

TERMS AND CONDITIONS OF BUSINESS SUB-CONTRACT FOR USE WHEN INDIVIDUAL PURCHASE ORDERS WILL BE ISSUED

- 1 DEFINITIONS**
In these conditions the following expressions shall unless the context otherwise admits have the following meanings:-
- 'Contract' shall mean the contract made between the Contractor and the Contractor's Employer,
 - 'Contractor' shall mean Ainscough Industrial Services Ltd and/or subsidiary company
 - 'Sub-Contract' shall mean the contract made between the Contractor and the Sub-Contractor, these Terms and Conditions of Business and those parts of the Contract identified on the face of the Purchase Order.
 - 'Sub-Contractor' shall mean the person, firm or company described in the Purchase Order who is to carry out the Sub-Contract Works,
 - 'Sub-Contract Order' shall mean the Purchase order contained on the other face of this page or attached.
 - 'Sub-Contract Sum' shall mean the aggregate value of the Purchase Order(s) issued by the Contractor and carried out by the Sub-Contractor,
 - 'Sub-Contract Works' shall mean the work as described in the Purchase Order.
 - 'Period for Completion' shall mean the period for completion, commencing at the date and time, stated on the face of the Purchase Order,
 - 'Regulations' shall mean any applicable European Community, governmental, local and other competent authorities' laws.
 - 'Terms and Conditions' shall mean these Terms and Conditions of Business set out on this page.
 - 'Purchase Order' shall mean the Purchase Order(s) supplied with these Terms and Conditions of Business referred to as AIS Terms and Conditions of Business
- 2 SUB-CONTRACTOR'S RESPONSIBILITIES**
2.1 Upon acceptance, in writing, of this Sub-Contract and in consideration of payment by the Contractor in accordance with the payment provisions of these terms and conditions the Sub-Contractor shall carry out and complete the Sub-Contract Works in accordance with the Purchase Orders issued by the Contractor at the time(s) set out and/or in accordance with any schedule issued with a Purchase Order, and for the Sub-Contract Sum, all in accordance with these terms and conditions.
2.2 The Sub-Contractor shall, comply with the contract, this Sub-Contract and if required by the Contractor, procure and provide the Contractor with a Guarantee in the form of either a Bond or Parent Company Guarantee which shall be in the form required by the Contractor.
- 3 CONTRACTOR'S RESPONSIBILITIES**
3.1 Upon acceptance, in writing, of this Sub-Contract the Contractor shall, save for those licenses and permissions identified in the Sub-Contract Order to be obtained by the Sub-Contractor, obtain all licenses and permissions required for the execution of the Sub-Contract Works.
3.2 The Contractor shall not be obliged to issue Purchase Orders in any aggregate value during any calendar period of the duration of the Sub-Contract and
3.3 To pay the Sub-Contract Sum in accordance with the provisions of these terms and conditions.
- 4 LIABILITY & INSURANCE**
4.1 If the Sub-Contractor shall be responsible for any delay in the completion of the Contract and/or Sub-Contract Works, then the Sub-Contractor shall be liable to pay the Contractor delay damages both as liquidated damages in accordance with the provisions of the Contract and unliquidated or any delay damages, costs or expenses as may be incurred by the Contractor.
4.2 Save for executing the design or choice of materials identified in the Purchase Order or exercising the skill and care of a reasonably competent provider of the works described in the Sub-Contract Order, the Sub-Contractor shall have no liability to the Contractor in respect of design or choice of materials.
4.3 The Sub-Contractor shall be liable for all loss or damage which may arise out of or in consequence of the execution of the Works and against and subject to remedying of any defects therein and against all claims, demands, proceedings, costs, charges and expenses in respect of:
(a) loss of or damage to any property, or
(b) death or injury to persons
provided always that loss or damage is due to the unlawful or negligent act of the Sub-Contractor or its servants or agents.
4.4 The Sub-Contractor shall have in force and maintain the following insurances:
(a) Employer's Liability Insurance
(b) Insurance of Contractor's tools and equipment and those of its servants and agents
(c) Public Liability (Third Party) with an indemnity limit of £10,000,000.00 any one occurrence or event, or a higher amount identified in the Sub-Contract Order,
be liable, at any time, to provide evidence to the Contractor that such insurance is in place and if such evidence is not provided then the Contractor may deduct the cost of procuring the required insurance from sums otherwise due to the Sub-Contractor.
- 5 DETERMINATION**
5.1 Contractor shall be entitled to determine this Sub-Contract by notice in writing to the Subcontractor:-
(a) if the latter shall not proceed with the Sub-Contract work with such speed as shall in the Contractor's reasonable opinion be necessary to avoid impediment of other trades or to complete such work within the agreed programme for the Sub-Contract work ; or
(b) if at any time the Sub-Contract work is not being carried out to the reasonable satisfaction of the Contractor; or
(c) if default is made by the Subcontractor in complying with a written order from the Contractor to proceed with the Sub-Contract work or delivery of goods or to rectify or replace defective work for the period named in such order being not less than 5 days.
and in the event of the Sub-Contract being so determined under the foregoing provisions of this clause an account shall be taken of the value of the work executed and materials delivered by the Subcontractor and of any increased cost to the Contractor in the completion of the Sub-Contract work and of any other damages caused to the Contractor by or in consequence of such determination and the balance due either from or to the Contractor shall be ascertained and paid by or to them as the case may be.
5.2 The Contractor shall also be entitled to determine this Sub-Contract if the Main Contract shall be determined by the Employer there under any special powers of determination therein contained in which event the respective rights of the Contractor and Subcontractor shall be similar to those of the said Employer and Contractor under the Main Contract.
5.3 If the Sub-Contractor becomes bankrupt or commits an act of bankruptcy or makes or enters into any deed of arrangement, assignment or composition with their creditors or being a company an order is made or an effective resolution is passed for the winding-up or an encumbrancer takes possession of a receiver (whether administrative or otherwise) is appointed of the whole or the major part of the assets or undertaking or an administrator is appointed or distress, execution or other legal process is levied or enforced or sued upon or against the whole or the major part of the assets and is not discharged, paid out, withdrawn or removed within 14 days, or the company stops or threatens to stop payment of its due debts or ceases or threatens to cease to carry on its business or a substantial part of its business or is deemed for the purpose of S123 Insolvency Act 1986 (or any statutory modification to re-enactment thereof) to be unable to pay its debts or compounds or proposes or enters into any re-organization or special arrangement with its creditors generally, then the Contractor may, but without prejudice to any other rights or remedies, forthwith on written notice determine the Sub-Contract, complete the Sub-Contract Works, deduct any additional costs incurred from such amounts as may otherwise be due to be paid to the Sub-Contractor and shall not be liable to pay any further amounts to the Sub-Contractor until the Sub-Contract Works have been completed and the amount of the additional costs have been fully ascertained.
- 6 PURCHASE ORDERS**
6.1 The Contractor shall issue individual Purchase Orders to the Sub-Contractor, which will identify a unique Purchase Order number, describe the Sub-Contracts Work to be carried out under the Purchase Order, the method of valuation, how retention is to be paid, start/finish dates, identify any schedule requirements and the rate at which liquidated damages, if any, will be deducted.
6.2 The Sub-Contractor shall not commence work until a Purchase Order is issued by the Contractor.
- 7 INSTRUCTIONS, EXTRA WORKS AND DAYWORKS**
7.1 Any order or instruction given by the Contractor to the Sub-Contractor shall be given in writing, or if given orally shall be confirmed in writing by the Contractor within 48 hours.
7.2 Any changes, addition, alteration or variation required to the works must only be carried out by the Sub-Contractor upon receipt of written instructions from the Contractor. Where there are no rates and prices to be paid by the Contractor to the Sub-Contractor for carrying out such extra work then the rates and prices shall be the subject of agreement between the Contractor and Sub-Contractor.
7.3 Minor alterations only to the Sub-Contract Works as may from time to time as required by the Contractor will be carried out on a Daywork basis but the Contractor shall not be liable to pay the Sub-Contractor on a Dayworks basis when the method of payment has been agreed in advance of the work being carried out. When work has been instructed to be carried out on a Daywork basis the total number of hours in respect of labour and plant and quantities of materials expended shall be recorded daily. The record must be submitted by the Sub-Contractor to the Contractor the next working day after the work is carried out and signed off by the Contractor on the day of submission. Work carried out on a Daywork basis shall be valued at rates contained in the Sub-Contract Order or at rates agreed between the Contractor and Sub-Contractor.
- 8 DELAYS**
8.1 The Contractor shall not be responsible for and shall have no liability in respect of delays due to any security event, adverse weather conditions, inductions, industrial dispute or any cause beyond their reasonable control including but not limited to acts of God, pandemic, act or restrictions of civil or other authorities, acts of any other third party, fire, non-availability of necessary labour or transport, explosion, civil disturbance or act of terrorism.
8.2 If a delay under the paragraph above is a delay of 30 days or such other period as may be defined in the Contract, then either the Contractor or the Sub-Contractor may terminate the whole or any part of the Sub-Contract.
8.3 It shall be a condition precedent to the consideration of any claim by the Sub-Contractor against the Contractor in respect of any delay, and to any liability of the Contractor for such delay, must be the subject of a written notice issued by the Sub-Contractor to the Contractor within 24 hours of the delay and details (describing the delay and the amount of any loss or expense claimed) due to the alleged delay must be received by Contractor within 24 hours of the occurrence thereof.
8.4 The Sub-Contractor shall be liable for any loss of revenue, loss of profit, loss of contracts or other special, indirect or consequential loss or damage suffered by the Contractor and/or any other person or party which arises out of or as a result of any delay in delivery or performance by the Sub-Contractor.
- 9 PAYMENT**
9.1 Payment of the Sub-Contract Sum, less previous payments, shall be within sixty (60) days of the submission of an invoice from the Sub-Contractor to the Contractor.
9.2 In the event of the Contractor failing to pay any such invoice, in whole or in part, within 60 days then the amount outstanding shall be subject to the payment of interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998
9.3 If payment of any invoice of the Sub-Contractor's is overdue, notwithstanding sub-paragraph 8.2, the Sub-Contractor shall not be entitled to suspend execution of the Sub-Contract Work or any work on any other contract then subsisting between the Sub-Contractor and the Contractor, without the Sub-Contractor having first given the Contractor seven calendar days written notice of the Sub-Contractor's intention to suspend execution of the Sub-Contract Works, which notice shall be delivered to the Contractor's Company Secretary at the Contractor's Registered Office.
9.3 Retention and/or discount shall be deducted from any payments made by the Contractor to the Contractor.
9.4 The amount of the Sub-Contract Sum is exclusive of Value Added Tax ("VAT") and if payment of all or part of the Contract Sum is subject to VAT then the Customer shall pay VAT at the rate applicable at the time the invoice is issued to the Customer.
9.5 Payment by the Contractor to the Sub-Contractor shall be subject to the Sub-Contractor's compliance in full with Contractor's Schedule of Requirements for a Valid Application for Payment.
9.6 Payment by the Contractor without the deduction of an amount in respect of tax shall only be if the Sub-Contractor has provided the Contractor with a current CIS certificate.
- 10 SAFETY, HEALTH ENVIRONMENT AND QUALITY**
10.1 The Sub-Contractor shall comply with the Health and Safety at Work etc Act 1974, any statutory re-enactment or amendment thereof, and all associated regulations/codes made thereunder together with such other appropriate Statutes and Regulations whether or not herein before referred.
10.2 The Sub-Contractor shall ensure that he has familiarised himself with the contents Ainscough Industrial Services Limited Safety, Health Environment and Quality Management Procedures and hereby undertakes to inform his staff, labour, agents and servants of their obligations thereunder. Compliance with Health and regulations and codes of practice is mandatory. The Sub-Contractor shall comply with all complimentary directions and instructions issued by the Contractor from time to time in connection safety and the environment.
- 11 REPRESENTATIONS**
11.1 No employee of the Contractor other than the Secretary or a Director of the Contractor is authorised to make any amendment to these Terms and Conditions. Accordingly the Sub-Contractor shall not be entitled to rely on or to seek to rely on any statement warranty or representation made by an employee or agent of the Contractor other than the Secretary or a Director which purports to amend the Terms and Conditions.
- 12 DISPUTE RESOLUTION**
12.1 Any dissatisfaction, difference or dispute which cannot be resolved at site level or by the managers next in line shall in first instance be referred to mediation between the Contractor's Director and the equivalent executive in the Customer's organization. Mediation, in the form of a meeting, shall take place within 14 days of referral.
12.2 If the mediation fails to resolve the dispute then a dispute shall be deemed to have arisen and either party may serve written notice of its intention to refer the dispute to Adjudication.
12.3 Whether or not, for the purposes of the Housing Grants, Construction and Regeneration Act 1996 (the Construction Act) the Work is a construction operation or the contract is a construction contract the Scheme for Construction Contracts (England and Wales) Regulation 1998 (the "Scheme") shall apply with the Adjudicator being appointed and the Adjudication being conducted in accordance with the Scheme.
- 13 WAIVER**
13.1 The rights and remedies of a Party shall not be diminished, waived or extinguished by the granting of any indulgence or forbearance or extension of time by a Party or by any failure or delay by a Party in asserting or exercising any such rights or remedies. The waiver by a Party of any breach of the Contract shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 14 SEVERABILITY**
14.1 If any one or more of the provisions of the Sub-Contract shall be declared to be invalid or unenforceable of the remaining provisions shall not result in any way be affected or impaired. However, if any provision shall be adjudged to be void or ineffective but would be adjudged to be valid and effective if part of the wording were deleted or the scope or periods reduced, they shall apply with modifications as may be necessary to make them valid and effective while adhering as closely as possible to the original intent, period and scope of the provisions and the parties hereby undertake to make such modifications.
- 15 LAW OF CONTRACT**
15.1 The Contract shall be governed and construed in all respects in accordance with the laws of England and Wales. The Contractor and Sub-Contractor irrevocably submit to the exclusive jurisdiction of the English Courts.
15.2 Nothing in the Contract shall confer or purport to confer on any third party any benefit or right to enforce any term of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.