

CAFOS Ltd Sub-Contractors Terms & Conditions

1.0 This Agreement:

1.1 is comprised of these Conditions, the completed Order and any documents expressly referred to in those documents;

1.2 may not be waived, varied or altered by the parties, except by their express written agreement;

1.3 applies to all work undertaken by the Sub-Contractor for the Contractor in connection with the Sub-Contract Works (whether under a letter of intent or otherwise) and applies whether or not the work was undertaken prior to the date of this Agreement. The Sub-Contractor acknowledges that any payment made to it prior to the date of this Agreement forms part of the Sub-Contract Price;

1.4 contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect; and

1.5 If there is any conflict, ambiguity or discrepancy between or within any of the documents which constitute this Agreement, these Conditions shall take precedence over the Order which itself shall take precedence over each of the other documents referred to in it, which shall be construed so that the documents created latest in time take precedence over any earlier created documents.

2.0 Sub-Contractor's Obligations

2.1 All subcontractors are responsible for Design and Specification of all elements of the works instructed under their package. Each subcontractor will ensure that design and detailing of their works is suitable for the intended purpose, and comply with all client requirements and current legislation and regulations. This responsibility includes, but is not limited to, issues such as lighting lux levels, air flow and extract rates, AC performance and control, sprinkler layouts and flow rates, stability of architectural elements, acoustic properties, function, form and detail.

2.2 The Sub-Contractor must carry out and complete the Sub-Contract Works in accordance with this Agreement, in consideration for which the Contractor must pay the Sub-Contract Price to the Sub-Contractor in accordance with this Agreement.

2.2 The Sub-Contractor must commence the Sub-Contract Works on the date for commencement stated on the Order and complete the Sub-Contract Works on or before the date for completion stated on the Order. The Sub-Contractor must progress the Sub-Contract Works with due expedition and without delay so as to achieve completion by the date for completion.

2.3 The Sub-Contractor must provide everything required to carry out and complete the Sub-Contract Works, unless otherwise stated in the Order.

2.4 The Sub-Contractor must comply with and give all notices required by any legislation (including statutes, statutory instruments, rules, orders, regulations, or bye-laws) applicable to the Sub-Contract Works and shall pay all fees and charges

2.5 Where there is a main contract, the Sub-Contractor is deemed to know all of its provisions (except for the Contractor's pricing information) and shall at its request be entitled to see such a copy and the Sub-Contractor must:

2.5.1 Carry out and complete the Sub-Contract Works in accordance with the Contractor's progress of the Works under the main contract; and

2.5.2 Carry out and complete the Sub-Contract Works so that no act or omission of the Sub-Contractor shall result in any breach of the main contract or any other liability of the Contractor under or in relation to the main contract. To the extent that such obligations and liabilities relate to the Sub-Contract Works the Sub-Contractor must perform the obligations and assume the liabilities of the Contractor under the main contract and indemnify the Contractor for any breaches of those obligations or liabilities.

3.0 The Site

3.1 The Sub-Contractor agrees and acknowledges that it is not entitled to exclusive possession of the Site and may be required to work in the same areas as other contractors or sub-contractors (whether employed by the Contractor or any other person), and to share any facilities or attendances made available by the Contractor with them and shall not be entitled to extra payment or time as a result.

3.2 The Sub-Contractor acknowledges that it has had sufficient opportunity prior to entering into this Agreement to investigate the Site and the documents comprising this Agreement and referred to in it to appreciate fully the risks involved in executing the Sub-Contract Works. The Sub-Contractor accepts the sole responsibility for, and assumes the risk of, all increased costs, loss and/or expense arising out of the physical conditions and characteristics of the Site and its surroundings encountered while carrying out the Sub-Contract Works.

4.0 Health, Safety, the Environment, and Quality Assurance

4.1 The Sub-Contractor must comply with all of the requirements in any Contractor's Health, Safety and Environmental Manual and Quality Assurance Manual, copies of which are available from the Contractor's site office, in carrying out the Sub-Contract Work. The Sub-Contractor must immediately inform the Contractor if any of these conflict with the requirements of any legislation which will prevail over the Contractor's policies as set out in the Manuals if there is any conflict.

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5.0 Insurance and Indemnity

5.1 The Sub-Contractor must put in place the insurances as stated in the Order for the period stated in the Order.

5.2 The Sub-Contractor will have the benefit of any insurance effected in relation to the main contract which relates to the Sub-Contract Works insofar as it has been effected. Under no circumstances will such insurance cover the Sub-Contractor's temporary huts, plant, tools or equipment.

5.3 The Sub-Contractor must indemnify and hold the Contractor harmless from all liability of any nature whatsoever caused by the Sub-Contractor's acts or omissions in any way relating to this Agreement, except to the extent that any such liability arises as a direct result of any act or omission of the Contractor. For the avoidance of doubt the above indemnity includes but is not limited to any liability whatsoever in relation to third parties, property and/or any of the Sub-Contractor's employees, servants or agents.

6.0 Intellectual Property

6.1 The Sub-Contractor warrants that any design, materials, documents and methods of working he proposes to use in carrying out the Sub-Contract Works will not infringe any patent, registered design, trade mark or name, copyright or any protected right.

6.2 Where the Sub-Contractor is required to design any element of the Sub-Contract works, it hereby assigns all rights and interests in relation to that design to the Contractor.

7.0 Site meetings and other attendances

7.1 The Sub-Contractor shall for the Sub-Contract Price attend all necessary site and other meetings and must provide all attendances unless otherwise stated in the Order.

8.0 Additional work

8.1 The Contractor may direct the Sub-Contractor to carry out works additional to the Sub-Contract Works by the issue of a variation notice ("Variation Notice"), and no additional works shall be outside the general scope of this Agreement.

8.2 Unless the Contractor expressly states in the variation notice that it does not require a quotation for the additional work prior to the Sub-Contractor carrying out that additional work, the Sub-Contractor must advise the Contractor of the cost of carrying out the work and any other effect it may have on the progress of the Sub-Contract Works or the Sub-Contract Price within 03 days of the Variation Notice.

8.3 The Contractor may then accept the Sub-Contractor's quotation or, if the Contractor does not agree with the Sub-Contractor's quotation, the Contractor may arrange for the additional work to be undertaken by others or direct that it be carried out by the Sub-Contractor.

8.4 If the additional work is carried out without an accepted quotation, it is to be valued by the Contractor in the next payment by reference to any applicable rates or prices elsewhere in this Agreement. If there are no such rates or prices applicable, then the Contractor will determine the reasonable value of any additional work.

8.5 The Sub-Contractor must not commence carrying out the instructed additional work unless and until the Contractor agrees with the Sub-Contractor's quotation, or unless and until the Contractor advises the Sub-Contractor that it does not agree with its estimated cost and/or effects, but requires the additional work to be undertaken in any event.

9.0 Instructions

9.1 The Contractor may issue instructions to the Sub-Contractor, which the Sub-Contractor must forthwith carry out.

9.2 Except as provided in clause 8 the Sub-Contractor shall not be entitled to any additional payment for complying with any instructions from the Contractor. If the Sub-Contractor does not comply with an instruction from the Contractor to the Contractor's satisfaction, within 7 days of receiving that instruction the Contractor may have the work the subject of that instruction carried out by others and the cost of doing so shall be a debt due from the Sub-Contractor to the Contractor.

10.0 Provision of documents

10.1 Within 7 days of signing this Agreement, the Sub-Contractor must provide to the Contractor each of the following:

10.1.1 Collateral warranties (if required by the Order);

10.1.2 Performance bonds (if required by the Order);

10.1.3 Parent company guarantees (if required by the Order);

10.1.4 Evidence of the insurance which the Sub-Contractor is required to have in effect under this Agreement (to the satisfaction of the Contractor); and

10.1.5 Copies of its CIS, VAT and other documents required by law or by the Order

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11.0 Payment

11.1 It is a condition precedent to the Sub-Contractor becoming entitled to make its first (and any subsequent) claim for payment and any payment becoming due under this Agreement that the Sub-Contractor has procured and delivered to the Contractor each of the documents referred to in clause 10.1 as well as the properly executed Order for this Agreement. Unless and until all such documents are provided, the Contractor has no obligation to pay the Sub-Contractor and no sums are due whatsoever.

11.2 If the Order provides that the duration of the Sub-Contract Works is to be less than 45 days or it is agreed that the duration of the Sub-Contract Works is estimated to be less than 45 days, then the Sub-Contract Price will be due on the expiry of one calendar month following completion of the Sub-Contract Works or the making of a claim by the Sub-Contractor whichever is later.

11.3 If the Order states that the duration of the Sub-Contract Works is 45 days or greater, the Sub-Contractor shall be paid by way of monthly interim payments, the first becoming due on the last Friday of the calendar month following the date of this Agreement or commencement of the Sub-Contract Works on site, whichever is the later, provided always that the Sub-Contractor has complied with clause 10.1. CAFOS Ltds Sub-Contractor Terms and Conditions Where the Sub-Contractor does not comply with clause 10.1 prior to the first due date, the first payment becomes due on the last Friday of the calendar month following the month in which the Sub-Contractor does comply with clause 10.1.

11.4 The Due date for payment by the Contractor shall be the 45 days from the month following the month in which an invoice in relation to the sub-contractor works is dated.

11.5 The Final date for payment shall be no later than 14 days following the Due date for payment.

11.6 The Contractor shall determine and notify the Sub-Contractor in writing of the amount (and basis of calculation) of each payment proposed to be made to the Sub-Contractor no later than 5 days after the date upon which any payment becomes due.

11.7 The amount of each interim payment shall be:

11.7.1 The value of work carried out by the Sub-Contractor, determined in accordance with the rates and prices contained in the Agreement, or if there are no rates and prices or the rates and prices in the Agreement do not apply, by reference to the Sub-Contract price; plus

11.7.2 The valuation of any approved additional work under clause 8. Less the sum of:

11.7.3 Any amount previously paid to the Sub-Contractor;

11.7.4 The retained amount under clause 12; and

11.7.5 Any amounts to be set off or otherwise withheld from the Sub-Contractor.

11.8 If the Contractor intends withholding any payments due to the Sub-Contractor it must give notice of its intention to do so not later than 2 days prior to the final date for payment, specifying the amount proposed to be withheld and the grounds for withholding payment and, if there is more than one ground, the amount attributable to each ground.

11.9 Within 28 days after practical completion of the Sub-Contract Works as determined by the Contractor pursuant to clause 13.1, the Sub-Contractor must provide its final claim for payment, together with all supporting documentation or any other information which the Contractor requires for assessing the final Sub-Contract Price and any other entitlements which may be due to the Sub-Contractor under this Agreement or otherwise.

11.9 The Sub-Contractor and Contractor shall seek to agree the final sums due to the Sub-Contractor within 12 months after the final claim for payment, Such agreement shall be in the form of a statement of final account issued by the Sub-Contractor which the Sub-Contractor shall sign and provide to the Contractor in full and final settlement of all entitlements whatsoever due to the Sub-Contractor in relation to this Agreement or otherwise.

11.10 If the Sub-Contractor does not provide its final claim for payment and the other information by the time specified in clause 11.8; or

11.10.2 The final account statement in clause 11.9 is not signed by the Sub-Contractor within 12 months after the final claim for payment then the Contractor shall be entitled to issue to the Sub-Contractor a Statement of Final Account which states the final Sub-Contract Price and any other amounts or other entitlements to which the Sub-Contractor is entitled whatsoever in relation to this Agreement or otherwise which, if not disputed by the Sub-Contractor within 5 days of the date of issue, shall be final and binding upon the Sub-Contractor.

12.0 Retention and security

12.1 The Contractor shall be entitled to retain 5% (unless a different figure is stated in the Order) of the value of each interim payment as security for the Sub-Contractor's due and proper performance of this Agreement.

12.2 The Contractor must return half of the amounts retained from all interim payments to the Sub-Contractor within 5 days of the Contractor notifying the Sub-Contractor that the Sub-Contract Works are practically complete in accordance with clause 13.1.

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12.3 The Contractor must return the balance of the amounts retained from all interim payments to the Sub-Contractor not later than 28 days after the end of the defects rectification period.

12.4 If the Sub-Contractor has provided a bond, and that bond has not been called upon, the Contractor must return the bond to the Sub-Contractor not later than 28 days after the end of the defects rectification period.

12.5 Subject to clause 11.7 the Contractor may set off against any amounts due to the Sub-Contractor under this Agreement any amounts which the Sub-Contractor may owe the Contractor under this Agreement or otherwise.

12.6 The title of any goods, materials and/or equipment ("the Goods") supplied or to be supplied pursuant to this Order or incorporated or to be incorporated in the Sub-Contract Works shall pass from the Sub-Contractor to the Contractor on the earlier of:

12.6.1 Delivery to the Site (or if delivery is made by instalments upon delivery of any such instalment),

12.6.2 on payment for the same;

12.6.3 on incorporation into the Sub-Contract Works or the main contract works.

12.7 The Contractor may take possession of the Goods the title to which has passed to the Contractor. The Sub-Contractor shall ensure that such Goods are set aside and clearly marked as the property of the Contractor.

13.0 Defects

13.1 The Sub-Contractor must, at its own cost, make good any defects in the Sub-Contract Works which become apparent from the day the Contractor determines and notifies the Sub-Contractor that the Sub-Contract Works are practically complete until the end of the defects rectification period stated in the Order.

13.2 If the defect is notified to the Sub-Contractor by the Contractor and it has not been rectified to the Contractor's satisfaction within 14 days of the Contractor's notice, the Contractor may have that defect rectified by others and the cost of doing so shall become a debt due from the Sub-Contractor to the Contractor.

14.0 Termination

14.1 Without prejudice to any of the Contractor's other rights at common law, under this Agreement or otherwise if, in the opinion of the Contractor, the Sub-Contractor:

14.1.1 fails to proceed regularly and diligently with the Sub-Contract Works;

14.1.2 Wholly or substantially suspends the carrying out of the Sub-Contract Works before completion; or

14.1.3 fails to comply with sub-clause 16.1 (other than 16.1.1), then the Contractor may give notice to the Sub-Contractor which specifies the default and requires it to be remedied. If the Sub-Contractor does not remedy the default within 7 days, the Contractor may determine the employment of the Sub-Contractor in whole or in part by serving a further notice. The determination shall take effect from when the further notice is given.

14.2 If the Sub-Contractor

14.2.1 becomes bankrupt;

14.2.2 has a provisional liquidator appointed;

14.2.3 has a winding-up order made;

14.2.4 Passes a resolution for voluntary winding-up (except for the purposes of amalgamation or reconstruction); or

14.2.5 has an administrator or administrative receiver appointed under the Insolvency Act 1986 (or any amendment or re-enactment of that Act), the Contractor may determine immediately the employment of the Sub-Contractor by serving a notice. The determination shall take effect when the notice is given. If the employment of the Sub-Contractor is determined, the Sub-Contractor shall immediately leave the Site.

14.4 The Contractor shall not be obliged to make any further payments to the Sub-Contractor until after completion of the Sub-Contract Works and the making good of defects.

14.5 There shall be due to the Contractor from the Sub-Contractor the additional costs of completing the Sub-Contract Works including any expenses and direct loss and/or damage incurred by the Contractor as a result of the determination.

14.6 Where there is a main contract, this Agreement may also be determined (at the Contractor's discretion) if the main contract is determined, in which case the Sub-Contractor

14.6.1 Must immediately leave the Site; and

14.6.2 is entitled to be paid for work completed up to the date of determination (valued in accordance with the payment clause of this Agreement), plus a reasonable amount for removing its plant, equipment and operatives from the Site but which shall not exceed the amount of retention held by the Contractor as at the date of determination of the Sub-Contract.

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15.0 Disputes

15.1 If a dispute or difference arises under or in relation to this Agreement, either party may refer that dispute or difference to adjudication in accordance with the Scheme for Construction Contracts. Unless otherwise stated in the Order, the parties agree that the adjudicator nominating body shall be RICS.

15.2 The parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales.

16.0 General

16.1 The Sub-Contractor must not (without the prior written consent of the Contractor):

16.1.1 Take or permit any visual records of the Sub-Contract Work to be taken for the purposes of promotion or publication;

16.1.2 Assign, novate or sub-let the whole or any part of the Sub-Contract Work or this Agreement without the prior express written consent of the Contractor;

16.1.3 Factor any payments it may be entitled to receive under this Agreement; or

16.1.4 in any way encumber or charge any of the materials or goods which are to be used or incorporated into the Sub-Contract Works, and the Sub-Contractor warrants that it shall have capacity to transfer good and unencumbered title to all goods, materials and equipment used in the Sub-Contract Works to the Contractor.

16.2 Each indemnity and warranty in this document survives the expiry or termination of this document.

16.3 To be effective, any notices under this Agreement must be given in writing and delivered either by hand, by recorded courier, first class post or fax to the respective addresses of the parties given in the Order.

16.3.1 If the Contractor notifies the Sub-Contractor in writing that service of certain notices are acceptable by e-mail communication, then service by e-mail to the designated e-mail addresses shall be deemed to have been given upon proof of a "delivery receipt" from the sending party's e-mail software application that the e-mail has been successfully delivered to the designated e-mail addresses, provided that the e-mail is successfully delivered before 4 p.m. on any working day ("working day" for this clause being Monday to Friday inclusive). Any e-mail delivered after that time shall be deemed to have been delivered at 9 a.m. the following working day.

16.4 Nothing in this Agreement shall confer or purport to confer upon any third party any benefit or right against the Contractor or the Sub-Contractor.

16.5 This Agreement is governed by the laws of England and Wales.