

SUBCONTRACTOR TERMS AND CONDITIONS

1. EXISTENCE AND SCOPE OF CONTRACT

- 1.1 These Terms and Conditions together with the Sub-contract Order set out all the rights and obligations of the parties each to the other and no other terms or conditions shall be implied save to the extent that such terms and conditions are implied by statute.
- 1.2 Unless otherwise expressly agreed, commencement of the Sub-contract Works shall signify acceptance of these Terms and Conditions. For the avoidance of doubt Spectrum do not intend to enter into contract on any terms and conditions other than those set out herein.
- 1.3 The Sub-contract Works are executed as part or all of work to be carried out by Spectrum for its Customer under the Principal Contract.
- 1.4 The Sub-contractor shall have reasonable opportunity to inspect and is deemed to have notice of the terms and conditions of the Principal Contract.
- 1.5 If requested by the Sub-contract Spectrum shall provide the Sub-contractor free of charge with a copy of the Principal Contract other than the details of Spectrum's prices.
- 1.6 Except where the context provides otherwise the provisions of the Principal Contract shall form part of this Sub-contract and the Sub-contractor shall be bound to Spectrum by the same obligations and enjoy the same rights and benefits as those conferred on Spectrum under the Principal Contract, *mutatis mutandis* (i.e. the necessary changes being made), as though the terms and conditions of the Principal Contract were each severally written herein.
- 1.7 In the event of conflict between the terms and conditions of the Principal Contract and these Terms and Conditions the latter shall take precedence.

2. DEFINITIONS

2.1 The following terms shall have the following meanings:

- (i) "Spectrum" means Spectrum Electrical Group its successors and assigns.
- (ii) The "Sub-contract Works" means all materials to be supplied and work to be done by the Sub-contractor including incorporation of Free Issue Equipment, as specified in the Sub-contract Order.
- (iii) The "Sub-contract Price" means the total price payable exclusive of Value Added Tax in the amount stated in the Sub-contract Order.
- (iv) "Variation" means any change or addition to or omission from the Sub-contract Works, or any change in the manner order or time in which the Sub-contract Works are required by Spectrum to be carried out.
- (v) The "Site" means the location notified by Spectrum to the Sub-contractor as the place where the Sub-contract Works are to be carried out.
- (vi) "Defect" and "Defective" means materials supplied or work carried out not in accordance with the Sub-contract.
- (vii) "CDM Regulations" means the Construction (Design and Management) Regulations 2009.
- (viii) "Principal Contract" means the contract between Spectrum and its Customer.
- (ix) "Sub-contract" means Spectrum's Sub-contract Order and the Sub-contractor's acceptance thereof, these Terms and Conditions, and any documents referred to therein including the provisions of the Principal Contract.
- (x) "Customer" means the customer of Spectrum under the main contract.
- (xi) "Completion Date" means the date (if any) specified in the Sub-contract Order as the date on which the Sub-contract Works shall be Complete.
- (xii) "Free Issue Equipment" means Equipment or goods or materials supplied by Spectrum to the Sub-contractor without charge for incorporation in the Sub-contract Works.
- (xiii) "Client" means the name registered as the Client with the Health and Safety Executive under the CDM Regulations.

3. SUBCONTRACTOR'S OBLIGATIONS

- 3.1 The Sub-contractor shall carry out and complete the Subcontract Works in accordance with the Sub-contract and the Sub-contract Order placed to the reasonable satisfaction of Spectrum and its Customer and any other person whose satisfaction is expressly required under the Principal Contract.
- 3.2 The Sub-contractor shall not assign whole or part of the benefit of this sub-contract nor sublet the whole or part of the Sub-contract Works without first obtaining Spectrum's written consent.
- 3.3 If a Completion Date is stated in the Sub-contract Order the Sub-contract Works shall be completed by that date or such extended date as shall be fixed under **Clause 6.3**. If no such date is stated the Sub-contractor shall carry out and complete the Sub-contract Works in a reasonable time from the date on which it is requested to commence by Spectrum.

4. INSTRUCTIONS AND VARIATIONS

- 4.1 Spectrum may issue written instructions which the Sub-contractor must carry out.
- 4.2 The Sub-contractor shall not make any Variation except Variations ordered by or approved by Spectrum and the Sub-contractor shall not accept instructions relating to this sub-contract from anyone except Spectrum or any person expressly authorised by Spectrum or any person having statutory powers to give the relevant instruction.
- 4.3 Spectrum may instruct the Sub-contractor to carry out a Variation. No Variation shall vitiate the Sub-contract.
- 4.4 Spectrum may require the value of any Variation to be agreed before its execution by the Sub-contractor.
- 4.5 If the value of any Variation is not agreed as provided in **Clause 4.4** Spectrum may require such Variation to be executed, and on completion of the Variation it shall be valued using rates and prices set out in this Sub-contract (if any) or in the absence of such rates and prices on a fair and reasonable basis in all the circumstances which shall take into account any rates or prices for similar work contained in the Sub-contract.

5. COMPLETION AND DEFECTS

- 5.1 The Sub-contractor shall notify Spectrum in writing when in his opinion the sub-contract works are Complete. Within 17 days of such notification Spectrum shall either dissent in writing giving reasons for such dissent or shall accept that the Sub-contract Works are complete.
- 5.2 The Sub-contractor shall until the end of the Defects Liability Period (if any) stated in the Sub-contract Order be responsible for making good at its own cost any defect in or damage to the Sub-contract Works to the extent that Spectrum is responsible to make good under the Principal Contract. Provided that if such damage was caused by the act neglect or default of Spectrum or others (except the Sub-contractor) for whom it is responsible Spectrum shall pay the reasonable costs of making good such damage.

6. DELAY AND EXTRA TIME

- 6.1 If the Sub-contractor fails to complete the Sub-contract Works
 - a) in a reasonable time under **Clause 3.3**, or
 - b) by the Completion Date or extended Completion Date under **Clause 3.3** Spectrum shall be entitled at its discretion to claim from the Sub-contractor any loss and/or expense suffered as a result of such failure. The amount of such claim may be deducted from sums otherwise due under the contract or may be recovered from the Sub-contractor as a debt.
- 6.2 If it becomes apparent that the Sub-contract Works will not be complete by the Completion Date, the Sub-contractor shall notify Spectrum in writing stating all the reasons for delay.
- 6.3 Spectrum shall grant an appropriate extension of time for completion of the Sub-contract Works to the extent that delay has been caused by
 - a) any reason which shall entitle Spectrum to a similar extension of time under the terms of the Principal Contract, or
 - b) any act neglect or default of Spectrum or others for whom Spectrum is responsible except the Sub-contractor.

7. PRICE AND PAYMENT

- 7.1 In consideration of performance of the Sub-contract Works in accordance with the Sub-contract Spectrum shall pay the Sub-contract price to the Sub-contractor at the times and in the manner set out in the Sub-contract.
- 7.2 Subject to the provisions of the Sub-contract the cost of executing the Sub-contract Works shall be at the risk of the Sub-contractor, which shall be deemed to have obtained all information and taken into account of all circumstances which may affect such cost. Save as expressly provided elsewhere all such costs shall be deemed to be included in the Sub-contract price which shall not be adjusted in any way other than in accordance with these terms and conditions.
- 7.3 The Sub-contract price excludes Value Added Tax.
- 7.4 Unless otherwise stated in the Sub-contract Order the Sub-contract Price is fixed for the duration of the Sub-contract Works.
- 7.5 Payment to the Sub-contractor shall be made in the following manner
- (a) The Sub-contractor may submit an application for payment together with details of amounts claimed for work properly executed under the Sub-contract and for any unfixed goods or materials properly supplied and stored on the site accompanied by such documents as Spectrum may require and for any other amounts due under the Sub-contract. Applications for payment shall be submitted at intervals stated on the Sub-contract Order, or if not applicable to the contract monthly starting one month after the Sub-contractor commences work on site or on completion of the Sub-contract
 - (b) The Sub-contractor shall be advised of the contract valuation dates where applicable and payment shall then become due 21 days after each contract valuation date
 - (c) The final date for payment shall be not later than 39 days after the due date or being subject to clause 7.7 whichever the latter
 - (d) If in respect of any application for payment Spectrum intends to withhold payment (or part thereof) of a sum previously notified as due under (c) above Spectrum may give written notice of such intention not later than 3 days before the latest date for payment under (b) above giving details of each amount to be withheld and the grounds for withholding each amount.
 - (e) Retention as applicable shall be deducted and held in the amount of 5% unless otherwise stated on the subcontract order. Retention shall be deducted from all payments made to the sub-contractor until certification of practical completion. After certification half of the retention held shall be released with the remainder held through the defects period as stated on the Sub-contract Order. This sum will be released after certification of satisfactory completion of all defects.
- 7.6 Value Added Tax where properly chargeable shall be added to any payments made under the Sub-contract.
- 7.7 Notwithstanding the provisions of **Clause 7**, Spectrum shall not be liable to the Sub-contractor (whether by reason of any negligence Spectrum or any of its employees or agents, any non-fraudulent misrepresentation, any breach of contract, an express or implied warranty, condition or other term, breach of statutory duty, under the terms of any indemnity given by Spectrum, or otherwise) for any loss of profits; or damage to reputation; or loss of business opportunities; or loss of contracts; or claim, action or demand made against the Sub-contractor by any third party; or any indirect loss, damage, cost, expense, claim or other liability whatsoever; which arises out of or in connection with this Sub-contract. The Sub-contractor acknowledges that Spectrum shall have no obligation to pay any amount greater than the amount paid by the Customer and in any event Spectrum's aggregate liability shall not exceed the Sub-contract Sum
- 7.8 Subject to **Clause 7.5(d)** Spectrum shall be entitled to set off against any payment otherwise due to the Sub-contractor, under this Sub-contract or otherwise, the amount of any damages costs losses and expenses which have been incurred by Spectrum and/or the Customer or which Spectrum bona fide estimates are likely to be incurred by reason of any breach of or failure to observe the provisions of this Sub-contract by the Sub-contractor.
- 7.9 The Sub-contractor where applicable must be registered under the CIS scheme as operated by HMRC. Spectrum will verify the Sub-contractors status under this scheme prior to payment to determine the correct deduction of tax. Should the Sub-contractor not be registered under the scheme a 30% (or as applicable at the time) withholding of tax will be applied. Where the tax is withheld the Sub-contractor will submit applications with a breakdown of direct costs for materials, plant, equipment and labour on each application submitted

7.10 Notwithstanding anything to the contrary elsewhere in this Sub-Contract, if the principal contractor under the Contract or his employer under the principal contract is insolvent the Contractor shall not be obliged to make any further payment to the Sub-Contractor of any amount which is due or may become due to the Sub-Contractor under the Sub-Contract, except only if and to the extent that the Contractor has received payment in respect thereof under the Contract. For the purposes of this clause "insolvent" has the same meaning as in section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof for the time being in force.

8 SUPERVISION, HEALTH AND SAFETY, QUALITY

- 8.1 At all times during the carrying out of the Sub-contract Works the Sub-contractor shall provide all necessary supervision to ensure the proper execution of the Sub-contract Works and shall have a competent person in charge on the site who shall be authorised to accept instructions and directions on behalf of the Sub-contractor.
- 8.2 The Sub-contractor shall make itself familiar and comply with the requirements for health and safety and quality control under the provisions of the Principal Contract insofar as they relate to the Sub-contract Works.
- 8.3 Without prejudice to the Sub-contractor's obligations under **Clause 8.2** the Sub-contractor shall comply with the provisions of Spectrum's current Health and Safety Regulations a copy of which shall be given to the Sub-contractor on demand.
- 8.4 To the extent that the Sub-contractor is a Designer or a Contractor for the purposes of the CDM Regulations the Sub-contractor shall provide such information as may be required for it to comply with the said Regulations including but not limited to information for incorporation by duty holders under the said Regulations in the Health and Safety Plan and the Health and Safety File for the Client's project.
- 8.5 All materials and goods supplied shall so far as procurable be of respective kinds and standards described in the specification drawings or other documents specified in the Sub-contract Order.
- 8.6 All workmanship shall be of the standard described in the specifications drawings and other documents specified in the Sub-contract Order. If no such standards are described the workmanship shall be of a standard appropriate to the Sub-contract Works.
- 8.7 All work shall be carried out in a proper and workmanlike manner.
- 8.8 To the extent that the Sub-contractor carried out design including the choice of materials, the Sub-contract Works shall be fit for any purpose made known to the Sub-contractor.

9 ENVIRONMENTAL CONSIDERATIONS AND HOUSEKEEPING

- 9.1 Spectrum are an ISO14001 registered company and the sub-contractor must comply fully with our Environmental Policy and any other Environmental issues pursuant to the customer.
- 9.2 At the request of our authorised representative you must remove all rubbish and surplus material arising from your works to a designated area or a skip or, if so instructed, remove from site.

10 ACCESS, FACILITIES AND ATTENDANCE

- 10.1 Spectrum shall provide the facilities and attendance (if any) described in the Sub-contract Order for use by the Sub-contractor.
- 10.2 Spectrum shall provide access to the Site for the purpose of executing the Sub-contract Works.

11 INDEMNITY AND INSURANCE

- 11.1 The provisions of the Principal Contract in respect of liability, insurance and indemnification in respect of death of or injury to persons and loss or damage to property shall apply between Spectrum and the Sub-contractor under this Sub-contract as though they were respectively the Customer and Spectrum.
- 11.2 Notwithstanding the provisions of **Clause 11.1** Spectrum will require the Sub-contractor to effect insurance against such risks and in such sums and for the benefit of such persons as are specified in the Sub-contract Order, and shall provide evidence and details of such insurance to Spectrum on request.

11.3 Sub-contractor shall indemnify Spectrum in respect of loss or damage to such equipment and shall effect insurance for the benefit of Spectrum in the sum specified (if any) in the Sub-contract Order.

12 TERMINATION

12.1 If the Principal Contract is determined or if the Spectrum's employment under the Principal Contract is determined for any reason, then the Sub-contract shall thereupon be terminated, and the Sub-contractor shall be entitled to payment in respect of the Sub-contract Works properly carried out, but the Sub-contractor shall not be entitled to any claim for loss and/or expense and/or damages including loss of profit resulting from such termination.

12.2 Spectrum may, after giving 7 days written notice to the Sub-contractor expel the Sub-contractor from the site and/or terminate the Sub-contract if the Sub-contractor:

- (a) Fails to comply with **Clause 3.2**, or
- (b) Fails to proceed regularly and diligently with the Sub-contract Works, or
- (c) Has abandoned the Sub-contract, or
- (d) Has suspended the progress of the Sub-contract Works other than by entitlement conferred on it by the provision of any Act of Parliament and has not resumed progress within 7 days after receiving notice from Spectrum to proceed, or
- (e) Becomes bankrupt or insolvent or has a receiving order made against it compounds with its creditors or being a corporation commences to be wound up or has an administrative order made against it carries on business under an administrator, a receiver or a manager for the benefit of any of its creditors.

12.3 Any such expulsion under **Clause 12.2** shall be without prejudice to any other right or power of Spectrum under the Sub-contract. Upon such expulsion the respective rights and duties of Spectrum and the Sub-contractor shall be:

- (a) Spectrum may use all goods and materials delivered to the site and shall unless their value has previously been included in a payment to the Sub-contractor, purchase such goods and materials at a fair price. Payment for such goods and materials shall be made in accordance with sub-clause (c) below.
- (b) Spectrum shall as soon as possible after the date of expulsion or termination value the Sub-contract Works as at that date in accordance with the provisions of the Sub-contract.
- (c) The Sub-contractor shall not be entitled to payment of any amounts valued under sub-clauses (a) or (b) above until after completion of the Sub-contract Works. Upon such completion the Sub-contractor may apply to Spectrum and Spectrum shall pay to the Sub-contractor the value of any work properly executed or goods and materials supplied to the extent that their value has not been included in previous payments.
- (d) When calculating the payment to be made to the Sub-contractor Spectrum may deduct without prejudice to any other rights of Spectrum, the amount of any loss and/or expense and/or damages caused to Spectrum by the termination.

13 NOTICES

13.1 Where Spectrum is required by the terms of the Principal Contract to give any return, notice, account or information to the Customer, the Sub-contractor shall in relation to the Sub-contract Works provide Spectrum with a similar return, notice, account or information in sufficient detail to enable Spectrum to comply with its obligations under the Principal Contract.

13.2 To be served effectively, any notice or communication in writing required under the Sub-contract shall be sent to the registered office or the address of the respective parties set out in the Sub-contract Order.

14 SETTLEMENT OF DISPUTES

14.1 Should any dispute or difference arise between the parties under the Sub-contract whether during the Sub-contract Period or after its completion and whether before or after the termination, abandonment or breach of the contract then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. For the avoidance of doubt, the following conditions are drafted to comply with Section 108 of the Housing Grants, Construction and Regeneration Act 1996 and any doubts or ambiguities shall be construed accordingly.

14.2 If any such dispute or difference arises then one party ("the Applicant") may serve upon the other ("the Respondent") a notice in writing ("the Notice") which shall state in sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.

- 14.3 The Notice under **Clause 14.2** shall also be served forthwith by the Applicant on the Adjudicator named in the Sub-contract Order or if not so named, forthwith either upon his identity being subsequently agreed or upon him being appointed under **Clause 14.4** below as the case may be.
- 14.4 In the event that no Adjudicator is named in the Sub-contract, then the parties shall within four days of the Notice being served upon the Respondent agree upon a suitable Adjudicator. Failing agreement the Applicant shall and the Respondent may apply for an appointment to the Academy of Construction Adjudicators (whilst at the same time serving a copy of the application on the other party) whose written notification of an appointment of an Adjudicator shall be served on both parties and shall be binding.

15 LAW

- 15.1 The Sub-contract shall be governed by English Law and the Sub-contractor consents to the exclusive jurisdiction of the English Courts in matters regarding the Sub-contract except to the extent that Spectrum invokes the jurisdiction of the Courts of any other country.
- 15.2 No waiver or forbearance by Spectrum whether express or implied shall in enforcing its rights under the sub-contract prejudice its rights to do so in the future. Furthermore no waiver or forbearance by Spectrum of any breach of the subcontract by the Sub-contractor shall prejudice its rights in relation to any subsequent breach of the same or any of the provision of the sub-contract.
- 15.3 Should any provision of these conditions be held by any court or other competent tribunal to be void, invalid or unenforceable in whole or in part, the validity of the other conditions of these provisions inclusive of the remainder of the provision in question shall not be affected thereby.

Additional project specific conditions

Project Name