

## Sub-Contract Terms and Conditions

### 1 DEFINITIONS

- Sub-Contractor:** Clarke Construction (Services) Ltd. Company no. 7443528. VAT no. GB 841 2304 66.
- Client:** The person/company with whom the Sub-Contractor contracts.
- Party/ies:** The Client or the Sub-Contractor or both.
- Sub-Contract:** The contract between the Parties for the Sub-Contractor to complete Works for the Client; the terms and conditions of which are these Conditions.
- Conditions:** This document comprised of all sections 1-16 and any Schedules.
- Sub-Contract Documents:** The Works Order; the Tender; these Conditions together with any Schedules; any relevant drawings and survey reports that have been shared between the parties by the date the Tender was accepted by the Client.
- Works Order/Order:** An order (or series of orders) issued to the Sub-Contractor by the Client to carry out certain works which are governed by the terms of this Sub-Contract.
- Sub-Contract Works / Works:** The works to be carried out by the Sub-Contractor as specified in a Works Order.
- Tender:** The document submitted to the Client by the Sub-Contractor (and accepted by the Client in instructing the Sub-Contractor) setting out his proposals and quotation for the cost and time for completing the Sub-Contract Works and, where required, the standard/type of materials/goods to be used and any other relevant matters.
- Variation:** An alteration or modification of the design, quality or quantity of the Sub-Contract Works. Including the addition, omission or substitution of work; alteration of the kind or standard of materials or goods used; and the removal from site of any work executed not in accordance with these Conditions.
- Payment date matrix:** Document setting out relevant payment dates for interim and final payments, including deadlines for Payment Notice and Final Date for Payment.
- Force Majeure:** Act of God, war, act of terrorism, civil commotion, lightening, earthquake, fire, explosion, flood or pandemic and any other event or circumstance to the extent it is beyond the reasonable control of the relevant Party to the extent that such event or circumstance has materially affected the ability of the Party relying on that event or circumstance to perform its obligations.

### 2 INTERPRETATION

- 2.1 These Conditions are to be read as a whole. They contain the entire terms and conditions of the agreement between the Parties (unless otherwise agreed in accordance with clause 2.3) and supersede any prior written or oral agreements, representations or understandings between the Parties in relation to the Sub-Contract Works.
- 2.2 These Terms and Conditions shall apply to all and any contracts for the supply of Services by the Sub-Contractor to the Client and to the exclusion of all other terms and conditions, including any terms and conditions the Client may purport to apply under any purchase order, confirmation of order or similar documents.
- 2.3 Any variation to these conditions (including any special terms or conditions agreed between the parties) shall be inapplicable unless agreed in writing by a Director of the Sub-Contractor.
- 2.4 Nothing in the Sub-Contract Documents shall be construed as imposing any liability on the Sub-Contractor in respect of any act, omission or default on the part of the Client or his agent.
- 2.5 In these Conditions, unless the context otherwise requires:
- 2.5.1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation;
- 2.5.2 the singular includes the plural and vice versa; a gender includes any other gender; and a reference to a "person" includes any individual, firm, partnership, company and any other body corporate;
- 2.5.3 a reference to a statute, statutory instrument or other subordinate legislation ("legislation") is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it.

### 3 SERVICE OF NOTICE & OTHER COMMUNICATIONS

- 3.1 Subject to clauses 3.2 and 3.3 any notice or other communication between the Parties that is expressly referred to in these Conditions shall be in writing.

- 3.2 If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.
- 3.3 Instructions issued by the Client or his representative that vary from the specifications in the Works Order and/or Tender will be executed whether those instructions are verbal or in writing and will be treated as an authorised Variation. The Client may not subsequently refuse to acknowledge the Variation and shall make payment according to Section 6 of these Conditions.
- 3.4 The address for service of notices on the Sub-Contractor is **Clarke Construction (Services) Ltd, Crestacre, Barracks Lane, Walsall WS9 9DL.**

#### **4 BASIS FOR THE TENDER FOR THE WORKS ORDER**

- 4.1 The Tender for the Works Order is based solely on the instructions and information provided by the Client prior to submission of the Tender. Unless specifically identified and accounted for in the Tender, the following circumstances are excluded and, if required, will constitute a Variation and may need an additional quotation in respect of costs and/or time for completion of the Sub-Contract Works:
  - 4.1.1 The occurrence and as required removal, working around and/or making safe of any artificial or natural underground obstruction, ordinance, concrete, services, tanks or reservoirs, contamination, existing structures and/or any ground water, ground make up, bedrock or any other adverse physical conditions in the ground, and/or any de-watering and/or excavations in bedrock at the site required to be carried out as part of the Sub-Contract works;
  - 4.1.2 Alterations to and /or diversion of existing services;
  - 4.1.3 Weekend or out-of-hours work.
- 4.2 Unless specifically addressed within the Tender for the Works Order, the Tender is based on the following assumptions. Should any assumption be incorrect, any necessary consequential action will be treated as a Variation.
  - 4.2.1 Any material to be disposed of is inert and can properly and lawfully be disposed of as such;
  - 4.2.2 The Sub-Contractor's operatives may use on-site welfare facilities;
  - 4.2.3 The Works area will not be trafficked whilst the Works are carried out.
- 4.3 Variations to the Works Order for which the Tender has been accepted ("Variations") may be executed following verbal instruction and shall subsequently be confirmed in writing.
- 4.4 Variations shall be valued on a fair and reasonable basis, taking due account as appropriate of any rates and prices specified in the Tender.
- 4.5 The Sub-Contractor reserves the right to pass on to the Client any increase in the price of materials that form part of the Works Order that is due to:
  - 4.5.1 any factor beyond the control of the Sub-Contractor (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 4.5.2 any increase in costs passed on to the Sub-Contractor by his supplier;
  - 4.5.3 any request by the Client to change quantities, types or specification of materials;
  - 4.5.4 a delay in the commencement of the Sub-Contract Works or any request or instruction by the Client which alters the programme of Works;The right referred to in this clause 4.5 will be exercised by giving notice to the Client at any time prior to the incorporation of the materials into the Sub-Contract Works and will be limited to the actual increase in cost to the Sub-Contractor.
- 4.6 All prices quoted in the Tender are exclusive of VAT. The Client shall notify the Sub-Contractor of his VAT status prior to the commencement of Sub-Contract Works and immediately following a change to that status. In the absence of written confirmation to the contrary, it shall be assumed that the Client is an End User/Intermediary Supplier for the purposes of reverse VAT and will be invoiced on that basis.

#### **5 CARRYING OUT THE SUB-CONTRACT WORKS**

- 5.1 Unless otherwise specified in the Tender, the Sub-Contractor shall provide all material, labour, plant, equipment, storage and transport necessary for the carrying out of the Sub-Contract Works. The Sub-Contractor shall keep the site clear of all debris arising out of its own works and remove such debris from the site at its own expense.
- 5.2 The Sub-Contractor shall comply with all statutes, other legislation and bylaws in force insofar as they affect the Sub-Contract Works.
- 5.3 The Sub-Contractor shall comply with the Client's site safety rules ("the Rules") as current at the time of the execution of the Sub-Contract Works and shall ensure that all staff comply with such Rules and also with their responsibilities under health and safety legislation.
- 5.4 Subject to clause 5.5, all materials and goods for the Sub-Contract Works shall, so far as procurable, be of the kinds and standards requested by the Client and, if so requested, will be specified in the Tender.

- 5.5 The Sub-Contractor warrants to the Client that he shall exercise the standard of reasonable skill and care not to specify and/or use in the construction of the Sub-Contract Works any goods, materials or substances that are:
- 5.5.1 prohibited by the Client's requirements;
  - 5.5.2 not in accordance with applicable British Standards and/or Codes of Building Practice;
  - 5.5.3 generally known within the construction industry at the time of use to be deleterious or hazardous to health and safety or detrimental to the structure, fabric or durability of the Works in the particular circumstances in which the material, substance, building practice or technique is used; and
  - 5.5.4 not in accordance with the guidance contained in the edition of "Good Practice in the Selection of Construction Materials" published by the British Council for Offices in 2011;
- and he shall immediately notify the Client if he becomes aware of any such use.
- 5.6 If and to the extent that the Sub-Contractor is responsible for the design or specification of any part of the Sub-contract Works it hereby warrants that it has exercised or will exercise all reasonable skill and care in the design and/or specification of the Sub-Contract Works or part thereof; the selection of the kinds of materials and goods; and the satisfaction of any performance specification where applicable.
- 5.7 In the interests of site safety the Client shall allow the Sub-Contractor exclusive possession of those areas of the site where the Sub-Contractor is working.
- 5.8 The Parties shall use reasonable endeavours to provide information, documentation and the like to the other Party so as to permit their respective compliance with The Construction (Design and Management) Regulations 2015 and any other statutory obligations.
- 5.9 The Sub-Contractor reserves the right to sub-sub-contract part or the whole of the Sub-Contract Works but shall remain responsible for carrying out and completing the Sub-Contract Works in all respects in accordance with this Sub-Contract.

## 6 PAYMENT

- 6.1 For Sub-Contract Works which are expected to be completed within 30 days, payment in full without set-off, withholding, deductions, retention or counterclaim is due 14 days after the date of the Sub-Contractor's invoice and the provisions of clauses 6.3-6.8 do not apply;
- 6.2 For Sub-Contract Works which are expected to exceed 30 days, the provisions of the following clauses 6.3- 6.9 apply;
- 6.3 Interim and final payments shall be made by the Client to the Sub-Contractor in accordance with the Payment Date Matrix contained within this Sub-Contract (Schedule 1). Where there is no date contained within the Payment Date Matrix, or a Payment Date Matrix has not been provided, payment shall be made in accordance with the provisions of the following clauses 6.4-6.9:
- 6.4 Valuations of the works executed shall take place on a monthly basis in week ending the last Friday of each month;
- 6.5 The Sub-Contractor will make an application to the Client (a "Payment Application") stating the sum that the Sub-Contractor considers due to him and the basis on which that sum has been calculated. The Final Date for Payment shall be 14 days after the date of the Payment Application.
- 6.6 The calculation of the amount proposed to be paid in each valuation month shall be based on the total value of items 6.6.1 to 6.6.4 inclusive less the value of item 6.6.5.
- 6.6.1 The sub-contract work on site properly executed, including works under a Variation. Where a priced activity schedule is included in the Sub-Contract Documents, the value to be included in each activity shall be a proportion of the price stated equal to the proportion that has been properly executed;
  - 6.6.2 Sub-contract site materials, including any pre-agreed items for payment off-site;
  - 6.6.3 Costs of additional works executed in consequence of non-compliant work by the Client or other contractor or sub-contractor not under the control of the Sub-Contractor, or any negligence, breach of statutory duty, omission or default of the Client or any of his agents;
  - 6.6.4 Costs of de-mobilising and re-mobilising following suspension of works by the Sub-Contractor in consequence of non-payment by the Client (clauses 7.1 & 7.2);
  - 6.6.5 the sums previously paid as interim payments under this Sub-Contract.
- 6.7 Not later than 5 days after receipt of the Payment Application (or in the absence of a Payment Application, 5 days after the last Friday in the month) the Client shall give notice (a "Payment Notice") to the Sub-Contractor, stating the sum that he considers to be due to the Sub-Contractor, and the basis on which that sum has been calculated. Subject to clause 6.8, if a Payment Notice is not given in accordance with this clause 6.7, the Client shall pay the Sub-Contractor the sum stated as due in the Payment Application.
- 6.8 Where the Client intends to pay less than the sum stated as due from him in the Payment Application, he shall give the Sub-Contractor a Pay Less Notice which shall specify the sum he considers to be due at the date the notice is given and the basis on which that sum has been calculated.
- 6.9 Unless expressly confirmed to the contrary, in writing, by a Director for the Sub-Contractor before the commencement of the Sub-Contract Works, this agreement does not provide for any retentions.

## **7 NON-PAYMENT BY THE CLIENT**

- 7.1 If the Client fails to pay a sum payable in accordance with the above section 6 (together with any VAT properly chargeable in respect of that payment), or any sum due to the Sub-Contractor under the terms of a separate contract, by the Final Date for Payment the Sub-Contractor, without affecting his other rights and remedies, may suspend performance of any or all of his obligations, without further notice, notwithstanding any statutory requirement for notice or other term of this Sub-Contract. This clause 7.1 is deemed and accepted by the Parties as being sufficient notice to the Client of the Sub-Contractor's intention to suspend the performance of his obligations should payment not be received within 7 days after the Final Date for that Payment and that the ground for such suspension is the non-payment by the Client of the relevant sum. That suspension may continue until payment is made by the Client to the Sub-Contractor in full.
- 7.2 Where the Sub-Contractor exercises his right of suspension under clause 7.1 the following provisions apply:
- 7.2.1 The period for completion shall be extended by the same number of days as it takes for payment to be made in full, and until such payment is made the completion date shall not apply.
- 7.2.2 He shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
- 7.3 In the event of non-payment by the Client as described in this section 7, simple interest at 5% above the Bank of England rate (when payment fell due) is due to the Sub-Contractor for the period from Final Date for Payment until payment is made.
- 7.4 In the event of non-payment by the Client as described in this section 7, within 14 days of the Final Date for Payment, the Sub-Contractor may, on the expiry of that 14 day period, by notice to the Client, terminate its employment under the Works Order.
- 7.5 In the event of the employment of the Sub-Contractor being determined as per clause 7.4 the Client shall pay to the Sub-Contractor all sums due that have accrued prior to the date of such determination. An account shall be taken of the factors set out in clause 6.6 and of any other damages caused to the Sub-Contractor by or in consequence of such determination. Payment of these sums shall be due immediately and interest as referred to in clause 7.3 will be due for the period from the date of determination until payment is made.

## **8 PROGRESS OF THE SUB-CONTRACT WORKS**

- 8.1 The Sub-Contractor shall commence the Sub-Contract Works at such time(s) as set out in the Order and shall carry out and complete the whole of the Sub-Contract Works within the period(s) set out in the Order.
- 8.2 If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Sub-Contract Works or such works in a section is being or is likely to be delayed, the Sub-Contractor shall give notice to the Client of the material circumstances, an estimate of any expected delay in the completion of the Sub-Contract Works.
- 8.3 If on receiving a notice and particulars under clause 8.2 any of the following events have occurred and completion of the Sub-Contract Works is likely to be delayed beyond the period(s) for completion, then the Client shall give an extension of time by fixing such revised period(s) for completion as is fair and reasonable.
- 8.3.1 Variations;
- 8.3.2 Deferment of the giving of possession of the Site;
- 8.3.3 The execution of work for which an approximate quantity included in the Bills of Quantities or contract bills is not an accurate reflection of the quantity of work required;
- 8.3.4 Any impediment, prevention or default, whether by act or omission, by the Client or his agent;
- 8.3.5 The carrying out by a Statutory Undertaker of work in pursuance of its statutory obligations;
- 8.3.6 the occurrence and as required removal, working around and/or making safe of any artificial or natural underground obstruction, ordinance, concrete, services, tanks or reservoirs, contamination, existing structures and/or any ground water, ground make up, bedrock or any other adverse physical conditions in the ground, and/or any de-watering and/or excavations in bedrock at the site required to be carried out as part of the Sub-Contractor's works which is not identified and expressly stated in the Tender;
- 8.3.7 Force Majeure
- 8.3.8 A pandemic event as defined by i) any pandemic (including, but not limited to, the COVID-19 Coronavirus outbreak and/or any mutation thereof and any other Outbreak of an infectious human disease), ii) any measures, recommendations, regulations and legislation issued by the government and/or public authorities in relation to any pandemic from time to time, and/or iii) any consequences of any pandemic which are outside the reasonable control of the Sub-Contractor, which affects the Sub-Contract Works including without limitation the Sub-Contractor being unable to reasonably access the

- Site, delay in or non-delivery of any materials required for the Sub-Contract Works, the Sub- Contractor being unable to reasonably adequately resource the Sub-Contract Works;
- 8.3.9 Any weather conditions that are so severe they cause the Sub-Contract Works to be suspended;
  - 8.3.10 the suspension of work by the Sub-Contractor in accordance with clause 7.2.1;
  - 8.3.11 the exercise by the UK Government or any local or public authority of any statutory power which directly affects the execution of the works and is not occasioned by the default of the Sub-Contractor.

## **9 LIABILITY & INSURANCE**

- 9.1 Nothing in these Conditions shall be construed as imposing any liability on the Sub-Contractor in respect of any act, omission or default on the part of the Client or his agent.
- 9.2 Without prejudice to clause 9.1 the Sub-Contractor shall indemnify the Client and in addition will adequately insure against all claims which may be brought against the Client arising out of the execution of the Sub-Contract Works which may be due to any act, default or negligence on the part of the Sub-Contractor his agents or servants, and will indemnify the Client against the same. Any damage arising out of the act, default or negligence of the Sub-Contractor shall be limited to the amount in which the Sub-Contractor has insurance in respect of that damage.
- 9.3 The Sub-Contractor will on written request by the Client produce the policy or policies of insurance and receipts for premiums relating to the risks aforesaid for the inspection of the Client.
- 9.4 If the Sub-Contractor is responsible for the design or specification of any part of the Sub-Contract Works, the Sub-Contractor shall procure Professional Indemnity Insurance, to a reasonable and proper level having regard to the value of the Sub-Contract Works, and maintain that insurance for the duration of the works. Documentary evidence of said insurance shall be provided to the Client on request.

## **10 BANKRUPTCY**

If, before practical completion of the Sub-Contract works either Party commits any act of bankruptcy or makes or enters into any Deed or Arrangement or Composition with creditors or suffer or allow any execution whether legal or equitable to be levied on the property of either Party or obtained against either Party or if being a Company, either Party enters into liquidation whether compulsory or voluntary (except liquidation for the purpose of amalgamation or reconstruction) or has an administrative receiver appointed, the employment of the Sub-Contractor may be terminated by notice by either Party.

## **11 BRIBERY ACT COMPLIANCE**

The Sub-Contractor shall procure that any person performing services in connection with this Sub-Contract shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption practices.

## **12 DISPUTE RESOLUTION & ADJUDICATION**

- 12.1 If any dispute shall arise between the Client and the Sub-Contractor either Party shall give notice to the other specifying the nature of the dispute and the Parties shall agree a date and time to meet and seek to resolve the issue(s).
- 12.2 If following the steps referred to in clause 12.1 the dispute has not been resolved, either party may refer the dispute to the adjudication of such person as the Parties may agree to appoint as adjudicator, or failing such agreement, as may be appointed by the Royal Institution of Chartered Surveyors. The provisions of Part 1 of the Schedule to the Scheme for Construction Contracts (England & Wales) 1998 (as amended) shall apply to this Sub-Contract.

## **13 THIRD PARTIES**

- 13.1 The Sub-Contractor shall enter into collateral warranties with third parties in accordance with the Client's requests in so far as and to the extent that such requests are notified to the Sub-Contractor prior to the commencement of the Sub-Contract Works. Should the Client notify the Contractor after commencement of the Contract Works that a collateral warranty is required, the Contractor may charge an administrative fee of £30 per document.
- 13.2 The Client and Sub-Contractor hereby agree that, notwithstanding any other provision of the Sub-Contract, the Sub-Contract shall not purport to confer on any third party any right to enforce any term of the Sub-Contract for the purpose of the Contracts (Rights of Third Parties) Act 1999.

## **14 RETROSPECTIVE EFFECT**

Notwithstanding the date of this Sub-Contract it shall have effect as if it had been executed upon the date the Sub-Contractor first performed any or activities in relation to the Sub-Contract Works and accordingly its provisions are deemed to have applied to the carrying out of any of those works prior to the date of this Sub-Contract. All payments made in respect of works carried out prior to the date of this Sub-Contract shall be treated as payments on account of sums due under this Sub-Contract.

## **15 SEVERANCE & AMMENDMENT**

- 15.1 If any term or condition of these Conditions is for any reason held to be invalid or otherwise unenforceable by law it shall be severed and deemed to be deleted from the Conditions and the validity and enforceability of the remainder of the Conditions shall not be affected in any way and shall remain in full force and effect. If any provision of the Conditions is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted or modified, the provision shall apply as if with such modification as may be necessary to make it valid.
- 15.2 No amendment to these Conditions shall be binding unless agreed in writing and authorised by a Director of the Sub-Contractor.

## **16 LEGAL PROCEEDINGS**

These Conditions are subject to the laws of England and Wales and all disputes arising out of these Conditions are subject to the exclusive jurisdiction of the courts of England and Wales.