable quality.

5.4 Orders for Services calculated on a time basis and considered by the Contractor to be based on an estimated rate, time or value shall be invoiced to the Contractor at the actual rate, time or value and must be agreed by the Contractor to be fair and reasonable.

5.5 The Contractor shall be entitled to set off against the Price any sums owed to the Contractor by the Sub-Contractor.

5.6 Payments are made by cheque or bank transfer and payable to the Sub-Contractor as stated on the invoice unless otherwise notified to the Contractor in writing.

5.7 The Price is subject to the retention percentage specified in the Order that shall reduce by half upon issue of the Certificate of Practical Completion. Final retention monies to be released on the issue of the Certificate of Rectification.

5.8 Notwithstanding any other provision of these Conditions, if a party to the Main Contract or the Employer or any other person responsible directly or indirectly for paying the main contractor is insolvent, the Contractor's obligation to pay the Sub-Contractor in accordance with the Sub-Contract shall be conditional on the Contractor's receiving payment specifically in relation to the Sub-Contract works from the main contractor or Employer as applicable. In this event, payment of the relevant amount under this Sub-Contract shall be due upon the Contractor's receiving such payment from the main contractor or Employer and the final date for such payment shall be 14 days thereafter. For the purpose of this clause, 'insolvent' has the meaning given to it in section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any re-enactment thereof.

6 Delivery>Returns

6.1 The Goods shall be delivered to, and the Services shall be performed at, the Site on the date or within the period stated in the Order, in either case during the Contractor's usual business hours.

6.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of Order, the Sub-Contractor shall give the Contractor reasonable notice of the specified date.

6.3 The time of performance of the Services and of delivery of the Goods is of the essence of the Sub-Contract.

6.4 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Sub-Contract will be treated as a single Sub-Contract and not severable.

6.5 The Contractor shall be entitled to reject any Goods delivered which are not in accordance with the Sub-Contract, and shall not be deemed to have accepted any Goods until the Contractor has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

6.6 The Sub-Contractor shall supply the Contractor in good time with any instructions or other information required to enable the Contractor to accept delivery of the Goods and performance of the Services.

7 Property

The property in the Goods shall pass to the Contractor upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Contractor once payment has been made and the Goods have been appropriated to the Sub-Contract.

8 Acknowledgement

The acceptance of this Order by the Sub-Contractor or alternatively the delivery of the whole or any part of the goods subject of such Order or the commencement of the Sub-Contract works shall be deemed to constitute an acceptance of these conditions and the instruction herein set out.

9 Warranties and liability

9.1 The Sub-Contractor warrants to the Contractor that the Goods:

9.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Sub-Contractor or made known to the Sub-Contractor in Writing at the time the Order is placed;

9.1.2 will be free from defects in design, material and workmanship;

9.1.3 will correspond with any relevant Specification or sample; and

9.1.4 will comply with all statutory requirements and regulations relating to their sale.

9.2 The Sub-Contractor warrants to the Contractor that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Contractor to expect in all the circumstances.

9.3 Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Sub-Contract, then the Contractor is entitled:

9.3.1 to require the Sub-Contractor to repair the Goods or to supply replacement Goods or Services in accordance with the Sub-Contract within 7 days; or

9.3.2 at the Contractor's sole option, and whether or not the Contractor has previously required the Sub-Contractor to repair the Goods or to supply any replacement Goods or Services, to treat the Sub-Contract as discharged by the Sub-Contractor's breach and require the repayment of any part of the Price which has been paid.

9.4 The Sub-Contractor shall indemnify the Contractor in full against all liability, loss, damages, costs and expenses (including legal expenses) and consequential costs awarded against or incurred or paid by the Contractor as a result of or in connection with:

9.4.1 breach of any warranty given by the Sub-Contractor in relation to the Goods or the Services: any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Contractor;

9.4.2 any liability under the Consumer Protection Act 1987 in respect of the Goods;

9.4.3 any act or omission of the Sub-Contractor or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and

9.4.4 any act or omission of any of the Sub-Contractor's personnel in connection with the performance of the Services.

9.5 If due to fire, strikes, lockout, force majeure or to any other causes arising from any acts of demands of the British Government or any Government or as a consequence of war or outbreak of hostilities, work at the Contractor's premises where the goods the subject of the Order are required to be delivered, or work at the premises of a third party where the goods the subject thereof are required to be delivered cannot function normally, the Contractor reserves the right to cancel this Order or any part thereof uncompleted.

9.6 The Services shall be completed to the satisfaction of the Architect, Engineer, Contract Administrator, as appropriate, or any other person acting for the Employer and to the satisfaction of the Contractor. The Subcontract Sum shall include the cost of compliance with Local Authority regulations, by-laws, Acts of Parliament and Statutory Undertaker's requirements in connection with the Subcontract Works.

9.7 The Services are to be executed as directed by the Contractor with due regard for the progress and sequencing of the other Services, if applicable. If as a consequence of the Sub-Contractor's failure to complete the Services, the completion of the Main Contract is delayed, the Sub-Contractor shall pay the Contractor for any direct or consequential loss or damages. The Contractor shall inform the Sub-Contractor in writing at the earliest opportunity when it becomes evident that damages have been levied and seek to recover the sums due from any monies outstanding to the Sub-Contractor.

9.8 In the event of a delay caused by the Sub-Contractor where no liquidated damages are deducted or levied by the Employer, the Sub-Contractor shall pay liquidated damages to the Contractor on demand or the Contractor may deduct from its payments to the Sub-Contractor a sum of the Contractor's payments to the Sub-Contractor as liquidated damages in accordance with the Main Contract. The parties confirm that this sum represents a genuine pre-estimate of the Contractor's loss.

9.9 The Sub-Contractor shall keep the Contractor indemnified against all claims for loss, injury or damage as a consequence of the breach of contract, breach of statutory duty or negligence by the Sub-Contractor or their employees, servants or agents. The Sub-Contractor will further indemnify the Contractor against all costs, charges and expenses incurred by the Contractor as a consequence of the breach of contract, breach of statutory duty or negligence by the Sub-Contractor, their employees, servants or agents.

9.10 The Sub-Contractor shall maintain a clean and tidy Site at all times during the term of the Sub-Contract. All surplus materials, refuse and packing shall be removed from the Site at the Sub-Contractor's own expense.

9.11 The Sub-Contractor shall provide all scaffolds, safety barriers, temporary works, hoists and craneage, etc. as necessary, at the Sub-Contractor's own cost, to carry out the Services in a safe manner.

10 Termination

10.1 The Contractor shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Sub-Contractor at any time prior to delivery or performance, in which event the Contractor's sole liability shall be to pay to the Sub-Contractor the Price for the Goods or Services in respect of which the Contractor has exercised its right of cancellation, less the Sub-Contractor's net saving of cost arising from cancellation.

10.2 The Contractor shall be entitled to terminate the Sub-Contract without liability to the Sub-Contractor by giving notice to the Sub-Contractor at any time if the Sub-Contractor commits a material breach of the Sub-Contract including, but not limited to, if:

10.2.1 the Sub-Contractor makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

10.2.2 an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Sub-Contractor; or

10.2.3 the Sub-Contractor ceases, or threatens to cease, to carry on business;

10.2.4 a Creditor secures Judgment over the Sub-Contractor's major assets;

10.2.5 the Contractor reasonably apprehends that any of the events mentioned above is about to occur in relation to the Sub-Contractor and notifies the Sub-Contractor accordingly;

10.2.6 the Sub-Contractor repeatedly breaches any of the terms of the Sub-Contract in such a manner as to reasonably justify the opinion that the Sub-Contractor's conduct is inconsistent with it having the intention or ability to give effect to the terms of the Sub-Contract; or

10.2.7 the Sub-Contractor fails to comply with instructions or fails to proceed with the Services regularly and diligently.

11. General

11.1 The Order is personal to the Sub-Contractor and the Sub-Contractor shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-Sub-Contract any of its obligations under the Sub-Contract.

11.2 The Sub-Contractor agrees to comply with its obligations under the Construction (Design and Management) Regulations 2015.

11.3 The Sub-Contractor agrees to provide collateral warranties if expressly required in accordance with the requirements of the Main Contract. Should the Sub-Contractor not provide such collateral warranties to the Contractor within 14 days of being requested to do so, the Contractor will be entitled to withhold payments to the Sub-Contractor until such time as the relevant collateral warranty has been delivered.

11.4 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any notice may be served either by hand or first class letter post or by facsimile transmission. Notice shall be deemed served if by hand upon delivery if by first class letter post 48 hours after posting and if by facsimile transmission upon being so transmitted.

11.5 No waiver by the Contractor of any breach of the Sub-Contract by the Sub-Contractor shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

11.7 If the Contract between the Employer and the Contractor is defined as a "Construction Contract" for the purposes of the Housing Grants Construction and Regeneration Act 1996 ("the Construction Act") the terms implied into a Construction Contract by the Construction Act and the Scheme for Construction (England and Wales) Regulations 1998 (as amended) ("the Scheme") shall, where considered to be applicable, be incorporated into these Conditions, but subject to any amendments to those implied terms made in these Conditions, which amendments where permissible shall take precedence.

11.8 The Sub-Contract shall be governed by the laws of England, and the Sub-Contractor agrees to submit to the non-exclusive jurisdiction of the English courts.

11.9 Adjudication is available as a dispute resolution procedure in accordance with the Construction Act and the Scheme.

12. Third Parties

A person who is not named as a party in the Order shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these conditions. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Act.