

## 24-7 Group Conditions of Sub-Contract



### 1. Definitions & Interpretation

1.1 In these Conditions of Sub-Contract, the following terms shall have the following meanings unless the context otherwise requires:

Contract	means the contract between the Contractor and the Main Contractor, or the contract between the Contractor and the Employer, whichever is applicable (see the Sub-Contract Particulars for clarification).
Contractor	means 24-7 Electrical Limited trading as 24-7 Group.
Defects Liability Period	means the period specified as such in the Sub-Contract Particulars.
Employer	means the employer under the Main Contract or the Contract, whichever is applicable (see the Sub-Contract Particulars for clarification).
Main Contract	means, where applicable, the contract between the Employer and the Main Contractor.
Main Contract Works	means, where applicable, the works to be carried out by the Main Contractor under the Main Contract.
Main Contractor	means, where applicable, the contractor engaged under the Main Contract (see the Sub-Contract Particulars for clarification).
Site	means the location where the Sub-Contract Works are to be carried out.
Sub-Contract	means the contract between the Contractor and the Sub-Contractor for the carrying out of the Sub-Contract Works, which shall incorporate the Sub-Contract Order, the Sub-Contract Particulars and the Sub-Contract Documents and shall be subject to these Conditions of Sub-Contract.
Sub-Contract Documents	means the documents listed in the Sub-Contract Order which the Sub-Contractor is required to comply with.
Sub-Contract Order	means the order issued by the Contractor to the Sub-Contractor.
Sub-Contract Particulars	means the particulars issued by the Contractor to the Sub-Contractor.
Sub-Contract Sum	means the sum specified in the Sub-Contract Order which is payable to the Sub-Contractor for carrying out the Sub-Contract Works.
Sub-Contract Works	means the works to be carried out by the Sub-Contractor, as described in the Sub-Contract Order and the Sub-Contract Particulars.

Sub-Contractor means the company, organisation or individual to whom the Sub-Contract Order is addressed.

Works means the works to be carried out by the Contractor under the Contract.

1.2 In these Conditions of Sub-Contract, unless expressly stated otherwise or unless the context otherwise requires:

1.2.1 any term importing gender includes any gender, and any term importing the singular includes the plural and vice versa;

1.2.2 any reference to a "person" includes natural persons and corporate and unincorporated bodies (whether or not having separate legal personality);

1.2.3 any reference to a clause is a reference to a clause of these Conditions of Sub-Contract;

1.2.4 the words "include" or "including" shall be construed without limitation;

1.2.5 a reference to any enactment, statutory provision or subordinate legislation is a reference to such enactment, statutory provision or subordinate legislation as modified, re-enacted, replaced or extended from time to time, and a reference to an enactment or statutory provision includes reference to any subordinate legislation made thereunder; and

1.2.6 clause headings are for reference only and do not form part of or affect the interpretation of these Conditions of Sub-Contract.

1.3 These Conditions of Sub-Contract apply to the exclusion of any other terms that the Sub-Contractor seeks to impose or incorporate. Any terms and conditions contained in any document provided or submitted by the Sub-Contractor (including the Sub-Contractor's quotation) shall not apply unless expressly agreed in writing by the Contractor. If the Sub-Contractor's quotation is incorporated into the Sub-Contract, it is only for the purposes of incorporating the information contained within it which is relevant to the carrying out of the Sub-Contract Works (such as specifications, drawings and other technical information). Any reference in the Sub-Contractor's quotation to the Sub-Contractor's terms and conditions is of no effect and the Sub-Contractor acknowledges and agrees that the Sub-Contractor's terms and conditions do not apply and are not incorporated into the Sub-Contract.

1.4 It shall be a condition precedent to payment that the The Sub-Contractor shall execute and return one copy of the Sub-Contract Order to the Contractor within 14 days of the date thereof, provided that if the Sub-Contract Order is not executed and returned as required by this clause 1.4, the Sub-Contractor shall nevertheless be deemed to have accepted the Sub-Contract Order and agreed to these Conditions of Sub-Contract upon commencement of the Sub-Contract Works or the performance of any of the Sub-Contractor's obligations under the Sub-Contract.

1.5 No amendment to these Conditions of Sub-Contract shall be made without the express written consent of the Contractor.

## **2. Sub-Contractor's Obligations**

2.1 The Sub-Contractor shall carry out and complete the Sub-Contract Works in accordance with the Sub-Contract Order, the Sub-Contract Particulars, the Sub-Contract Documents and these Conditions of Sub-Contract. The Sub-Contractor shall carry out and complete the Sub-Contract Works with due diligence, in a good and workmanlike manner and in accordance with the reasonable directions and requirements of the Contractor.

2.2 The Sub-Contractor shall provide goods and materials which are new, of a satisfactory quality and appropriate for use in the Sub-Contract Works. The Sub-Contractor's workmanship shall be of a satisfactory quality.

2.3 The Sub-Contractor shall, prior to commencing the Sub-Contract Works, satisfy itself as to the content of any tender drawings and specifications provided to it, the nature, extent and location of the Site, the physical conditions of the Site, the availability of necessary equipment and facilities and any other matters which may affect the execution of the Sub-Contract Works. The Sub-Contractor shall be deemed to have fully acquainted itself with all physical conditions and risks which may influence or affect the Sub-Contract Works. No failure on the part of the Sub-Contractor to discover or foresee any condition or risk, whether the same ought reasonably to have been discovered or foreseen or not, shall entitle the Sub-Contractor to an addition to the

Sub-Contract Sum or to claim damages or any additional payment or to an extension of time. The Sub-Contractor shall not and shall not be entitled to rely upon any survey, report, data or other document prepared or provided by the Contractor regarding any such matter as is referred to in this clause 2.3 and the Contractor makes no representation and gives no warranty as to the accuracy or completeness of any such survey, report, data or document or any representation, recommendation or statement, whether negligently or otherwise made, therein contained.

- 2.4 The Sub-Contractor shall not use or permit to be used in the Sub-Contract Works any materials which contravene any British Standard or EU equivalent, or which are generally considered to be deleterious within the building design professions.
- 2.5 The Sub-Contractor shall provide at its own expense everything required to carry out and complete the Sub-Contract Works, including all materials, labour, plant, equipment, storage and transport. The Sub-Contractor shall be responsible for unloading and distributing all plant and materials used to carry out the Sub-Contract Works. The Contractor shall not be responsible for the provision of any attendances unless specified in the Sub-Contract Particulars or otherwise agreed by the Contractor in writing.
- 2.6 Insofar as the Sub-Contractor is responsible for the design of the Sub-Contract Works or any part thereof, the Sub-Contractor warrants that there has been exercised and will be exercised all the reasonable skill, care and diligence to be expected of a duly qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Sub-Contract Works or such part thereof. The Sub-Contractor further warrants that the design of the Sub-Contract Works shall satisfy any performance specifications or requirements which are included in or referred to in the Sub-Contract.
- 2.7 The Sub-Contractor shall bear the risk of all errors, discrepancies and divergences within or between any documents produced by the Sub-Contractor and, where the Sub-Contractor is responsible for the design of the Sub-Contract Works or any part thereof, the Sub-Contractor shall also bear the risk of all errors, discrepancies and divergences within any documents provided by the Contractor and between any documents produced by the Sub-Contractor and any documents provided by the Contractor. If the Sub-Contractor discovers any error, discrepancy or divergence, the Sub-Contractor shall immediately notify the Contractor of its proposals for resolving it and the Contractor shall either agree the proposed amendment or instruct the Sub-Contractor how the error, discrepancy or divergence is to be dealt with (but such instruction shall not be treated as a variation where the Sub-Contractor is responsible for the design of the Sub-Contract Works or any part thereof). If the Sub-Contractor fails to so notify the Contractor and instead proceeds with the Sub-Contract Works in the knowledge of the error, discrepancy or divergence, any additional costs which the Contractor incurs as a result of such failure shall be due from the Sub-Contractor as a debt.
- 2.8 The Sub-Contractor shall provide on the Site at all times a Site supervisor and such competent operatives as are necessary to enable the Sub-Contractor to execute the Sub-Contract Works in accordance with the Sub-Contract. Any instructions given by the Contractor to the Sub-Contractor's Site supervisor shall be deemed to have been issued to the Sub-Contractor directly.
- 2.9 The Sub-Contractor shall keep all areas of the Site where the Sub-Contract Works are carried out clean, tidy and safe at all times and dispose of all debris and rubbish resulting from the execution of the Sub-Contract Works in the manner specified in the Sub-Contract Particulars. The Sub-Contractor shall protect all surfaces on the Site from damage arising from the carrying out of the Sub-Contract Works.
- 2.10 As part of its management of the Sub-Contract Works, the Sub-Contractor shall be responsible for the proper and effective co-ordination of its Sub-Contract Works with the Works of the Contractor and the work of all third parties working on the Site.
- 2.11 The Sub-Contractor shall provide all details relating to the Sub-Contract Works to the Contractor sufficiently far in advance so as not to delay or disrupt the Contractor in complying with its obligations under the Contract.
- 2.12 The Sub-Contractor shall be responsible for protecting the Sub-Contract Works and maintaining the Sub-Contract Works in good order and condition until such time as they are handed over to the Contractor.

- 2.13 The Sub-Contractor shall be responsible for checking the quality and accuracy of its Sub-Contract Works and shall provide records, samples, test certificates and other documentation relating to the Sub-Contract Works when required to do so by the Contractor.
- 2.14 The Sub-Contractor shall observe and comply with all applicable laws, codes and policies relating to anti-bribery, anti-corruption and anti-slavery including the Bribery Act 2010 and Modern Slavery Act 2015.
- 2.15 Save as may be necessary for the performance of the Sub-Contract Works, or as the Contractor may otherwise allow in writing, the Sub-Contractor shall treat as confidential all information relating to the Sub-Contract and the Sub-Contract Works, and shall take all necessary steps to ensure its employees, operatives and agents do likewise.
- 2.16 No approval, review, comment, consent, advice or indication of satisfaction given by the Contractor will reduce, extinguish, exclude, limit or modify the Sub-Contractor's obligations under the Sub-Contract.

### **3. Compliance with the Contract**

- 3.1 The Sub-Contractor is deemed to have allowed in its tender for complying with the Contract and shall observe, perform and comply with all provisions of the Contract on the part of the Contractor to be observed, performed and complied with so far as they relate to the Sub-Contract Works (or any portion of the same) as if they were specifically set out herein. A copy of the Contract (with details of the Contractor's pricing omitted) is available for the Sub-Contractor to view on written request and upon reasonable notice.
- 3.2 The Sub-Contractor shall indemnify the Contractor against and from all losses, damages, costs, expenses, losses and liabilities suffered or incurred by the Contractor as a result of any failure by the Sub-Contractor, its employees, operatives or agents to comply with clause 3.1.

### **4. Health and Safety**

- 4.1 The Sub-Contractor shall:
  - 4.1.1 fully comply, and provide such information as may be required for others to comply, with all current legislation, regulations, codes of practice, standards and statutory obligations relating to health and safety, including the Health & Safety at Work etc Act 1974 and the Construction (Design and Management) Regulations 2015 including any amendments thereto;
  - 4.1.2 comply with all health and safety procedures, policies and requirements notified to it by the Contractor and ensure that its employees, operatives and agents comply with and are fully conversant with the same;
  - 4.1.3 submit a copy of its health and safety policy to the Contractor no later than 7 days prior to commencement of the Sub-Contract Works;
  - 4.1.4 provide all necessary personal protective equipment to its employees, operatives and agents in accordance with the requirements of the Personal Protective Equipment at Work Regulations 1992 and/or to suit Site specific requirements (such as Main Contractor personal protective equipment branding requirements);
  - 4.1.5 provide all necessary "tool box talks" to its employees, operatives and agents and provide the Contractor with written details of this training;
  - 4.1.6 submit all necessary method statements and risk assessments to the Contractor no later than 7 days prior to commencement of the Sub-Contract Works;
  - 4.1.7 provide the Contractor with written confirmation and/or evidence that all its employees, operatives and agents are Construction Skills Certification Scheme qualified; and
  - 4.1.8 ensure that its Site supervisor has completed and holds a current Construction Site Manager's Safety Certificate.
- 4.2 Unless otherwise specified, upon entering and leaving the Site, all employees, operatives and agents of the Sub-Contractor shall report to the Site office and to the Contractor's Site office (if different), providing details of their name, employer and Construction Skills Certification Scheme card number. Where other signing in/out procedures are specified, all employees, operatives and agents of the Sub-Contractor shall fully comply with such procedures.

## **5. Sub-Contract Sum**

- 5.1 The Sub-Contract Sum shall be the amount stated in the Sub-Contract Order and shall not be increased except in accordance with the provisions of the Sub-Contract.
- 5.2 The Sub-Contractor shall be taken to have included within the Sub-Contract Sum everything necessary for the proper and timely execution of the Sub-Contract Works.
- 5.3 The Sub-Contractor shall, as a condition precedent to payment, provide a schedule of rates and prices to the Contractor demonstrating how the Sub-Contract Sum is calculated.

## **6. Commencement, Progress & Completion**

- 6.1 The Sub-Contractor shall commence the Sub-Contract Works on the date(s) specified in the Sub-Contract Particulars and complete the Sub-Contract Works within the period(s) or by the date(s) for completion specified in the Sub-Contract Particulars.
- 6.2 The Sub-Contractor shall proceed with the Sub-Contract Works regularly and diligently and use its best endeavours to prevent or minimise any delay in carrying out the Sub-Contract Works.
- 6.3 If so specified in the Sub-Contract Particulars, the Sub-Contractor shall produce a programme demonstrating how the Sub-Contractor intends to carry out the Sub-Contract Works and submit a copy of the same to the Contractor. The Sub-Contractor's programme shall be indicative only and shall not have any contractual effect.
- 6.4 The Sub-Contractor shall carry out and complete the whole of the Sub-Contract Works in accordance with the directions of the Contractor, which may take the form of programmes.
- 6.5 Without prejudice to any other rights or remedies which the Contractor may possess, if it becomes reasonably apparent that the Sub-Contractor is failing to progress the Sub-Contract Works in accordance with the requirements of the programme, or that the Sub-Contract Works will not be completed within the period(s) or by the date(s) specified in the Sub-Contract Particulars, the Contractor may upon 7 days' written notice omit any part of the Sub-Contract Works and make arrangements for that part of the Sub-Contract Works to be carried out by others. The Contractor shall be entitled to recover the costs thereof and/or any loss and/or expense so incurred from the Sub-Contractor. The Sub-Contractor shall not be entitled to treat its employment under the Sub-Contract as terminated unless the Contractor gives a written notice of termination in accordance with clause 20. The Sub-Contractor shall not be entitled to any payment for loss of profit or any other loss and/or expense incurred as a result of the Contractor taking over the performance of any part of the Sub-Contract Works.
- 6.6 The Sub-Contractor shall notify the Contractor in writing when it considers that the Sub-Contract Works are practically complete. The Contractor shall inspect the Sub-Contract Works within a reasonable time thereafter and confirm in writing the date when in the Contractor's reasonable opinion practical completion of the Sub-Contract Works has been achieved.
- 6.7 It shall be a condition precedent to practical completion being achieved that the Sub-Contractor completes commissioning of the Sub-Contract Works and provides the Contractor with 3 copies of all necessary health and safety information, operation and maintenance manuals and any other handover documents listed in the Sub-Contract Particulars.

## **7. Delay Damages**

- 7.1 The basis of the Contractor's entitlement to damages for failure to complete the Sub-Contract Works within the period(s) or by the date(s) specified in the Sub-Contract Particulars (as may be adjusted in accordance with the provisions of the Sub-Contract) shall be specified in the Sub-Contract Particulars.
- 7.2 Where the Sub-Contract Particulars state that liquidated damages apply, the Sub-Contractor shall pay or allow to the Contractor liquidated damages at the rate specified in the Sub-Contract Particulars from the date(s) or the end of the period(s) for completion specified in the Sub-Contract Particulars until the date of practical completion of the Sub-Contract Works, as confirmed pursuant to clause 6.6.
- 7.3 Where the Sub-Contract Particulars state that general damages apply, the Sub-Contractor shall indemnify the Contractor against any costs, loss and/or expense or damage suffered or incurred by the Contractor as a result of the failure to complete the Sub-Contract Works within the period(s) or by the date(s) specified in the Sub-Contract Particulars, including any sum the Contractor is required to pay as liquidated damages under the Contract which can be attributed in whole or in part to delay by the Sub-Contractor in completing the Sub-Contract Works.

## **8. Instructions**

- 8.1 The Sub-Contractor shall comply forthwith with all instructions of the Contractor. Instructions shall be issued by the Contractor in writing, or if they are issued orally, the same shall be confirmed in writing within 5 working days.
- 8.2 The Contractor shall be entitled to instruct the Sub-Contractor to omit elements of the Sub-Contract Works and, to the extent that the Sub-Contractor has not commenced any work in relation to such element, such instruction shall not constitute a variation.

## **9. Variations & Dayworks**

- 9.1 Variations to the Sub-Contract Works instructed by the Contractor shall not vitiate the Sub-Contract.
- 9.2 It shall be a condition precedent to payment for any variation that the Sub-Contractor produces evidence that the variation was instructed by the Contractor in writing.
- 9.3 The value of authorised variations shall be ascertained by measurement and by reference to the rates and prices, if any, specified in the Sub-Contract for similar or analogous work or, if there are no applicable rates or prices, the value shall be such as is reasonable in all the circumstances. Any disagreement by the Sub-Contractor with the value of a variation shall not relieve the Sub-Contractor of its obligation to proceed with the variation as instructed by the Contractor.
- 9.4 Items of work claimed on a daywork basis will only be considered by the Contractor if:
- 9.4.1 the relevant works have been authorised in advance by the Contractor;
  - 9.4.2 the daywork sheets are fully detailed and quantified; and
  - 9.4.3 the daywork sheets are submitted to the Contractor for signature on the same day that the work is carried out.
- 9.5 Signature of a daywork sheet by the Contractor shall constitute acceptance that the work detailed therein is suitable for valuation on a daywork basis but shall not constitute agreement to the hours detailed therein.
- 9.6 Work which is accepted by the Contractor as being suitable for valuation on a daywork basis will be valued by the Contractor in accordance with the daywork rates specified in the Sub-Contract Particulars.

## **10. Extension of Time**

- 10.1 If the Sub-Contractor is delayed in completing the Sub-Contract Works within the period(s) or by the date(s) specified in the Sub-Contract Particulars due to:
- 10.1.1 any reason which is grounds under the Contract for an extension of time; or
  - 10.1.2 any authorised variation to the Sub-Contract Works; or
  - 10.1.3 any impediment, prevention or default of the Sub-Contract by the Contractor, the Main Contractor, the Employer or any of their employees, operatives or agents; or
  - 10.1.4 reasons beyond the reasonable control of the Sub-Contractor,
- the Sub-Contractor shall notify the Contractor in writing as soon as, and in any event not later than 14 days after, such delay has or should reasonably have become apparent to the Sub-Contractor. The Sub-Contractor shall notify the Contractor of the cause of the delay and the anticipated effects thereof and shall as soon as practicable thereafter submit full and detailed particulars of the extension of time which the Sub-Contractor considers it is entitled to.
- 10.2 Provided that the Sub-Contractor gives notice of delay in accordance with clause 10.1, the Contractor shall grant such extension of time (if any) as is reasonable.

## **11. Payment & Retention**

- 11.1 The due dates for interim payments shall be specified in the Sub-Contract Particulars.
- 11.2 On the 28<sup>th</sup> day of each calendar month (unless otherwise agreed), the Sub-Contractor shall give a written notice to the Contractor by email to [accounts@24-7group.co.uk](mailto:accounts@24-7group.co.uk) specifying the sum the Sub-Contractor considers to be or have been due at the due date for payment and the basis on which that sum is calculated (the "Payee's Notice"). Should the Sub-Contractor fail to

- issue a Payee's Notice in accordance with this clause 11.2, no sum shall become due to the Sub-Contractor in respect of the relevant interim payment.
- 11.3 The final date for payment of each payment to be made under the Sub-Contract shall be 60 days after the relevant due date for payment, unless otherwise specified in the Sub-Contract Particulars.
- 11.4 Subject to clause 11.9, the Contractor shall make payment of the sum specified in each Payee's Notice on or before the relevant final date for payment.
- 11.5 Interim payments are payments on account and do not signify acceptance by the Contractor of the quality, quantity or value of work carried out.
- 11.6 The Sub-Contractor shall submit its final account to the Contractor along with all relevant substantiation on or before the date specified in the Sub-Contract Particulars.
- 11.7 The final interim payment to be made shall become due on the date specified in the Sub-Contract Particulars. Not later than 5 days after the final interim payment becomes due, the Sub-Contractor shall issue a Payee's Notice in accordance with clause 11.2. The final date for payment of the final interim payment to be made under this clause 11.7 shall be 60 days after the due date for payment, unless otherwise specified in the Sub-Contract Particulars.
- 11.8 Retention monies shall be withheld from all payments to the Sub-Contractor at the rate specified in the Sub-Contract Particulars. The dates for release of retention and the amount of retention to be released shall be specified in the Sub-Contract Particulars. Not later than 5 days after each moiety of the retention becomes due, the Sub-Contractor shall issue a Payee's Notice. The final date for payment of each moiety of the retention shall be 60 days after the payment due date, unless otherwise specified in the Sub-Contract Particulars. The release of retention is subject always to all defects in the Sub-Contract Works having been remedied to the Contractor's satisfaction.
- 11.9 If the Contractor wishes to pay less than the sum set out in any Payee's Notice, the Contractor shall not later than 1 day before the relevant final date for payment issue a written notice to the Sub-Contractor specifying the sum the Contractor considers to be due at the date the notice is given and the basis on which that sum is calculated ("Pay Less Notice").
- 11.10 Notwithstanding any other provision of the Sub-Contract, in the event of the Employer, Main Contractor or any other party upon whom payment to the Contractor in respect of the Sub-Contract Works is conditional (whether directly or indirectly) becoming insolvent as defined by sections 113(2) to 113(5) of the Housing Grants, Construction and Regeneration Act 1996, as amended, as a result of which the Contractor does not receive monies otherwise due and owing under the Sub-Contract, the Sub-Contractor shall only be entitled to payment of any sums due and owing under the Sub-Contract if the Contractor receives payment of sums expressly identified as relating to the Sub-Contract Works.
- 11.11 If either party fails to pay any sum properly due under the Sub-Contract by the relevant final date for payment, such sum shall bear simple interest at the rate of 3% over the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the final date for payment until actual payment of the overdue amount, whether before or after judgment. Both parties agree that this rate of interest is a substantial contractual remedy pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 11.12 Without prejudice to the Contractor's other rights and remedies whether at common law or in equity, whenever under the Sub-Contract any sum of money is recoverable from or payable by the Sub-Contractor or any damages, costs, charges, expenses or debts are reasonably and properly owed to or incurred by the Contractor for any reason arising out of or attributable to any negligence, default, unlawful act or omission or breach of or failure to comply with the Sub-Contract by the Sub-Contractor or its employees, operatives or agents, or in the event that the Contractor reasonably considers that the Sub-Contractor has been overpaid in previous interim payments made by the Contractor, the Contractor shall be entitled to deduct the same from any sum then due or which at any time thereafter may become due to the Sub-Contractor under the Sub-Contract or any other contract between the parties by issuing a Pay Less Notice. Furthermore, and without prejudice to the foregoing, for the purposes of exercising its rights under this clause 11.12, the Contractor may issue a Pay Less Notice specifying that the sum the Contractor considers to be due at the date such notice is given is a negative sum payable by the Sub-Contractor to the Contractor, and the Sub-Contractor shall pay such sum to the Contractor in accordance with the Sub-Contract.

- 11.13 It shall be a condition precedent to payment that the Sub-Contractor returns a properly executed copy of the Sub-Contract Order.

**12. Tax**

- 12.1 The Contractor shall pay to the Sub-Contractor in addition to the Sub-Contract Sum any properly chargeable VAT at the appropriate rate.
- 12.2 Where the Sub-Contract Particulars state that self-billing applies, each Sub-Contractor's Payee's Notice shall indicate the value of goods and services included within that Payee's Notice which are taxable at a rate other than zero. The Contractor shall issue a VAT invoice for the amount of tax the Contractor calculates to be payable to the Sub-Contractor and the Sub-Contractor shall account to Her Majesty's Revenue and Customs for the amount of VAT shown on the Contractor's invoice. The Sub-Contractor must not issue separate VAT invoices.
- 12.3 Where the Sub-Contract Particulars state that self-billing does not apply, the Sub-Contractor's Payee's Notices shall constitute a VAT invoice for the value of goods and services included in that Payee's Notice which are taxable at a rate other than zero.
- 12.4 The Sub-Contractor shall comply with the provisions of the Construction Industry Scheme and shall when requested to do so by the Contractor produce such documents as the Contractor may require to establish that the Sub-Contractor is so complying and to enable the Contractor to establish the status of the Sub-Contractor for the purposes of the Construction Industry Scheme.

**13. Materials and Goods on Site**

- 13.1 Materials and goods delivered to the Site by the Sub-Contractor, its employees, operatives, agents or suppliers shall become the property of the Contractor upon delivery, but the Sub-Contractor shall be responsible for all necessary unloading, storage, protection, movement and lifting of materials and goods, including their delivery to the Site, until such time as they are finally incorporated into the Sub-Contract Works.
- 13.2 The Contractor shall not make any payment for materials and goods on Site until they are fully, finally and properly incorporated into the Sub-Contract Works, unless expressly agreed otherwise in writing. If the Contractor agrees in writing that payment will be made for off-Site materials and goods, payment shall only be made if the Sub-Contractor has supplied to the Contractor reasonable evidence (including, if required by the Contractor, a suitably worded vesting certificate) that property in such materials and goods will pass to the Contractor after the value of such materials and goods included in an interim payment has been discharged by the Contractor.

**14. Defects**

- 14.1 After practical completion of the Sub-Contract Works, the Sub-Contractor shall, at the Sub-Contractor's expense, make good all defects and other faults which are apparent in the Sub-Contract Works during the Defects Liability Period. The Contractor shall notify the Sub-Contractor of any defects that appear in the Sub-Contract Works during the Defects Liability Period and the Sub-Contractor shall make good such defects at its own expense within the period(s) specified in the Sub-Contract Particulars, or such other period as the Contractor may allow.
- 14.2 Should the Sub-Contractor fail to make good any defects in accordance with clause 14.1, the Contractor may, without prejudice to its other rights and remedies, arrange for any necessary remedial works to be carried out at the Sub-Contractor's expense. The Sub-Contractor shall indemnify the Contractor in respect of any costs so incurred.

**15. Collateral Warranties**

- 15.1 If the Sub-Contract Particulars state that collateral warranties are required, the Sub-Contractor shall whenever instructed to do so by the Contractor execute and deliver a deed or deeds of collateral warranty in such form as the Contractor specifies in favour of such third parties as the Contractor may require. If the Sub-Contractor fails to execute and deliver any such deed of collateral warranty within 14 days of the Contractor's instruction, no payments shall be due to the Sub-Contractor under the Sub-Contract until such failure is rectified.



**16. Performance Bond/Parent Company Guarantee**

16.1 If the Sub-Contract Particulars state that a performance bond and/or parent company guarantee is required, the Sub-Contractor shall provide the Contractor with a performance bond and/or a parent company guarantee on terms to be specified by the Contractor executed as a deed by a surety acceptable to the Contractor. If the Sub-Contractor fails to provide a performance bond and/or a parent company guarantee within 14 days of the commencement of the Sub-Contract Works, no payments shall be due to the Sub-Contractor under the Sub-Contract until such failure is rectified.

**17. Insurance, Liability and Indemnity**

17.1 The Sub-Contractor shall indemnify the Contractor against and from all losses, damages, costs, expenses, losses and liabilities suffered by the Contractor as a result of:

17.1.1 any negligence or breach of duty of the Sub-Contractor, its employees, operatives or agents resulting in personal injury, death or damage to property which is caused by or arises from the carrying out of the Sub-Contract Works; and

17.1.2 any breach, non-observance or non-performance by the Sub-Contractor, its employees, operatives or agents of any provision of the Sub-Contract or the Contract,

except to the extent that the same is due to any act, omission or default of the Contractor, the Main Contractor, the Employer and any of their employees, operatives or agents.

17.2 Without limiting its obligations to indemnify the Contractor, the Sub-Contractor shall arrange and keep in force for the duration of the Sub-Contract Works policies of employer's liability and public liability insurance with reputable insurers. The policy of public liability insurance shall have a limit of indemnity of not less than five million pounds (£5,000,000) (or such other amount specified in the Sub-Contract Particulars) for any occurrence or series of occurrences arising out of each and every event. The policy of employer's liability insurance shall have at least the minimum limit of indemnity required by law.

17.3 The Sub-Contractor shall, unless otherwise specified in the Sub-Contract Particulars, be responsible for the risk of all loss or damage to the Sub-Contract Works and any materials or goods which are on Site in advance of being incorporated into the Sub-Contract Works up to the date of practical completion of the Sub-Contract Works. The Sub-Contractor shall obtain a policy of insurance to cover its liabilities under this clause 17.3.

17.4 Insofar as the Sub-Contractor is responsible for the design of the Sub-Contract Works or any part thereof, the Sub-Contractor shall hold and maintain professional indemnity insurance in an amount of not less than five million pounds (£5,000,000) (or such other amount specified in the Sub-Contract Particulars) for any one occurrence or series of occurrences arising out of any one event at all times until 12 years after the date of practical completion of the Works or the Main Contract Works (whichever is the later), provided always that such insurance is available at commercially reasonable rates. Payment of any increased rates or additional premiums by reason of the Sub-Contractor's own claims record or other matters peculiar to the Sub-Contractor is to be disregarded in determining whether such insurance is available at commercially reasonable rates. The Sub-Contractor shall immediately notify the Contractor if such insurance ceases to be available at commercially reasonable rates and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Sub-Contractor to obtain.

17.5 If so specified in the Sub-Contract Particulars, the Sub-Contractor shall hold and maintain product liability insurance in the amount specified in the Sub-Contract Particulars for any one occurrence or series of occurrences arising out of any one event at all times until 12 years after the date of practical completion of the Works or the Main Contract Works (whichever is the later).

17.6 The Sub-Contractor shall, both prior to commencing the Sub-Contract Works and thereafter at such times as the Contractor may require, produce the policies of insurance required pursuant to this clause 17 for inspection by the Contractor. In the event of any failure by the Sub-Contractor to comply with this clause 17, and without relieving the Sub-Contractor of its obligations under the Sub-Contract, the Contractor may itself take out such insurance and deduct the cost of the premiums so incurred from the Sub-Contractor.

- 17.7 If the Sub-Contractor fails to produce evidence that the policies of insurance required pursuant to the Sub-Contract or industry accreditations required for the carrying out of the Sub-Contract Works are being maintained, the Contractor shall be entitled to withhold 5% from sums otherwise due to the Sub-Contractor until such evidence is provided to the Contractor's reasonable satisfaction.
- 17.8 The Contractor shall not be liable to the Sub-Contractor for any loss of profit or indirect and/or consequential loss arising out of, under or in relation to the Sub-Contract and/or the Sub-Contract Works.

## **18. Copyright**

- 18.1 Insofar as the Sub-Contractor is responsible for the design of the Sub-Contract Works or any part thereof, the copyright in all designs, drawings, details and specifications prepared by the Sub-Contractor in relation to such design (the "Design Documents") shall remain vested in the Sub-Contractor.
- 18.2 The Contractor shall have an irrevocable, non-exclusive, royalty-free licence (such licence carrying the right to grant sub-licences and to be transferable without the consent of the Sub-Contractor) to copy and use the Design Documents and to reproduce the designs and content of them for any purpose relating to the Main Contract Works and/or the Works and/or the Sub-Contract Works.
- 18.3 The Sub-Contractor warrants that the Design Documents are the Sub-Contractor's own work and their use in connection with the Main Contract Works and/or the Works and/or the Sub-Contract Works will not infringe the rights of any third party. If the use of the Design Documents is found to infringe the rights of any third party, the Sub-Contractor shall indemnify the Contractor against all resulting expenses, liability, losses, damage, claims or proceedings.

## **19. Assignment and Sub-Letting**

- 19.1 The Sub-Contractor shall not assign the benefit of the Sub-Contract or sub-let any part of the Sub-Contract without the written consent of the Contractor (which shall not be unreasonably withheld). Where such consent is given, the Sub-Contractor shall not be relieved of its obligations under the Sub-Contract.
- 19.2 The Contractor shall be entitled to assign the benefit of the Sub-Contract without the Sub-Contractor's consent.

## **20. Termination**

- 20.1 Without prejudice to any other rights and remedies which the Contractor may possess, if the Sub-Contractor:
- 20.1.1 fails to proceed regularly and diligently with the Sub-Contract Works; or
  - 20.1.2 fails to proceed with the Sub-Contract Works at such times and/or in such sequence as in the Contractor's opinion is necessary to avoid delay to other trades or to complete the Sub-Contract Works within the time required by the Contractor; or
  - 20.1.3 fails to comply with health and safety requirements relating to the Sub-Contract Works; or
  - 20.1.4 fails to carry out the Sub-Contract Works to the satisfaction of the Sub-Contractor; or
  - 20.1.5 fails to comply with a written instruction from the Contractor to proceed with the Sub-Contract Works or fails to rectify or replace defective work within the period named in such instruction; or
  - 20.1.6 commits a material breach of the Sub-Contract,
- the Contractor may give a written notice to the Sub-Contractor specifying the default and requiring it to be remedied within 7 days. If such default shall continue after the expiry of the 7 day period, the Contractor may forthwith terminate the employment of the Sub-Contractor under the Sub-Contract by service of a further written notice.
- 20.2 If the Sub-Contractor becomes insolvent as defined in sections 113(2) to 113(5) of the Housing Grants, Construction and Regeneration Act 1996 (as amended), the Contractor may without prejudice to any other rights or remedies forthwith terminate the employment of the Sub-Contractor under the Sub-Contract by service of a written notice.

- 20.3 Without prejudice to any other rights and remedies which the Contractor may possess, the Contractor may at its sole discretion be entitled at any time by service of 14 days' written notice to terminate the Sub-Contractor's employment under the Sub-Contract.
- 20.4 If the Contractor's employment under the Contract is terminated, the employment of the Sub-Contractor under the Sub-Contract shall also forthwith be terminated.
- 20.5 Subject to clause 20.6, following the termination of the Contractor's employment pursuant to this clause 20:
- 20.5.1 the Sub-Contractor shall take immediate steps to bring an end to the performance of the Sub-Contract Works and deliver to the Contractor all documents and/or materials relating to the Sub-Contract Works;
  - 20.5.2 the Contractor may complete the Sub-Contract Works itself or engage others to do so;
  - 20.5.3 no further sum shall become due to the Sub-Contractor under the Sub-Contract until after the completion of the Sub-Contract Works and the Contractor need not pay any sum that has already become due to the Sub-Contractor where the Contractor gives a Pay Less Notice in respect of that sum;
  - 20.5.4 where the Sub-Contractor is insolvent as set out in clause 20.2, the Contractor need not pay any sum that has already become due to the Sub-Contractor where the Sub-Contractor becomes insolvent after the last date on which a Pay Less Notice could be given by the Contractor in respect of that sum; and
  - 20.5.5 within 60 days following completion of the Sub-Contract Works by the Contractor or others, an account shall be taken of the value of any work properly executed and goods and materials supplied by the Sub-Contractor which have not already been included in previous payments. The Contractor shall deduct therefrom the amount of additional costs, losses and expenses incurred by the Contractor as a result of the termination, including the additional costs of completing the Sub-Contract Works. The balance calculated to be due from the Sub-Contractor to the Contractor or from the Contractor to the Sub-Contractor shall become due 70 days after completion of the Sub-Contract Works and the final date for payment of the same shall be 90 days after completion of the Sub-Contract Works. Clauses 11.2 and 11.9 shall apply to any payment to be made.
- 20.6 If the Sub-Contractor's employment under the Sub-Contract is terminated pursuant to clause 20.3 through no default on the part of the Sub-Contractor, its employees, operatives or agents, or pursuant to clause 20.4 through no default on the part of the Sub-Contractor, its employees, operatives or agents, the Sub-Contractor shall be entitled to submit an account to the Contractor detailing the value of the Sub-Contract Works properly carried out (less any sums already paid). The due date for payment of any sum payable pursuant to this clause 20.6 shall be 30 days after the date of receipt by the Contractor of the Sub-Contractor's account and the final date for payment shall be 60 days after the due date. Clauses 11.2 and 11.9 shall apply to any payment to be made.

## **21. Order of Precedence**

- 21.1 In the event of any conflict, ambiguity or discrepancy in or between the Sub-Contract Order, Sub-Contract Particulars, these Conditions of Sub-Contract and the Sub-Contract Documents, those documents shall take precedence in the order in which they are listed in the Sub-Contract Order, unless otherwise specified in writing by the Contractor. The Sub-Contractor shall inform the Contractor of any conflict, ambiguity or discrepancy and obtain instructions from the Contractor as to which of the conflicting, ambiguous or discrepant items is to be adopted. The Sub-Contractor shall comply with such instruction at its own cost and without any extension of time being granted.

## **22. Entire Agreement**

- 22.1 The Sub-Contract constitutes the entire agreement and understanding between the parties in relation to the Sub-Contract Works and supersedes all previous agreements (whether written or oral) between the parties relating to the Sub-Contract Works. Each party acknowledges that, in entering into the Sub-Contract, it has not relied on, and shall have no right or remedy in respect of, any written or oral statement, representation, misrepresentation, assurance or

warranty (whether made negligently or innocently, and whether express or implied) other than as expressly set out in the Sub-Contract. Nothing in this clause 22.1 shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

**23. Notices**

23.1 All notices to be given under the Sub-Contract shall be given to the addresses specified in the Sub-Contract Particulars.

23.2 Any Payee's Notice or Pay Less Notice to be given in accordance with the Sub-Contract shall be delivered by hand, sent by first class post or sent by email. Any other notice to be given under the Sub-Contract shall be sent by first class post or recorded delivery or delivered by hand.

23.3 Notices delivered by hand shall be deemed to be received on the working day on which they were delivered, or if the notice was not delivered on a working day, on the next working day after the date of delivery. Notices sent by first class post or recorded delivery shall be deemed to be received on the second working day after the date of posting. Notices sent by email shall be deemed to be received on the same working day that the email is sent. If the email is sent after 5:00pm or not on a working day, the notice shall be deemed to be received on the next working day.

**24. Third Party Rights**

24.1 The Sub-Contract is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

**25. Waiver**

25.1 No failure or delay on the part of either party to exercise any right or remedy under the Sub-Contract shall be construed or operate as a waiver, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.

**26. Severance**

26.1 If any provision of the Sub-Contract is held by a court or other relevant tribunal to be invalid or unenforceable it shall be severable and shall be deemed omitted from the Sub-Contract to the extent necessary to prevent such invalidity or unenforceability and the remaining provisions shall continue to have full effect.

**27. Disputes**

27.1 If any dispute or difference arises between the Sub-Contractor and Contractor under or in relation to the Sub-Contract, either party may give written notice at any time of its intention to refer the dispute to adjudication. Any adjudication shall be conducted in accordance with the Scheme for Construction Contracts (England & Wales) Regulations 1998 (as amended). The adjudicator nominating body shall be the Royal Institution of Chartered Surveyors.

27.2 The Sub-Contract shall be governed by English law and the English courts shall have jurisdiction with regard to all matters arising under it.

**28. Limitation Period**

28.1 Any claim, action or proceedings arising out of or in connection with the Sub-Contract and/or the Sub-Contract Works may be commenced up to 12 years from the date of practical completion of the Sub-Contract Works (or, if earlier, 12 years after the date of termination of the Sub-Contractor's employment under the Sub-Contract). Any provision of the Limitation Act 1980 to the contrary shall be disregarded and shall not apply to the Sub-Contract.