

STANDARD TERMS AND CONDITIONS OF PURCHASE FOR SUB-CONTRACT WORKS

1. *Definitions/General*

1.1 **Contractor:** QR Engineering Ltd

Sub-Contractor: The person, firm, partnership or company stated on the Order

Main Contract: The contract between the Contractor and its Employer, which may incorporate, by reference or

otherwise, elements of a Superior Contract

Order: The Sub-Contract Order as issued to the Sub-Contractor by the Contractor

Sub-Contract Works: As described on the Order

Sub-Contract Documents: As listed on the Order

1.2 These Terms and Conditions of Sub-Contract shall apply to the Sub-Contract to the exclusion of any other terms which may have been proposed by the Sub-Contractor.

1.3 The Sub-Contractor is deemed to have examined the drawings, the site and specification of the Main Contract before submitting his tender

2. *Main Contract Provisions*

2.1 The Sub-Contractor is deemed to have allowed in his tender for complying with the Main Contract and shall observe, perform and comply with all provisions of the Main 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. The Sub-Contractor shall indemnify the Contractor from and against any actions, proceedings, claims, damages, costs, expenses or losses arising from any breach by the Sub-Contractor of the aforementioned obligation.

3 *Sub-Contractor's Obligations*

3.1 The Sub-Contractor shall carry out and complete the Sub-Contract Works in a good and workmanlike manner and in full compliance with the Sub-Contract Documents and shall comply with all statutes other legislation and bylaws in force insofar as they affect the Sub-Contract Works. The Sub-Contractor shall maintain the Sub-Contract Works in good order and condition until completion and make good any defects therein appearing during any defects liability period which unless otherwise stated on the Order shall be two years from the date of completion of the Main Contract Works.

3.2 Unless otherwise agreed in writing with the Contractor, the Sub-Contractor shall provide at its own expense 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 works and remove such debris to a location on the site as provided by the Contractor and in all respects leave the whole of the Sub-Contract Works in a clean condition on completion to the satisfaction of the Contractor and or the client or his representative.

3.3 Save where the Sub-Contract Works are described as "Labour Only" or "Labour and Plant" or the like, the Sub-Contractor shall be responsible until completion of the Main Contract Works for any loss or damage howsoever arising to any materials or goods incorporated into the works or placed on site for the Sub-Contractor's use or benefit in connection with the Sub-Contract Works.

4. *Indemnities and Insurance*

4.1 The Sub-Contractor shall indemnify the Contractor and in addition will adequately insure (with a limit of indemnity not less than £5,000,000 (five million pounds) for any one claim) against all claims of whatsoever nature which may be brought against the Contractor in connection with or 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 Contractor against the same and against all actions, proceedings, damages, costs and expenses arising therefrom or in connection therewith and in particular and without prejudice to the generality of the foregoing shall indemnify and insure as aforesaid against:

4.1.1 injuries or damage to any person employed by the Sub-Contractor in or about the Sub-Contract Works or in any connection therewith;

4.1.2 death of or injury to any person whatsoever (including a person employed by the Contractor or other sub-contractors of the Contractor) caused by or arising out of the execution of the Sub-Contract Works;

4.1.3 injuries or damage to any property or thing (including the property or things of the Contractor) caused by or arising out of the execution of the Sub-Contract Work; provided that nothing contained in these conditions shall impose any liability upon the Sub-Contractor in respect of any injury or damage caused solely by negligence or breach of statutory duty on the part of the Contractor or its servants or other sub-contractors or agents.

4.2 The Sub-Contractor shall produce the policy or policies of insurance relating to the risks aforesaid for the inspection of the Contractor within 7 days following the date of the Order.

5. Health and Safety

5.1 The Sub-Contractor shall comply with all health and safety legislation current at the time of the execution of the Sub-Contract Works and shall ensure that all staff comply with and are fully conversant with such legislation.

6. Payment

6.1 The first and all interim payments and the final payment shall be made in accordance with this clause.

6.2 Interim payments shall be due at the end of the month in which the work is executed. Such interim payments shall be valued on the basis of the work properly executed. No payments will be made for materials on site.

6.3 The final date for payment of interim payments shall be 60 days after the date on which they become due.

6.4 The Sub-Contractor shall no later than 5 days prior to the end of the month in which the work to which the application relates was performed submit to the Contractor an application for payment of the value of all work properly executed under the Sub-Contract. The application shall contain sufficient detail and particularity to enable the Contractor to ascertain the validity of the valuation set out therein. To the extent that the application does not contain sufficient detail and particularity the valuation of work will be reduced. Applications received by the Contractor later than 5 days prior to the end of the month in which the work to which the application relates was performed will be deemed to relate to work performed in the following month.

6.5 Not later than 5 days following the due date for each payment the Contractor shall calculate the amount proposed to be paid (taking account of any application for payment from the Sub-Contractor) and give notice to the Sub-Contractor specifying the said amount and the basis upon which the amount is calculated. The calculation of the amount proposed to be paid shall account for the deduction of a retention of 5 per cent unless otherwise stated in the Order. The notice served under this sub-clause may also contain the matters to be set out in the notice mentioned in sub-clause 6.6. If the Contractor shall fail to give notice under this sub-clause any application for payment made by the Sub-Contractor shall not constitute the amount due to the Sub-Contractor.

6.6 Within 7 days of the notice by the Contractor under sub-clause 6.4, the Sub-Contractor shall issue an invoice for the amount stated as due in the said notice. The invoice shall be issued notwithstanding any dispute as to the value of works for the purpose of payment, in which circumstances the Contractor shall not be entitled to hold out the invoice as evidence that no dispute exists.

6.7 Notwithstanding the notice referred to in sub-clause 6.4, if the Contractor intends to withhold a payment, in whole or in part, after the final date for payment thereof, the Contractor shall give notice to that effect not less than 1 day prior to the said final date for payment. The notice shall state the amount proposed to be withheld and the ground for withholding payment or, if there is more than one ground, each ground and the amount attributable to it. Without prejudice to the generality of this sub-clause, the Contractor shall be entitled to withhold payment from monies otherwise payable under this Sub-Contract for monies due and owing by the Sub-Contractor to the Contractor under or in connection with other contracts. If any notice issued under sub-clause 6.4 contains the matters set out in this sub-clause, it shall comprise an effective notice of withholding of payment.

6.8 The Sub-Contractor shall, within one month of completion of the Sub-Contract Works, submit to the Contractor a final application for payment setting out all items and amounts to which the Sub-Contractor considers he is entitled under or in connection with the Sub-Contract. The Sub-Contractor shall not thereafter raise any further application or claim for monies additional to those set out in the said final application nor shall the Sub-Contractor be entitled to any further monies under or in connection with the Sub-Contract which are not set out in the said final application. Notwithstanding the foregoing, the Contractor may direct the form and particulars required in the final application and may direct that an inadequate final application be amplified and/or resubmitted. Any amount to be paid in relation to the final application for payment shall become due 60 days after receipt by the Contractor of an adequate final application from the Sub-Contractor. The provisions of sub-clauses 6.4, 6.5 and 6.6 shall thereafter apply save that the balance remaining as a result of the deduction of retentions shall be paid as follows:

6.8.1 half of the said balance shall be paid to the Sub-Contractor within 60 days following the date of practical completion under the Main Contract;

6.8.2 the remaining balance shall be paid to the Sub-Contractor within 60 days following the making good of defects or the expiry of the defects liability period under the Main Contract whichever is the later.

6.9 Notwithstanding sub-clauses 6.1 to 6.7, if the Employer (or similarly titled party) under the Main Contract becomes insolvent within the meaning of Section 113 of the Act and thereby fails to make payment to the Contractor for any works executed under the Main Contract, which works incorporate all or part of the Sub-Contract Works, then the Contractor shall have no obligation to make payment to the Sub-Contractor in respect of the Sub-Contract Works incorporated into the Main Contract Works for which payment has not been made under the Main Contract.

7. Taxes

- 7.1 The Contractor shall pay to the Sub-Contractor in addition to the Sub-Contract Sum, any Value Added Tax properly chargeable by the Commissioners of Customs & Excise on any goods and services provided by the Sub-Contractor under this Sub-Contract at the appropriate rates from time to time in force on submission of a VAT invoice.
- 7.2 The Sub-Contractor shall at the request of the Contractor furnish such information as the Contractor may require to satisfy the Contractor as to the amount of any such Value Added Tax which may be or become chargeable as referred to in this Clause and for this purpose the Sub-Contractor shall keep such books, accounts and any other documents and records that are necessary to enable the Contractor to verify the amount of such tax, and shall permit the Contractor to inspect them and shall provide such other information as the Contractor may reasonably require.
- 7.3 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. The Sub-Contractor shall indemnify the Contractor against any costs, loss or expenses arising from the Sub-Contractor's failure so to comply or to notify the Contractor of any change in the Sub-Contractor's circumstances or status under these provisions.
- 7.4 The Contractor shall be entitled to withhold any payments due under this Sub-Contract if the Contractor has not received from the Sub-Contractor a copy of insurance details under conditions 4.1 and 4.2 and a valid Unique Tax Reference (UTR) number, Company Registration Number (or National Insurance Number where applicable) under the Construction Industry Scheme and shall notwithstanding any other provision of this Sub-Contract make such deductions from any payment due or which may become due to the Sub-Contractor as the Contractor is required to make by virtue of the Construction Industry Scheme.
- 7.5 If the Contractor is or becomes liable to pay to the Inland Revenue any tax, penalties or interest (including, without limitation, any national insurance contributions and income tax (whether under PAYE or otherwise)) in respect of any payment made to the Sub-Contractor shall pay the Contractor, on demand, such amount as is necessary to put the Contractor in the same net of tax position as it would have been in if it had not been so liable.
- 7.6 The Sub-Contractor shall be responsible for the payment of any CITB levy where applicable.

8. Commencement and Completion

- 8.1 The Sub-Contractor shall commence the Sub-Contract Works at such time or times as the Contractor may direct. The Sub-Contractor shall carry out and complete the whole of the Sub-Contract Works in a sequence and/or manner directed by the Contractor. The Contractor may issue directions in the form of programmes which may be revised from time to time and may direct suspensions and/or accelerations in the progress of the Sub-Contract Works. Directions issued under this clause shall not comprise a variation under, nor a breach of, this Sub-Contract and the Sub-Contractor shall have no entitlement to additional payment arising from any such directions. The Sub-Contractor should note that a number of visits may be required to complete the whole of the Sub-Contract Works.
- 8.2 The Contractor shall grant extensions of time for the completion of the Sub-Contract Works, or sections thereof where they are to be completed in sections, where the said Sub-Contract Works are delayed by causes which result in an extension of time being granted to the Contractor under the Main Contract or are delayed by acts, omissions and defaults on the part of the Contractor, his sub-contractors servants or agents (other than the Sub-Contractor). Provided always that the Sub-Contractor shall give a written notice to the Contractor within a reasonable time of the said causes, acts, omissions and defaults occurring.
- 8.3 Without prejudice to any other rights which the Contractor may possess, if the Sub-Contractor fails to make satisfactory progress the Contractor has the right to supplement the Sub-Contractor's workforce and/or remove a part of the remaining works from this Sub-Contract and have such part executed concurrently by others. In this latter event the Sub-Contractor shall not be paid the value of such part nor a loss of profit nor loss of overhead contribution. The Sub-Contractor's site preliminaries/site overheads value shall be reduced accordingly. If the Contractor suffers or incurs loss and/or expense in consequence of the said supplementation of the Sub-Contractor's workforce and/or removal and execution by others then, subject to sub-clause 6.6, such loss and/or expense shall be deducted from monies due or to become due to the Sub-Contractor or may be recoverable by the Contractor from the Sub-Contractor as a debt.

9. Delay in Completion

- 9.1 If the Contractor shall be required to pay or allow, and shall pay or allow, any sum by way of liquidated damages or otherwise or incur any loss or expense for delay in completion of the work comprised in the Main Contract and such delay is due in whole or in part, either directly or indirectly, to

any delay by the Sub-Contractor in the execution of the Sub-Contract Works the Sub-Contractor shall pay to the Contractor either the whole of such sum or (as the case may be) such proportion thereof as is properly attributable to the delay in the execution of the Sub-Contract Work or the consequences of such delay. Notwithstanding anything herein contained the Contractor shall (subject to sub-clause 6.6) be entitled to deduct from or set-off against any moneys due from the Contractor to the Sub-Contractor any sum or sums for which the Sub-Contractor is liable to the Contractor hereunder whether for damages or otherwise.

10. Instructions

10.1 The Sub-Contractor shall comply with all instructions of the Contractor including, but not limited to, variations to the Sub-Contract Works, or which otherwise originate under the conditions of the Main Contract. Variations shall be valued by the Contractor on a fair and reasonable basis, taking due account of any rates and prices specified in the Sub-Contract. The Contractor may issue instructions omitting any part or parts of the Sub-Contract Works for any reason whatsoever (including, but not without limitation, where the omitted works is to be undertaken by others) without incurring any liability for damages or loss of profit.

11. Termination

11.1 The Contractor shall be entitled to terminate the employment of the Sub-Contractor immediately by notice in writing to the Sub-Contractor:

11.1.1 if the Sub-Contractor shall not proceed with the Sub-Contract Work regularly and diligently OR

11.1.2 if the Sub-Contractor shall not proceed with the Sub-Contract Work 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 such work within the time required by the Contractor OR

11.1.3 if at any time the Sub-Contract Work is not being carried out to the satisfaction of the Contractor OR

11.1.4 if the Sub-Contractor fails to comply with a written order from the Contractor to proceed with the Sub-Contract Work or with the delivery of goods or fails to rectify or replace defective work for the period named in such order OR

11.1.5 if the Sub-Contractor shall commit any act of bankruptcy or make or enter into any deed or arrangement or composition with creditors or suffer or allow any execution whether legal or equitable to be levied on the Sub-Contractor's property or obtained against the Sub-Contractor or if being a Company, the Sub-Contractor enters into liquidation whether compulsory or voluntary (except liquidation for the purpose of amalgamation or reconstruction) or has an administrative receiver appointed

the provisions of clause 11.1 are without prejudice to any other rights possessed by the Contractor in connection with the determination of the Sub-Contractor's employment under the Sub-Contract.

11.2 In the event of the employment of the Sub-Contractor being determined as aforesaid no further monies shall be due to the Sub-Contractor. Following completion of the Sub-Contract Works an account shall be taken of the value of work executed and materials delivered to the site by the Sub-Contractor and of any increased cost incurred by the Contractor in completion of the Sub-Contract Works and of any other damages caused to the Contractor by or in consequence of such determination. In consequence of such an account the balance due from the Sub-Contractor to the Contractor or from the Contractor to the Sub-Contractor shall be paid forthwith.

11.3 If the Contractor's employment under the Main Contract is determined, the employment of the Sub-Contractor hereunder shall be automatically determined.

11.4 If the Client under the Main Contract shall determine such contract, or shall determine the employment of the Contractor thereunder, for any cause for which the Sub-Contractor is responsible the Sub-Contractor shall pay to the Contractor all damages, costs and expenses suffered by the Contractor by reason of or in connection with such determination.

12. Design

12.1 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:

12.1.1 the design and/or specification of the Sub-Contract Works or part thereof;

12.1.2 the selection of the kinds of materials and goods;

12.1.3 the satisfaction of any performance specification where applicable.

12.2 If required to do so, the Sub-Contractor shall either prior to, during, or at any time after commencement of the Sub-Contract Works produce documentary evidence confirming that professional indemnity insurance, to a reasonable and proper level having regard to the value of the Sub-Contract Works, has been taken out and will be maintained for the duration of the Main Contract. If further required to do so, the Sub-Contractor must, at annual intervals for a period of twelve years from the date

of completion of the Sub-Contract Works, produce evidence confirming that the insurance is being maintained at the same level.

12.3 The Sub-Contractor shall allow for and enter into warranties with third parties in accordance with the Main Contract in so far as, and in the form in which, the Main Contract requires warranties from Sub-Contractors.

13. Disputes

13.1 If any dispute or difference shall arise between the Contractor and Sub-Contractor in regard to any matter or thing of whatsoever nature arising out of this Sub-Contract or in connection therewith whether arising during the execution or after the completion or abandonment of the Sub-Contract Works or after the determination of the employment of the Sub-Contractor (whether by breach or in any other manner) then either party shall give to the other notice in writing of such dispute or difference and such dispute or difference shall be and is hereby referred to the arbitration of such person as the parties hereto may agree to appoint as arbitrator or failing such agreement as may be appointed on the request of either party by the President for the time being of the Royal Institution of Chartered Surveyors and in either case the award of such arbitrator shall be final and binding on the parties.

14. Third Party Rights

14.1 The Contractor 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.

15. Applicable Law

15.1 Whatever the nationality, residence or domicile of the Contractor or the Sub-Contractor and wherever the Sub-Contract Works are situated the law of England shall be the law applicable to this Sub-Contract.