

Terms and Conditions – RBL02

1. Application

- 1.1 These terms and conditions shall be deemed to be incorporated in any contract, agreement or Order Form between the Contractor and the Subcontractor and shall be in substitution for any other terms and conditions introduced before or after the date of the Order Form (unless expressly identified and agreed to in writing by the Contractor). Furthermore, any action undertaken by the Subcontractor in pursuit of their obligations under the Contract will be deemed an explicit agreement to the terms of the Contract and cannot be rescinded, altered, or amended in any way without mutual agreement by the Parties.

2. Definitions and Interpretation

- 2.1 The following definitions shall apply in these terms and conditions:

- 2.2.1 "**Contract Price**" shall mean the price specified on the Subcontract Order form. The order value shall be stated in VAT exclusive terms and any VAT payable in line with rules and regulations of HM Revenue and Customs will be added to any payment due.
- 2.2.2 "**Defects Liability Period**" shall mean 12 months following completion of the Main Contract Works.
- 2.2.3 "**Due Date**" has the meaning given at clause 4.4.
- 2.2.4 "**Employer**" shall mean the person or organisation employing the Main Contractor under the Main Contract.
- 2.2.5 "**Final Date for Payment**" has the meaning given in clause 4.5.
- 2.2.6 "**Interim Valuation Date**" shall mean the date specified in the Subcontract Order Form.
- 2.2.7 "**Main Contract**" means the contract by which the Main Contractor has been employed by the Employer, a copy of which is available for inspection by the Subcontractor and the full terms of which are deemed to be known to the Subcontractor.
- 2.2.8 "**Main Contractor**" means the company or person named as such on the Subcontract Order.
- 2.2.9 "**Main Contract Works**" means the works as defined in the Main Contract and of which the Subcontract Works form part.
- 2.2.10 "**Payment Notice**" has the meaning given at clause 4.6.
- 2.2.11 "**Practical Completion**" has the meaning given at clause 4.
- 2.2.12 "**Project**" shall mean the place stated on the Subcontract Order Form.
- 2.2.13 "**Subcontract**" shall mean these terms and conditions, the Subcontract Order Form and any other document that may be provided from time to time by the Main Contractor to the Subcontractor outlining the terms, conditions, rights, and obligations of each party.
- 2.2.14 "**Subcontractor**" shall mean the company or person named as such on the Subcontract Order Form.
- 2.2.15 "**Subcontract Order Form**" shall mean the Main Contractor's Subcontract Order Form.
- 2.2.16 "**Subcontract Works**" shall mean the works described in the Subcontract Order form. Any instructed Variations also form part of the Subcontract Works.
- 2.2.17 "**Variations**" shall mean any changes to the scope, quality, quantity, and/or conditions of the Subcontract Works that have been instructed in writing by the Main Contractor.

3. Subcontractor Obligations

- 3.1 The Subcontractor is deemed to have read and understood the Main Contract and is deemed to be aware of all the provisions thereunder to the extent that the same are relevant to the Subcontract Works.

- 3.2 To the extent that the Main Contractor's obligations under the Main Contract relate and apply to the Subcontract Works or any part of them, the Subcontractor shall observe, perform, and comply with those obligations and shall not by any act, omission or default cause or contribute to any breach by the Main Contractor of its obligations or lead to a loss or diminution in the Main Contractor's rights under the Main Contract and shall indemnify and hold harmless the Main Contractor from any losses, costs, damages and expenses the Main Contractor suffers arising from any breach or non-compliance by the Subcontractor of its obligations and duties under this clause.
- 3.3 The Subcontractor shall reimburse the Main Contractor for any costs, losses, damages, and expenses suffered by the Main Contractor as a result of a breach under clause 3.2. Any such sum will be recoverable as a debt. The Main Contract has the right to set-off any such debt owed against sums due to the Subcontractor under this or any other Subcontract between the Main Contractor and the Subcontractor.
- 3.4 The Subcontractor shall carry out the Subcontract Works with due diligence and in a good, substantial, and workmanlike manner and in accordance with good building practice and to the entire satisfaction of the Main Contractor.
- 3.5 The Subcontractor shall observe, perform and comply at all times with all obligations placed upon him by all Acts of Parliament and other statutory provisions, regulations, by-laws, site rules, rules and approved codes of good practice (including but not limited to the Health and Safety at Work Acts, the CDM Regulations and the COSHH Regulations) and/or at common law which apply in the United Kingdom as far as the same are applicable to the Subcontract Works. The Subcontractor must provide the Main Contractor with acceptable and appropriate Risk Assessments and Method Statements for all aspects of the Subcontract Works prior to commencement.
- 3.6 The Subcontractor shall ensure that all materials and goods supplied for incorporation into the Subcontract Works shall be in accordance with the requirements of this Subcontract Order and are and will be of satisfactory quality.
- 3.7 Insofar as the Subcontract Works has been or will be designed by or on behalf of the Subcontractor, the Subcontractor will exercise reasonable skill and care in its design. The design of the Subcontract Works shall be suitable and fit in every respect for the purpose made known in, or which may reasonably be inferred from, this Subcontract Order. The Subcontractor grants the Main Contractor an irrevocable, royalty free and fully assignable licence to copy and/or use any designs produced by the Subcontractor as part of the Subcontract Works for any purpose whatsoever.
- 3.8 The Subcontractor shall be deemed to have visited the Project to assess all physical and other conditions of the site and/or the surrounding areas that may affect the execution of the Subcontract Works and is deemed to have allowed for the effect of same within the Contract Price.
- 3.9 The Subcontractor shall protect and secure the Subcontract Works against damage, theft, and loss, and shall make good any such damage or loss at its own expense.

4. Price and Payment

- 4.1 The price for the Subcontract Works shall be the Contract Price or such other sum as shall become payable in accordance with the terms of this Subcontract Order. The Contract Price is deemed to be fixed for the duration of the Subcontract Works.
- 4.2 If the duration of the Subcontract Works is 45 days or more, then up until the month following Practical Completion, the Subcontractor shall be entitled to make applications for interim payment at the intervals and on the dates stated in the Subcontract Order Form or, where used, on the dates stated in any payment schedule submitted as part of this Subcontract.
- 4.3 It is a condition precedent to payment that each interim application shall:
 - 4.3.1 Bear the heading 'Interim Payment Application'.
 - 4.3.2 Be submitted via email to the email address(es) stated in the Subcontract Order Form.
 - 4.3.3 Set out clearly and unambiguously the sum the Subcontractor considers will become due up to and including the Interim Valuation Date as set out in the Subcontract Order Form.
 - 4.3.4 Set out clearly and unambiguously any VAT due to be paid.
 - 4.3.5 Be supported by sufficient information to support the basis of the calculation and any other information that the Main Contractor may request from time-to-time.

- 4.4 The Due Date shall be 7 days after a valid interim payment application has been submitted by the Subcontractor.
- 4.5 The Final Date for Payment shall be 30 days after the Due Date. Interest on any unpaid notified sums shall be 2% above the Bank of England base rate for the period from the Final Date for Payment until such time that payment is made.
- 4.6 If the Main Contractor so wishes, it shall issue a Payment Notice no later than 5 days after the Due Date specifying the amount considered to be or have been due to the Subcontractor at the Due Date. Should the Main Contractor not issue a Payment Notice in accordance with this clause, the Subcontractor is required to issue a Default Payment Notice setting out the sum that it considers due at the Due Date and the basis on which the sum was calculated. The Final Date for Payment will be postponed by the length of time between when the Main Contractor was to submit its Payment Notice by and the date that the Subcontractor issues its Default Payment Notice.
- 4.7 If the Main Contractor intends to pay less than the amount stated in the Subcontractor's interim payment application or the amount specified in any notice issued pursuant to clause 4.6, it may give the Subcontractor a notice specifying the amount it considers to be due on the date the notice is served and the basis upon which that sum is calculated. The Main Contractor may serve a notice under this clause no later than 1 day before the Final Date for Payment of that interim payment.
- 4.8 If the Subcontractor becomes insolvent, the Main Contractor shall have no further obligations to make payment to the Subcontractor until the Subcontract Works are complete and subject to any deductions made pursuant to clause 10.

5. Retention

- 5.1 If specified within the Subcontract Order Form as a special condition the Main Contractor may deduct from any interim payment due to the Subcontractor a sum equivalent to that which is specified within the Order Form by way of retention.
- 5.2 If clause 5.1 applies, provided and to the extent that there are no defects in the Subcontract Works and the Main Contractor has confirmed that the Subcontract Works are practically complete pursuant to clause 6.2, the Subcontractor may make an application for the release of retention no earlier than 1 month following the expiry of the Defects Liability Period. It is a condition precedent to payment of any retention monies that the Subcontractor's application:
 - 5.2.1 Bear the heading 'Payment Application - Retention'.
 - 5.2.2 Be submitted via email to the email address(es) stated in the Subcontract Order Form.
 - 5.2.3 Set out clearly and unambiguously the total retention deducted.
 - 5.2.4 Set out clearly and unambiguously any VAT due to be paid.
 - 5.2.5 Be supported by sufficient information to support the basis of the calculation and any other information that the Main Contractor may request from time-to-time.
- 5.3 The due date for the release of retention shall be 30 days following the date of an application made by the Subcontractor pursuant to clause 5.2. The final date for payment shall be 90 days after the due date subject to there being no defects.

6. Commencement and Completion

- 6.1 Subject only to any subsequent notice given by the Main Contractor, the Subcontractor shall commence, carry out and complete the Subcontract Works in line with the dates and/or periods specified in this Subcontract Order.
- 6.2 The Main Contractor may confirm in writing when, in its reasonable opinion, the Subcontract Works are practically complete and have passed any test that may be prescribed. Failing such confirmation practical completion of the Subcontract Works shall be deemed to have occurred on the same date as the date that practical completion is certified under the Main Contract or otherwise achieved under the Main Contract ("**Practical Completion**").

7. Delay to Progress of the Subcontract Works

- 7.1 If the commencement progress or completion of the Subcontract Works or any part thereof is delayed or is likely to be delayed, then the Subcontractor shall so notify the Main Contractor immediately in

writing and in any event will do so in within 7 days of it becoming reasonably apparent that the commencement, progress, or completion of the Subcontract Works is being or is likely to be delayed.

- 7.2 The notice given to the Main Contractor by the Subcontractor pursuant to clause 7.1 must contain sufficient detail on the following to allow the Main Contractor to assess the validity of the claim and must detail:
 - 7.2.1 the event or events giving rise to the claim;
 - 7.2.2 the cause or causes of the delay; and
 - 7.2.3 the Subcontractor's estimate of a fair and reasonable period of extension of time to be granted by the Main Contractor.
- 7.3 The Main Contractor shall, within a reasonable time of being provided with details required by clause 7.2.1, 7.2.2 and 7.2.3, give notice to the Subcontractor of the extension of such period of time being granted. It is at the discretion of the Main Contractor if an extension is granted to the Subcontractor.
- 7.4 Any extension of time shall only be permitted subject to compliance with clauses 7.1 and 7.2 and subject to the Main Contractor being able to secure an extension of time from the Employer. Should the Employer fail to grant an extension of time to the Main Contractor, the Main Contractor will not grant an extension of time for the Subcontractor.
- 7.5 If the regular progress of the Main Contract Works, or any part thereof, is affected by any act or default of the Subcontractor, his servants or agents, the amount of any direct loss and/or expense and/or damage incurred or to be incurred by the Main Contractor may be deducted from any monies due or to become due to the Subcontractor (whether in relation to this Subcontract or in respect of any other Subcontract and/or agreement between the Main Contractor and the Subcontractor) and/or shall be recoverable by the Main Contractor from the Subcontractor as a debt.

8. Variations

- 8.1 The Subcontractor shall not make any Variations to the Subcontract Works, whether by way of addition, modification, or omission, unless it is a Variation that is requested in writing by the Main Contractor.
- 8.2 Prior to commencing any Variation work, the Subcontractor must provide a detailed written estimate of the cost and time impact of the proposed Variation to the Main Contractor. The Main Contractor shall review the estimate and, if acceptable, provide written approval for the Subcontractor to proceed with the Variation. It is a condition precedent to the Subcontractor's entitlement to payment for any Variation that the estimate has been submitted and approved in writing by the Main Contractor prior to the commencement of the Variation work.
- 8.3 The Subcontractor shall maintain detailed records of all work carried out under the Variation and provide such records to the Main Contractor upon request.
- 8.4 If following a written instruction for a Variation the Subcontractor is of the view that the carrying out of the Variation will delay the progress of the Subcontract Works, then the Subcontractor must give notice of the anticipated delay as required by clauses 7.1 and 7.2 inclusive. If the Subcontractor fails to do so, it is at the discretion of the Main Contractor as to whether an extended period of time to complete the Subcontract Works or part thereof is granted.

9. Passing of Property & Risk

- 9.1 Ownership of any goods or materials used in connection with the Subcontract Works shall pass to the Main Contractor upon delivery to the site, regardless of whether or not payment has been made.
- 9.2 Any materials, goods, and equipment brought to the site by the Subcontractor that are not intended for incorporation into the Subcontract Works shall remain at the sole risk of the Subcontractor.
- 9.3 In the event of termination of the Subcontract Works for any reason, the Main Contractor shall have the right to unrestricted usage of the Subcontractor's materials, plant, and equipment without any responsibility for wear and tear until the completion of the Subcontract Works.
- 9.4 If and when required, the Subcontractor shall assign the benefit of any agreement to supply plant, materials, or equipment to the Main Contractor.

10. Defects

- 10.1 The Subcontractor shall perform, maintain, and protect the Subcontract Works in good order and condition until the Main Contract Works have been completed and handed over to the Employer, and shall make good any defects free of charge until completion of the Main Contract Works and thereafter until the completion of the Defect Liability Period.
- 10.2 If the Subcontractor fails to rectify the defects that it is liable for, then the Main Contractor may employ others to rectify those defects, and may recover the cost of doing so, together with any other related costs (including delay costs and charges), expenses and/or damage, from the Subcontractor.

11. Termination

- 11.1 The Main Contractor may terminate the Subcontract forthwith if the Subcontractor has committed a material breach of the Subcontract and fails to remedy such breach within 5 days of receiving a written notice from the Main Contractor requesting its remedy.
- 11.2 Without prejudice to any other rights and remedies which the Main Contractor and the Subcontractor may possess, the Subcontractor's employment under this Subcontract may be terminated at the entire discretion of the Main Contractor and at any stage by the Main Contractor immediately on notice in writing to the Subcontractor. If the Subcontractor's employment is terminated pursuant to this clause, the Subcontractor will be entitled to be paid for all works properly and fully undertaken but will not be entitled to any loss and/or expense and/or loss of profit relating to this action.
- 11.3 The Main Contractor may at its discretion and at any time supplement the Subcontractor's labour and/or other resources and/or remove the whole or part of the Subcontract Works from the Subcontractor and employ and pay others to execute the whole or part of the remaining Subcontract Works. If the Main Contractor takes this action, the Subcontractor will be entitled to be paid for all works properly and fully undertaken but will not be entitled to any loss and/or expense and/or loss of profit relating to this action. The Main Contractor will be entitled to recover from the Subcontractor the costs that it incurs in supplementing the Subcontractor's labour and/or other resources and/or in employing others to execute the whole or part of the remaining Subcontract Works.
- 11.4 This Subcontract Order will automatically terminate if either party becomes insolvent. If the Subcontractor becomes insolvent, the Main Contractor shall not be required to make any further payments to the Subcontractor including sums already applied for and any monies retained under clause 5.

12. Liability and Indemnity

- 12.1 The Subcontractor shall be liable for and shall indemnify the Main Contractor against any cost, expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of:
- 12.1.1 personal injury to or death of any person whomsoever arising out of or caused by the carrying out of the Subcontract Works, unless and to the extent that the same is entirely due to any act of or neglect by the Main Contractor; and
 - 12.1.2 any injury or damage to property, real or personal (including the Subcontract Works), unless and to the extent that the same is entirely due to any act of or neglect by the Main Contractor, which may arise out of or in consequence of the execution, completion, or maintenance of the Subcontract Works.
- 12.2 Without prejudice to his obligations to indemnify the Main Contractor under this clause, the Subcontractor shall effect and maintain insurance in respect of claims arising out of his liability referred to in this clause for cover of not less than that referred to in the Subcontract. Without prejudice to this requirement, the Subcontractor shall indemnify the Main Contractor against any premium excess arising as a result of a related claim upon any insurance policy against which the Main Contractor makes a claim.
- 12.3 The Main Contractor shall not be liable to the Subcontractor, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Subcontract for:
- 12.3.1 loss of profits;
 - 12.3.2 loss of sales or business;

- 12.3.3 loss of agreements or contracts;
- 12.3.4 loss of anticipated savings;
- 12.3.5 loss of or damage to goodwill;
- 12.3.6 any indirect, special, or consequential losses.

12.4 The Subcontractor shall indemnify the Main Contractor against all damages, costs, claims, and expenses suffered by the Main Contractor arising from loss or damage to any equipment (including that of third parties) caused by the Subcontractor, or his agents or employees.

13. Governing Law and Jurisdiction

13.1 The Subcontract shall in all respects be governed by and construed in accordance with English Law and the exclusive jurisdiction of the English Court.

13.2 If any clause of the Subcontract is held to be invalid, illegal, or unenforceable then such clause shall be modified to reflect the Law of England. All remaining clauses of the Subcontract shall remain in full force and effect and shall not be impaired in any way.

14. Waiver

14.1 A waiver by the Main Contractor of any right or remedy under this Subcontract or by law is only effective if given expressly in writing and shall not be deemed a waiver of any subsequent breach or default.

14.2 A failure or delay by the Main Contractor to exercise any right or remedy provided under this Subcontract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Subcontract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

15. Dispute Resolution

15.1 If any dispute or difference concerning the Works shall arise between the Main Contractor and the Subcontractor, such dispute or difference may be referred to adjudication to be conducted in accordance with the Scheme for Construction Contracts Regulations (England and Wales) 1998 (as amended) (the "**Scheme**").

15.2 Without prejudice to the period of time set out in the Scheme for the rendering of a decision by the Adjudicator, if the Subcontractor commences an adjudication, the Main Contractor shall have no less than 14 days following service of the Referral Notice to issue a Response.

16. The Contracts (Rights of Third Parties) Act 1999

16.1 Nothing in the Subcontract confers or purports to confer on any third party any benefit or any right to enforce any term of the Subcontract. The Contracts (Rights of Third Parties) Act 1999 is excluded.

17. Confidentiality

17.1 The Subcontractor shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, or initiatives which are of a confidential nature and have been disclosed to the Subcontractor by the Main Contractor, its employees, agents or sub-contractors and any other confidential information concerning the Main Contractor's business or its products which the Subcontractor may obtain. The Subcontractor shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Main Contractor's obligations to its Employer, and shall ensure that such employees, agents, or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Subcontractor.

17.2 All materials, equipment and tools, drawings, specifications and data supplied by the Main Contractor to the Subcontractor shall, at all times, be and remain as between the Main Contractor and the Subcontractor the exclusive property of the Main Contractor, but shall be held by the Subcontractor in safe custody at its own risk and maintained and kept in good condition by the Subcontractor until

returned to the Main Contractor, and shall not be disposed of or used other than in accordance with the Main Contractor's written instructions or authorisation.

17.3 This Clause 14 shall survive termination of the Subcontract, however arising.

18. Notices

18.1 Any notice or other communication to be given or made under the Subcontract shall be in writing and shall be delivered by hand, post or email to the Main Contractor or the Subcontractor at the address set out in the Subcontract Order or at such other address or number as the relevant party may specify from time to time by notice in writing to the other.

18.2 Notices shall be deemed to have been received:

18.2.1 in the case of delivery by hand, when delivered;

18.2.2 in the case of pre-paid post, two days after the date of posting; and

18.2.3 in the case of email, on the day the email was sent to the recipient.

19. Compliance With instructions

19.1 The Subcontractor shall carry out any instructions issued by the Main Contractor without delay. If the value of the instruction has not as yet been agreed, the Subcontractor is not entitled to delay the instruction on that basis and must carry out the instruction pending agreement.

19.2 If the Subcontractor considers that the compliance with any instruction issued by the Main Contractor would cause delays to the progress of the Subcontract Works, the Subcontractor must inform the Main Contractor pursuant to clause 7 of these terms and conditions.

20. Assignment

20.1 The Subcontractor shall not assign or sub-let the Subcontract Works or any part thereof without the written consent of the Main Contractor.

21. Entire Agreement

21.1 This Subcontract represents the entire agreement between the Main contractor and the Subcontractor and replaces any previous agreements, promises, assurances, warranties, representations, and understandings between the parties.

22. Collateral Warranties

22.1 The Subcontractor shall execute and deliver to the Main Contractor any collateral warranty as may be required by the Main Contractor in favour of any third party within seven (7) days of receiving a written request.

22.2 If the Subcontractor fails to execute and deliver the required collateral warranty within the specified timeframe, the Main Contractor shall be entitled to withhold ten percent (10%) of the Contract Price until the Subcontractor complies with this obligation.

22.3 The Subcontractor shall indemnify the Main Contractor against any losses, damages, or expenses arising from the Subcontractor's failure to provide the required collateral warranties.