

- 1.11 “Works” means the works as detailed in the Main Contract of which the Subcontract Works form part.

2 Interpretation

- 2.1 The Subcontractor has had an opportunity to inspect the Main Contract (save for the financial information contained therein) and shall be deemed to have taken notice of all provisions of the Main Contract save for such financial information.
- 2.2 The Subcontract Order, these Conditions and the Annexed Documents are to be read as a whole. If any conflict appears between them and the provisions of the Main Contract then the Main Contract shall prevail.
- 2.3 This subcontract shall be governed by and in accordance with the law of England and the parties shall submit to the exclusive jurisdiction of the English Courts save for enforcement of any judgement of the English Courts.
- 2.4 Unless otherwise stated any reference to a Statute, Statutory Instrument or other Legislative provision includes any amendment extension or re-enactment of it for the time being in force.
- 2.5 Clause headings are for convenience only and do not form part of or affect the interpretation of these Conditions.
- 2.6 Terms importing the masculine include the feminine and neuter.
- 2.7 No amendment of these Conditions shall be binding unless agreed in writing by the Contractor.

3 Subcontract works

- 3.1 The Subcontractor shall carry out and complete the Subcontract Works in accordance with the Sub Contract Order, these conditions and the Specification and such instructions as may be issued by the Contractor and to the reasonable satisfaction of the Contractor.
- 3.2 If in the carrying out of the Subcontract Works the subcontractor becomes aware of any matter which may affect the design or construction of the Sub-Contract Works or the Works he shall forthwith notify the Contractor.
- 3.3 If the Subcontractor identifies improvements or savings in the design or method of the Subcontract Works he shall bring the matter to the attention of the Contractor. If the Contractor then instructs changes based on the Subcontractor’s suggestion the parties shall agree fair recompense to the Subcontractor for his input.
- 3.4 All work to be carried out by the Subcontractor in the course of or in connection with the Subcontract Works shall be supervised by the Subcontractor and shall be carried out in a good, proper and workmanlike manner and to the standards described in the Specification or where no standards are specified to a good industry standard.

- 3.5 All goods and materials used or supplied by the Subcontractor shall be new and of sound and good quality and suitable in all respects for the Subcontract Works and in accordance with the relevant British Standards and Codes of Practice, the Specification, good building practice and any instruction issued by The Contractor.
- 3.6 The Subcontractor has had an opportunity to and shall be deemed to have inspected and examined the Site, its physical and other conditions (including subsurface conditions) its surroundings, means of access and all existing structures and generally to have obtained for himself all necessary information as to risks, contingencies and all other circumstances affecting the Subcontract Works and the Subcontract Sum. The Subcontract Sum shall be deemed to have included for all such matters.
- 3.7 No comment, approval, consent, acceptance, confirmation or the like given by the Contractor in relation to the Subcontract Works shall limit or exclude the Subcontractor's responsibility or liability for any breach of its obligations under this Subcontract.

4 Instructions

- 4.1 The Contractor may from time to time issue written instructions requiring the Subcontractor to alter, amend, add, omit, substitute or otherwise vary the Subcontract Works. No such instruction shall vitiate this Subcontract. Site representative's signatures will not be recognised as authorising variations without written confirmation from the Contractor.
- 4.2 The amount to be paid or allowed in respect of such Instructions shall be agreed in writing and confirmed in the Instruction or, in default of agreement shall be settled by the Contractor applying the rates upon which the Subcontract Sum has been calculated.
- 4.3 The Subcontractor shall perform this Subcontract personally and no part of it shall be assigned, sublet or subcontracted without prior written consent of the Contractor.

5 Commencement and completion

- 5.1 The Subcontractor shall commence the Subcontract Works on the date notified by the Contractor in accordance with the requirements stated in the Sub Contract Order and thereafter shall proceed regularly and diligently to carry out and complete the same within the Period for carrying out the Subcontract Works as stated in the Sub Contract Order and in accordance with such programme as may be agreed with the Contractor.
- 5.2 Where the date for completion of the Subcontract Works falls before the date for Completion of the Works or the date for completion of the Subcontract Works stipulated in the Main Contract programme the benefit of that float period shall belong to the Contractor. The Subcontractor agrees that it shall not be entitled to avoid liability for delay during the float period on the grounds that such delay did not cause delay beyond the date for completion of the Works as prescribed by the Main Contractor by reference to the float in the Contractor's programme.
- 5.3 Notwithstanding the dates for commencement and completion stipulated in the Sub Contract Order, the Contractor may require the Subcontractor to delay or accelerate its

Works. The amount to be paid or allowed by reference to such matters shall be agreed and confirmed in writing and in default of agreement shall be limited to the Subcontractor's proven expenses.

- 5.4 The Subcontractor shall forthwith or in any event within 10 days notify the Contractor in writing of any event which the Subcontractor considers may cause a delay or disruption to the Subcontract Works. The Subcontractor shall include details of the effect of the event and the likely period of delay and the amount of any loss or expense which the Subcontractor considers he may be entitled to under these conditions. It is a condition precedent to the Subcontractors entitlement under this Clause that the Subcontractor has fully complied with its requirements.
- 5.5 With the agreement of the Contractor the Subcontractor shall re programme the Subcontract Works to mitigate and avoid delays. Where the cause of the delay is a matter beyond the control of the Subcontractor (including default by the Contractor) and is not a contingency for which he should have allowed, and provided that the Contractor is entitled to obtain an extension of time under the Main Contract, the Contractor shall grant such extension of time as is reasonable.
- 5.6 Subject to compliance by the Subcontractor with the requirements of this clause 5, where the Contractor grants an extension of time under clause 5.5 the Contractor shall pay or allow the sum per week stipulated in the Sub Contract Order and where no such sum is stipulated the, Subcontractor's proven direct loss and expense.
- 5.7 If, in the opinion of the Contractor, the Subcontractor fails to maintain reasonable progress of the Subcontract Works the Contractor may, without prejudice to any other rights under these Conditions, after giving 3 days notice to the Subcontractor in writing (which shall include the issue of a notification given by smart phone or e mail) employ its own labour or other contractors to improve progress of the Subcontract Works. The Subcontractor shall pay or allow (by way of set off or abatement) the costs and expenses thereby incurred.
- 5.8 If the Subcontractor fails to complete the Subcontract Works by the date agreed in the Sub Contract Order or such other date as the parties may agree or the Contractor allow, the Subcontractor shall pay or allow The Contractor his losses and expenses resulting from the delay.
- 5.9 The provision of this clause 5 shall constitute the parties exclusive remedies for loss and expense associated with delay.
- 5.10 Until the end of the Maintenance Period referred to in the Sub Contract Order any defects shrinkages or other faults in the works, which the Contractor is liable to make good under the Main Contract (if any) or which are due to the Subcontractor's materials or workmanship not being in accordance with the terms of this subcontract or to flaws occurring before completion of the works will be immediately made good by the Subcontractor at his own cost. If the subcontractor fails to carry out such remedial work within a reasonable period (no longer than 10 days) after written notice from the Contractor then the Contractor may make alternative arrangements for the necessary work to be executed and the Subcontractor will pay or allow to the Contractor the cost of the execution of such work.

6 Site Administration

- 6.1 The Subcontractor shall comply with the CDM Regulations, the Health and Safety Plan and all directions of the Principal Designer and the Principal Contractor.
- 6.2 The Subcontractor shall at all times provide on Site a competent person who shall be authorised to receive instructions on behalf of the Subcontractor and to ensure that the Subcontract Works are properly supervised administered and coordinated.
- 6.3 Where so stated in the Sub Contract Order the Contractor may permit from time to time the Subcontractor at his own risk and subject to supervision by his own staff to use standing scaffolding and ladders. No warranty or liability on the part of the Contractor is to be implied as to the suitability or fitness of such equipment. The Subcontractor shall indemnify the Contractor in relation to any claim charges costs damages liability or losses and/or proceedings arising out of or by reference to such use.
- 6.4 Save as provided in the Subcontract Order the Subcontractor shall make provision at his own cost for all his site requirements, normal and special attendances including but not limited to transporting loading unloading sorting and storage of site materials plant and tools (including handling and protection on site) temporary workshops shed offices and welfare buildings and the supply of light power and water.
- 6.5 During the execution of the Subcontract Works and on completion thereof the Subcontractor shall remove all excess materials, waste, debris and general rubbish arising from the Subcontract Works and shall keep and leave the Site in a clean and tidy condition. If the subcontractor fails to comply with this requirement the Contractor may effect such removal and the cost of doing so will be paid or allowed by the Subcontractor.

7 Sub Contract Sum

- 7.1 The Subcontract sum for the Works will be the sum or value at the rates stated in the Sub Contract Order. There will be no fluctuations unless expressly stated in the Subcontract Order.

8 Payment

- 8.1 The Subcontractor shall submit to the Contractor at the times stated in the Sub Contract order a fully detailed application payment. If no times are stated in the Sub Contract Order applications shall be made calendar monthly immediately prior to the end of each month.
- 8.2 The Contractor shall withhold the Retention from any payment due to the Subcontractor unless the Retention is properly included in the application for payment and is due for release.
- 8.3 The Contractor shall not be liable for any daywork whether permitted by the Subcontract or not, unless written authorisation is obtained for the scope of the daywork carried out. A statement of all daywork carried out must be submitted daily to the Contractor's site agent for signature by him. The Contractor will not be liable to pay for any dayworks for which there is no authorisation and verification as provided for by this clause.

- 8.4 The due date for payment of each application shall be 7 days after the end of the relevant period for which the application is made or after the date of submission by the Subcontractor in accordance with this clause 8 and as stated in the Sub Contract Order. The final date for payment will be 35 days thereafter as set out in Annexed Document Number 2 of the Subcontract order.
- 8.5 The Contractor shall not later than 5 days after the date upon which payment becomes due give notice to the Subcontractor specifying the amount (if any) of the payment which the Contractor proposes to make. Prior to withholding any payment under the Subcontract the Contractor shall give a notice to pay less to the Subcontractor not less than 3 days before the final date for payment of the relevant application specifying the amount to be withheld and the ground(s) for withholding payment.
- 8.6 In the event that the Contractor fails to make any payment by the final date for payment and the Late Payment of Commercial Debts Act 1998 applies the Contractor shall pay simple interest at the rate of 3% above the base lending rate of the Bank of England on the amount due and unpaid from the final date for payment to the date of payment.
- 8.7 The Subcontractor shall not be entitled to receive payment for any materials unless they have been incorporated in the Works or brought to Site and clearly labelled as the property of the Contractor.
- 8.8 No payment of any sum under the Subcontract shall amount to an admission acceptance expression of satisfaction acknowledgement or confirmation that the Subcontract Works are in accordance with the Subcontract.
- 8.9 If the Employer under the Main Contract is insolvent the Contractor shall not be obliged to make any further payment to the Subcontractor of any amount which is due or may become due to the Subcontractor unless the Contractor has received payment in respect thereof from the Employer and then only to the extent of such receipt.
- 8.10 The Contractor shall be entitled to set off from any moneys due or payable under this Subcontract (including the Retention or any part thereof) whether before or after the date of this Subcontract any sums (where liquidated or unliquidated) including the potential levy of liquidated damages under the Main Contract due to or claimed by the Contractor under this Subcontract or under any other contract entered into between the Contractor and the Subcontractor howsoever arising.
- 8.11 Subject to obtaining a separate agreement to provide VAT invoices for goods and services carried out under this Subcontract, payment of all interim applications will be made using authenticated tax receipts. Failure to signed and return the validated receipt by the Subcontractor will result in the suspension of any further payment until such time that the receipt in question has been validated and returned.

9 Termination

9.1 If the Main Contract is terminated this subcontract will automatically terminate. Provided that such termination is not by reference to the Subcontract's default, within 60 days of such termination the Subcontractor shall be entitled to receive payment for all Subcontract Works properly carried out applying the rates by reference to which the Subcontract Sum has been calculated.

9.2 Without prejudice to any other rights which the Contractor may possess if the Subcontractor shall:

9.2.1 suspend the Subcontract works (otherwise than pursuant to any statute)

9.2.2 fail to proceed regularly and diligently with the Subcontract Works

9.2.3 refuse or fail or neglect (after notice in writing) to remove repair or reinstate defective or unsatisfactory work or materials.

9.2.4 refuse or fail to comply with any reasonable request or Instruction from the Contractor as to the manner in which the Subcontract Works are carried out.

9.2.5 commit any breach of the Health and Safety Plan or any statute or statutory obligations for the time being in force.

and if such default shall continue for 7 days after the service of a written notice specifying the default the Contractor may forthwith by written notice determine the employment of the Subcontractor under this Subcontract.

9.3 If the Subcontractor shall become bankrupt or enter into any composition or arrangement with his creditors or if being in a partnership shall have a winding up order made against it or if being an incorporated company shall have any administrative receiver or administrator appointed, or shall pass a resolution for winding, up or a Court shall make an Order to that effect the employment of the Subcontractor pursuant to this subcontract shall automatically determine.

9.4 If the employment of the Subcontractor is determined pursuant to the provisions of Clauses 9.2, 9.3 or by reason of any default of the Subcontractor then the Contractor:

9.4.1 may complete the Subcontract Works using the Subcontractors plant and equipment and materials.

9.4.2 shall not be liable to make any payment to the Subcontractor until the Works are complete

9.4.3 shall pay the Subcontractor for all Subcontract Works properly completed using the rates upon which the Subcontract sum was based less costs charges claims damages and expenses incurred on this or any other contract between the parties.

9.4.4 The termination of the employment of the Subcontractor shall be without prejudice to the rights obligations and liabilities accrued prior to such termination.

9.5 If the Contractor is in material breach of its obligations pursuant to this Subcontract the Subcontractor may give the Contractor written notice specifying such breach and requiring the Contractor to remedy the same. If the Contractor does not remedy the breach within 28 days of such notice the Subcontractor shall be entitled by written notice within 7 days to forthwith determine its employment pursuant to this Subcontract. The Contractor shall within 35 days of the date of determination under this clause pay to the Subcontractor the total value of Subcontract Works which have been completed and the Subcontractor's costs of vacating the Site. The Subcontractor shall not be entitled to any other loss or remedy.

10 Insurance

10.1 The Subcontractor shall indemnify the Contractor against charges claims costs damages expenses liability loss or proceedings of whatsoever nature arising out of or in connection with the Subcontract Works or the performance (*or non-performance*) of this Subcontract by the Subcontractor his servants or agents and any personal injury to or death of any person whomsoever or damage to property arising out of or in the course of or caused by the carrying out of the Subcontract Works unless due to any act or default on the part of the Contractor or its servants or agents or of any other contractor engaged on the Site.

10.2 Without prejudice to clause 10.1 the Subcontractor shall maintain all such insurances to the minimum amount stated in the Sub Contract Order and where no such amount is stipulated to a minimum of £5,000,000.00.

10.3 In the event that the Subcontractor fails to comply with the requirements of clause 10.1 or 10.2 above the Contractor may insure on behalf of the Subcontractor and deduct the premiums due from any money payable to the Subcontractor.

10.4 Where the Subcontractor has design responsibility, the Subcontractor shall maintain professional indemnity insurance (or where this is not available product liability insurance) with a limit of indemnity as stated, in the Sub Contract Order and where no such amount is stated, a minimum of £1,000,000.00. Whilst such insurance remains available to the Subcontractor at commercially reasonable rates and terms the Subcontractor shall maintain such insurance for a period of not less than 12 years from the date of Practical Completion of the Main Contract. The Subcontractor shall immediately inform the Contractor if such insurance ceases to be available at commercially reasonable rates and terms and agree with the Contractor appropriate levels of insurance which shall be maintained. As and when requested to do so by the Contractor, the Subcontractor shall produce written evidence that insurance is being maintained in accordance with this clause 10.

11 Wages and Conditions of Employment

11.0 (a) The wages and conditions of employment of the Subcontractor's employees engaged on the Works must be no less than the minimum prescribed by the competent authority in the trade to which such employees belong.

(b) If the Subcontractor fails to comply with his obligations as to payments under paragraph (a) above or if he fails to make any other payments (whether by stamping cards or by payments by levy or otherwise) in respect of his employees engaged on the Works Arthur M. Griffiths & Son Ltd, may make such payments and any monies so expended by Arthur M. Griffiths & Son Ltd will be recoverable from the Subcontractor.

12 Design Responsibility

12.1 Where the Subcontractor has design responsibility, the Subcontractor is required to have exercised and to continue to exercise all the reasonable skill care and diligence to be expected of a competent specialist subcontractor experienced in designing and constructing works of a similar size scope and complexity as the Subcontract Works.

12.2 The Subcontract Works have been or will be designed and executed using good up to date practice.

12.3 The Subcontract Works shall be carried out in accordance with the Project Brief and the Contractor's Proposals and the Statutory Requirements and the Health and Safety Plan.

12.4 The Subcontractor accepts entire responsibility for complying with the Contractor's Proposals and the Project Brief and for any mistake inaccuracy discrepancy or omission contained in the Contractor's Proposals and for any mistake inaccuracy discrepancy contained in the Project Brief in so far as the same relates to the Subcontract Works.

12.5 The Subcontractor warrants and undertakes that in so far as they relate to the Sub Contract works, the Contractor's Proposals give effect to and shall achieve the Project Brief.

13 Contracts (Rights of Third Parties) Act 1999 – Contracting Out

13.1 Notwithstanding any other provision of this contract nothing in this contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

14 Disputes

14.1 Either party may at any time refer any dispute or difference arising under this Sub-Contract to adjudication in accordance with the provisions of Part 1 of the Scheme for Construction Contracts.

14.2 Subject to Condition 14.1, any dispute or difference arising under or in connection with this Sub-Contract shall be determined by legal proceedings.