



(To apply to order where work is to be carried out on site and materials are supplied by the Subcontractor)

1. DEFINITIONS

1.1 The following terms shall have the following meanings:

- (i) "The Company" means JCW Energy Services Ltd its successors and assigns.
- (ii) The "Subcontract Works" means all materials to be supplied and work to be done by the Subcontractor including incorporation of Free Issue Equipment, as specified in the Subcontract Order.
- (iii) The "Subcontract Price" means the total price payable exclusive of Value Added Tax in the amount stated in the Subcontract Order.
- (iv) "Variation" means any change or addition to or omission from the Subcontract Works, or any change in the manner order or time in which the Subcontract Works are required by The Company to be carried out.
- (v) The "Site" means the location notified by The Company to the Subcontractor as the place where the Subcontract Works are to be carried out.
- (vi) "Defect" and "Defective" means materials supplied or work carried out not in accordance with the Subcontract.
- (vii) "CDM Regulations" means the Construction (Design and Management) Regulations 2007.
- (viii) "Principal Contract" means the contract between The Company and its Customer.
- (ix) "Subcontract" means The Company's Subcontract Order and the Subcontractor'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 The Company under the Principal Contract.
- (xi) "Completion Date" means the date (if any) specified in the Subcontract Order as the date on which the Subcontract Works shall be Complete.
- (xii) "Free Issue Equipment" means Equipment or goods, or materials supplied by The Company to the Subcontractor without charge for incorporation in the Subcontract Works.
- (xiii) "Practically Complete" means finished except for de minimus items which are capable of being finished without material effect on the Customer's use of the Site.
- (xiv) "Client" means the name registered as the Client with the Health and Safety Executive under the CDM Regulations.

2. EXISTENCE AND SCOPE OF CONTRACT

- 2.1 These Terms and Conditions together with the Subcontract 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.
- 2.2 Unless otherwise expressly agreed, commencement of the Subcontract Works shall signify acceptance of these Terms and Conditions. For the avoidance of doubt, The Company does not intend to enter into contract on any terms and conditions other than those set out herein.
- 2.3 The Subcontract Works are executed as part or all of work to be carried out by The Company for its Customer under the Principal Contract.
- 2.4 The Subcontractor shall have reasonable opportunity to inspect and is deemed to have notice of the terms and conditions of the Principal Contract.
- 2.5 If requested by the Subcontractor, The Company shall provide the Subcontractor free of charge with a copy of the Principal Contract, other than the details of The Company's prices.
- 2.6 Except where the context provides otherwise the provisions of the Principal Contract shall form part of this Subcontract and the Subcontractor shall be bound to The Company by the same obligations and enjoy

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the same rights and benefits as those conferred on The Company under the Principal Contract, *mutatis mutandis*, as though the terms and conditions of the Principal Contract were each severally written herein.
 2.7 In the event of conflict between the terms and conditions of the Principal Contract and these Terms and Conditions the latter shall take precedence.

3. SUBCONTRACTOR’S OBLIGATIONS

- 3.1 The Subcontractor shall carry out and complete the Subcontract Works in accordance with the Subcontract and to the reasonable satisfaction of The Company and its Customer and any other person whose satisfaction is expressly required under the Principal Contract.
- 3.2 The Subcontractor shall not assign whole or part of the benefit of this subcontract nor sublet the whole or part of the Subcontract Works without first obtaining The Company’s written consent.
- 3.3 If a Completion Date is stated in the Purchase Order the Subcontract 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 Subcontractor shall carry out and complete the Subcontract Works in a reasonable time from the date on which it is requested to commence by The Company.
- 3.4 The Subcontractor shall ensure that the personnel providing the goods/services that are the Subcontract Works are suitably trained, qualified and experienced. A copy of the Subcontractors personnel training records and qualifications may be requested at any time by The Company.
- 3.5 The Subcontractor shall carry out all tests and inspections that are required under the Order, Subcontract or Principal Contract and provide copies of the test records and inspection reports as requested by The Company.

4. INSTRUCTIONS AND VARIATIONS

- 4.1 The Company may issue written instructions which the Subcontractor shall carry out.
- 4.2 The Subcontractor shall not make any Variation except Variations ordered by or approved by The Company and the Subcontractor shall not accept instructions relating to this subcontract from anyone except The Company or any person expressly authorised by The Company or any person having statutory powers to give the relevant instruction.
- 4.3 The Company may instruct the Subcontractor to carry out a Variation. No Variation shall vitiate the Subcontract.
- 4.4 The Company may require the value of any Variation to be agreed before its execution by the Subcontractor.
- 4.5 If the value of any Variation is not agreed as provided in Clause 4.4, The Company 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 Subcontract (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 Subcontract.

5. COMPLETION AND DEFECTS

5.1 The Subcontractor shall notify The Company in writing when in his opinion the subcontract works are Practically Complete giving dates when such works will be complete. Within 17 days of such notification The Company shall either dissent in writing giving reasons for such dissent or shall accept that the Subcontract Works are substantially complete. It is agreed that the period required to fully complete the Subcontract Works shall be taken into account in determining whether the Subcontracts Works are Practically Complete.

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5.2 Any part of the Subcontract Works which are not complete when the Subcontract Works are accepted to be Practically Complete under Clause 5.1 shall be completed by the Subcontractor as soon as practicable or as may be agreed between the parties.

5.3 The Subcontractor shall until the end of the Defects Liability Period (if any) stated in the Subcontract Order be responsible for making good at its own cost any Defect in or damage to the Subcontract Works to the extent that The Company is responsible to make good under the Principal Contract.

6. DELAY AND EXTRA TIME

6.1 If the Subcontractor fails to complete the Subcontract Works

- a) in a reasonable time under Clause 3.3, or
- b) by the Completion Date or extended Completion Date under Clause 3.3, The Company shall be entitled at its discretion to claim from the Subcontractor 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 Subcontractor as a debt.

6.2 If it becomes apparent that the Subcontract Works will not be complete by the Completion Date, the Subcontractor shall notify The Company in writing stating all the reasons for delay.

6.3 The Company shall grant an appropriate extension of time for completion of the Subcontract Works to the extent that delay has been caused by

- a) any reason which shall entitle The Company to a similar extension of time under the terms of the Principal Contract, or
- b) any act neglect or default of The Company or others for whom The Company is responsible except the Subcontractor.

7. PRICE AND PAYMENT

7.1 In consideration of performance of the Subcontract Works in accordance with the Subcontract, The Company shall pay the Subcontract price to the Subcontractor at the times and in the manner set out in the Subcontract.

7.2 Subject to the provisions of the Subcontract the cost of executing the Subcontract Works shall be at the risk of the Subcontractor, 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 Subcontract price which shall not be adjusted in any way other than in accordance with these terms and conditions.

7.3 The Subcontract price excludes Value Added Tax.

7.4 Unless otherwise stated in the Purchase Order the Subcontract Price is fixed for the duration of the Subcontract Works.

7.5 Payment to the Subcontractor shall be made in the following manner:

(a) The Subcontractor may submit applications for payment together with details of amounts claimed for work properly executed under the Subcontract and for any unfixed goods or materials properly supplied and stored on the site accompanied by such documents as The Company may require and for any other amounts due under the Subcontract. Applications for payment may be submitted at intervals of one month starting either one month after the Subcontractor commences work on site or on completion of the Subcontract Works whichever is the sooner.

(b) Subject to any agreement between The Company and the Subcontractor as to stage payments, the amount of the first and each interim payment to the Subcontractor shall be the gross valuation as referred to in Clause 7.5(a) less:

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- (i) an amount equal to any amount which may be deducted and retained by way of retention by The Company under the Subcontract Order in accordance with Clause 7.5 (h);
 - (ii) any amounts which are to be retained from the Subcontractor which The Company is entitled to set-off and/or withhold in accordance with the provisions of this Order; and
 - (iii) the total payments previously due in respect of the Subcontract Works.
- (c) Payment shall become due 60 days after the end of the calendar month during which The Company receives the Subcontractor’s application and payment shall be made within 10 days of becoming due. (The final date for payment)
- (d) Not later than 5 days after the date on which the first and each succeeding interim payment is due under Clause 7.5(c), The Company shall give a written payment notice (‘payment notice’) to the Subcontractor which shall pursuant to Clause 7.5(a) and in respect of the amount stated as due in the notice specify:
- (i) the sum that The Company considers to be due in respect of the Subcontract Works at the payment due date; and
 - (ii) the basis on which such payment was calculated (“the notified sum”). It is immaterial that the notified sum may be zero.
- (e) Not later than 5 days before the final date for payment, The Company may give a notice (‘pay less notice’) to the Subcontractor of The Company’s intention to pay less than the sum stated as due from it. The notice shall set out the sum due on the date that notice is served and the basis on which that sum is calculated. Where a pay less notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in the notice. It is immaterial that the amount then considered to be due is zero.
- (f) Any notification by the Subcontractor that becomes a payment notice in accordance with Section 110B(2) or Section 110B(4) of Part II of the Housing Grants Construction and Regeneration Act 1996 (as amended) shall be subject to any pay less notice given pursuant to Clause 7.5(e).
- (g) Subject to any pay less notice given by The Company under Clause 7.5(e), the amount of the interim payment to be made by The Company shall be the sum stated as due in the payment notice.
- (h) Where the Subcontract Order Works have not reached practical completion, The Company may deduct and retain from the gross valuation the amount equal to 5% of the gross valuation.
- (i) Payment of retention monies (if any) shall fall due and, subject to the Subcontractor first submitting an application for payment thereof, the final dates for payment shall be:
- (j) the first half of the retention shall be due on the date when the Subcontract Works are agreed by The Company to be practically complete and its final date for payment shall be 60 days thereafter.
 - (k) the second half of the retention shall be due on the date when all Defects notified to the Subcontractor within the defects liability period (if any) specified in the Subcontract Order have been properly made good, and the final date for payment shall be 30 days after the date when final payment is due to The Company under the Principal Contract.
- 7.6 Value Added Tax where properly chargeable shall be added to any payments made under the Subcontract
- 7.7 Notwithstanding the provisions of Clause 7.5 payment shall not be made until The Company receives payment under the Principal Contract in respect of work or materials or other amounts incorporated in the Subcontractor’s application for payment.
- 7.8 Subject to Clause 7.5(e) The Company shall be entitled to set off against any payment otherwise due to the Subcontractor, under this Subcontract or otherwise, the amount of any damages costs losses and expenses which have been incurred by The Company and/or the Customer or which The Company bona fide estimates are likely to be incurred by reason of any breach of or failure to observe the provisions of this Subcontract by the Subcontractor.

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7.9 The Statutory Tax Deduction Scheme shall be applied in accordance with Finance (No.2) Act 1975 and any subsequent amendments to or revisions thereof to all payments due in accordance with the Subcontract.

8. PAYMENT IN INSOLVENCY

8.1 Notwithstanding anything else to the contrary elsewhere in this Order if the ultimate employer or the Client or The Customer is insolvent as defined in Sections 113(2)-(5) of Part II of the Housing Grants, Construction and Regeneration Act 1996 (as amended from time to time and subject to the change to section 113(2)(a) made by the Enterprise Act 2002 (Insolvency) Order 2003 (SI 2003/2096), The Company shall not be obliged to make any further payment to the Subcontractor of any amount which is due or may become due to the Subcontractor unless The Company has received payment in respect thereof from The Customer and then only to the extent of such receipt.

8.2 The requirement to pay any notified sum under this Order does not apply if the Subcontractor becomes insolvent after the prescribed period for the giving of any pay less notice pursuant to Clause 7.5(e).

9. SUPERVISION, HEALTH AND SAFETY, QUALITY

9.1 At all times during the carrying out of the Subcontract Works the Subcontractor shall provide all necessary supervision to ensure the proper execution of the Subcontract 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 Subcontractor.

9.2 The Subcontractor 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 Subcontract Works.

9.3 Without prejudice to the Subcontractor’s obligations under Clause 9.2 the Subcontractor shall comply with the provisions of The Company’s current Health and Safety Regulations a copy of which shall be given to the Subcontractor on demand.

9.4 To the extent that the Subcontractor is a Designer or a Contractor for the purposes of the CDM Regulations the Subcontractor 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.

9.5 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 Purchase Order.

9.6 All workmanship shall be of the standard described in the specifications drawings and other documents specified in the Purchase Order. If no such standards are described the workmanship shall be of a standard appropriate to the Subcontract Works.

9.7 All work shall be carried out in a proper and workmanlike manner.

9.8 To the extent that the Subcontractor carried out design including the choice of materials, the Subcontract Works shall be fit for any purpose made known to the Subcontractor.

10. FREE ISSUE EQUIPMENT

10.1 The Company may provide Free Issue Equipment to the Subcontractor for incorporation in the Subcontract Works.

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10.2 Title in Free Issue Equipment shall at all times remain with The Company.

10.3 The Subcontractor shall be responsible for unloading Free Issue Equipment at the Site, storage and protection on the site, and for proper installation of such equipment into the Subcontract Works in accordance with any specification drawing and other document provided by The Company including manufacturer’s instructions and recommendations.

11. ACCESS, FACILITIES AND ATTENDANCE

11.1 The Company shall provide the facilities and attendance (if any) described in the Subcontract Order for use by the Subcontractor.

11.2 The Company shall provide access to the Site for the purpose of executing the Subcontract Works.

12. INDEMNITY AND INSURANCE

12.1 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 The Company and the Subcontractor under this Subcontract as though they were respectively the Customer and The Company.

12.2 Notwithstanding the provisions of Clause 12.1 The Company may require the Subcontractor to effect insurance against such risks and in such sums and for the benefit of such persons as are specified in the Subcontract Order, and shall provide evidence and details of such insurance to The Company on request.

12.3 Notwithstanding title in Free Issue Equipment remains with The Company under Clause 10.2, the Subcontractor shall indemnify The Company in respect of loss or damage to such equipment and shall effect insurance for the benefit of The Company in the sum specified (if any) in the Subcontract Order.

13. TERMINATION

13.1 If the Principal Contract is determined or if The Company’s employment under the Principal Contract is determined for any reason, then the Subcontract shall thereupon be terminated, and the Subcontractor shall be entitled to payment in respect of the Subcontract Works properly carried out, but the Subcontractor shall not be entitled to any claim for loss and/or expense and/or damages including loss of profit resulting from such termination.

13.2 The Company may, after giving 7 days written notice to the Subcontractor expel the Subcontractor from the Site and/or terminate the Subcontract if the Subcontractor:

- (a) Fails to comply with Clause 3.2, or
- (b) Fails to proceed regularly and diligently with the Subcontract Works, or
- (c) Has abandoned the Subcontract, or
- (d) Has suspended the progress of the Subcontract 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 The Company 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.

13.3 Any such expulsion under Clause 13.2 shall be without prejudice to any other right or power of The Company under the Subcontract. Upon such expulsion the respective rights and duties of The Company and the Subcontractor shall be:

- (a) The Company may use all goods and materials delivered to the Site and shall unless their value has previously been included in a payment to the Subcontractor, purchase such goods and materials at a fair price. Payment for such goods and materials shall be made in accordance with subclause (c) below.

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(b) The Company shall as soon as possible after the date of expulsion or termination value the Subcontract Works as at that date in accordance with the provisions of the Subcontract.

(c) The Subcontractor shall not be entitled to payment of any amounts valued under subclauses (a) or (b) above until after completion of the Subcontract Works. Upon such completion the Subcontractor may apply to The Company and The Company shall pay to the Subcontractor 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 Subcontractor The Company may deduct without prejudice to any other rights of The Company, the amount of any loss and/or expense and/or damages caused to The Company by the termination.

14. RULING LAW AND DISPUTES

14.1 Should any dispute or difference arise between the parties under the contract at any time including 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, (as amended) and any doubts or ambiguities shall be construed accordingly. Nothing in this clause shall be construed to deprive either party of its rights to commence proceedings in the Courts.

14.2 If any such dispute or difference arises then one party (“the Applicant”) may serve upon the other (“the Responder”) a notice in writing (“the Notice”) which shall state in sufficient detail but in no more than 20 A4 pages the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication. 14.3 Subject to any other agreement between the parties as to who shall act as Adjudicator, the Adjudicator shall be the person named in The Company’s Subcontract Order or the person selected by the President or Vice President of the Royal Institute of Chartered Surveyors.

14.4 The Adjudicator’s decision is binding until the dispute or difference is finally determined as provided in Clause 14.6.

14.5 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator is similarly protected.

14.6 Subject to the provisions of Clause 14, the Contract shall be read and construed in accordance with English law and the parties hereto are deemed to have submitted any disputes arising out of or in connection with the Contract to the exclusive jurisdiction of the English Courts subject to the rights of the parties to enforce a judgement or order obtained in the English Courts in any other jurisdiction.

14.7 Notwithstanding the provisions of Clause 14.6, if the Contract provides that the ruling law of the Contract is other than English law and/or the courts of a country other than England shall have jurisdiction over any disputes under or in respect of the Contract, then such law shall apply to the Contract and/or such courts shall have jurisdiction over any disputes under this Contract as the case may be subject only to the rights of the parties to enforce a judgement or order obtained in such courts in any other jurisdiction.

15. NOTICES

15.1 To be served effectively, any notice or communication in writing required to be given pursuant to these Conditions shall in the case of a notice or communication to The Company be sent to it at its address stated in the Subcontract Order. Any such notice or communication may be given by registered or recorded delivery post or facsimile transmission. To prove service in the case of a notice given by facsimile

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transmission it shall be sufficient to show that it was despatched to the correct facsimile number. Service shall be deemed to have been effected 24 hours after despatch by post or facsimile transmission.

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