

TERMS AND CONDITIONS OF ENGAGEMENT OF SUBCONTRACTORS & SUPPLIERS
Hepple Engineering Services Ltd
 (hereinafter referred to as "the Contractor")

1. Interpretation

1.1 In these Conditions

'Conditions' means the standard terms and conditions of purchase set out herein (unless the context otherwise requires) includes any special terms and conditions specified in the Order.

'Goods' means the goods (if any) described in the Order.

'Main Contract' means the contract and conditions imposed on the Contractor by any Authority, Developer, Builder or Employer.

'Order' means the Contractor's purchase order to which these Conditions are annexed.

'Price' means the charge for the Services and/or the price of the Goods.

'Sub-Contract' means the contract for supply and acquisition of the Services and/or the sale and purchase of the Goods including the Order, these Conditions and any annexed documentation.

'Sub-Contractor' means the person so described in the Order.

'Services' means the services described in the Order.

'Site' means the site specified in the Order.

'Specification' includes any plans, drawings, data or other information relating to the Services or Goods.

'Variation' means the alteration or modification of the design, quality or quantity of the Services included in the Contract and accompanying specification including the addition, omission or substitution of any work and the alteration of the kind or standard of any of the materials or Goods to be used in the work

'Writing' includes telex, cable, electronic mail and facsimile transmission.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2. Basis of purchase

2.1 The Subcontractor shall be bound by the terms and conditions of the Main Contract. Where a discrepancy occurs between the provisions of the Main Contract and the Subcontract, the Subcontract shall prevail. A copy of the Main Contract can be viewed at the Contractor's registered office 3 Industry Road, Heaton, Newcastle upon Tyne, NE6 5XB between the hours of 9am and 5pm Monday to Friday.

2.2 The Order constitutes an acceptance by the Contractor (subject to these Conditions) of the offer made by way of the Sub-Contractor's tender.

2.3 These Conditions and the Order shall apply to the Sub-Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Contractor or subject to which the Order is accepted or purported to be accepted by the Sub-Contractor.

2.4 The Services shall be subject to a program of works being agreed by the Contractor prior to the Sub-Contractor commencing the Services.

2.5 No variation to the Order or these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Contractor and the Sub-Contractor.

3. Specifications

3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Contractor to the Sub-Contractor or agreed in Writing by the Contractor.

3.2 No Variation to the Sub-Contract shall be binding unless agreed between the authorised representatives of the Contractor and the Sub-Contractor.

3.3 The Sub-Contractor shall provide all labour, plant and/or materials to carry out and complete the Services in accordance with the drawings, details and specifications described in the invitation to tender and any amendments thereto.

3.4 The Sub-Contractor shall provide, where expressly stated in the Sub-Contract, design services for the Services and shall include for the integration of his design with other designs required to complete the Main Contract.

3.5 Any Specification supplied by the Contractor to the Sub-Contractor, or specifically produced by the Sub-Contractor for the Contractor, in connection with the Sub-Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Contractor. The Sub-Contractor shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Sub-Contractor, or as required for the purpose of the Sub-Contract.

3.6 The Sub-Contractor shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

3.7 The Sub-Contractor shall comply in all respects with the Contractor's current Health & Safety Policy and all relevant Acts, Regulations & Approved Code of Practice. On or before 7 days prior to the commencement of Services or delivery of Goods the Sub-Contractor is to provide the Contractor with a copy of the Sub-Contractor's Health & Safety Policy and the necessary Risk Assessments applicable to the scope of the Services.

3.8 The Sub-Contractor shall take out and keep in force insurance policies for Public Liability, Employers Liability, Contractors All Risks, Professional Indemnity where appropriate, and any other insurance defined in the Main Contract, and to the limits and time periods defined in the Main Contract. The Sub-Contractor is to provide on request documentary evidence to prove that satisfactory insurance cover is in place.

4. Price of the goods and services

4.1 The Price shall be as stated in the Order and, unless otherwise so stated, shall be exclusive of any applicable value added tax (which shall be payable by the Contractor subject to receipt of a VAT invoice).

4.2 Variations shall be valued as agreed between the Contractor and the Sub-Contractor. In default of agreement, a reasonable sum shall be payable. The value of any Variation shall be included in the payments claimed by the Sub-Contractor in accordance with these terms.

4.3 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Contractor in Writing.

5. Terms of payment

5.1 The Sub-Contractor shall be entitled to invoice the Contractor on or at any time after performance of the Services or delivery of the goods, as the case may be, and each invoice shall quote the number of the Order.

5.2 Unless otherwise stated in the Order, the Contractor shall pay the Price of the Goods and the Services within 30 days after the end of the second month of receipt by the Contractor of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Contractor.

5.3 Payment is subject to, and will only be made when the Goods or Services have been inspected by the Contractor and are considered by the Contractor to have been completed to a satisfactory and acceptable standard and/or the Goods supplied are of expected and acceptable quality.

5.4 Orders for Services calculated on a time basis and considered by the Contractor to be based on an estimated rate, time or value shall be invoiced to the Contractor at the actual rate, time or value and must be agreed by the Contractor in writing to be fair and reasonable. The Sub-Contractor is to provide at the time of invoicing all timesheets together with any applicable copy invoices.

5.5 The Contractor shall be entitled to set off against the Price any sums owed to the Contractor by the Sub-Contractor.

5.6 Payments are made by cheque and payable to the Sub-Contractor as stated on the invoice unless otherwise notified to the Contractor in writing.

5.7 The Price is subject to the retention percentage specified in the Order (and if not specified in the Order to the retention percentage specified in the Main Contract) that shall reduce by half upon issue of the Certificate of Practical Completion. Final retention monies to be released on the issue of the Certificate of Rectification.

5.8 A tax deduction in accordance with the Finance Act 1975 and current CIS Regulations will be made and a Unique Tax Reference (UTR) must be provided prior to release of payment.

5.9 Payment is made without admission and without prejudice to the Contractor's right to bring any future action.

6. Delivery>Returns

6.1 The Goods shall be delivered to, and the Services shall be performed at, the Site on the date or within the period stated in the Order, in either case during the Contractor's usual business hours.

6.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of Order, the Sub-Contractor shall give the Contractor reasonable notice of the specified date.

6.3 The time of performance of the Services and of delivery of the Goods is of the essence of the Sub-Contract.

6.4 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Sub-Contract will be treated as a single Sub-Contract and not severable.

6.5 The Contractor shall be entitled to reject any Goods delivered which are not in accordance with the Sub-Contract, and shall not be deemed to have accepted any Goods until the Contractor has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

6.6 The Sub-Contractor shall supply the Contractor in good time with any instructions or other information required to enable the Contractor to accept delivery of the Goods and performance of the Services.

7. Property

The property in the Goods shall pass to the Contractor upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Contractor once payment has been made and the Goods have been appropriated to the Sub-Contract.

8 Acknowledgement

The acceptance of this Order by the Sub-Contractor or alternatively the delivery of the whole or any part of the goods subject of such Order shall be deemed to constitute an acceptance of these conditions and the instruction herein set out.

9 Warranties and liability

- 9.1 The Sub-Contractor warrants to the Contractor that the Goods:
- 9.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Sub-Contractor or made known to the Sub-Contractor in Writing at the time the Order is placed;
- 9.1.2 will be free from defects in design, material and workmanship;
- 9.1.3 will correspond with any relevant Specification or sample; and
- 9.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 9.2 The Sub-Contractor warrants to the Contractor that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Contractor to expect in all the circumstances.
- 9.3 Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Sub-Contract, then the Contractor shall be entitled:
- 9.3.1 to require the Sub-Contractor to repair the Goods or to supply replacement Goods or Services in accordance with the Sub-Contract within 7 days; or
- 9.3.2 at the Contractor's sole option, and whether or not the Contractor has previously required the Sub-Contractor to repair the Goods or to supply any replacement Goods or Services, to treat the Sub-Contract as discharged by the Sub-Contractor's breach and require the repayment of any part of the Price which has been paid.
- 9.4 The Sub-Contractor shall indemnify the Contractor in full against all liability, loss, damages, costs and expenses (including legal expenses) and consequential costs awarded against or incurred or paid by the Contractor as a result of or in connection with:
- 9.4.1 breach of any warranty given by the Sub-Contractor in relation to the Goods or the Services: any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Contractor;
- 9.4.2 any liability under the Consumer Protection Act 1987 in respect of the Goods;
- 9.4.3 any act or omission of the Sub-Contractor or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
- 9.4.4 any act or omission of any of the Sub-Contractor's personnel in connection with the performance of the Services.
- 9.5 If due to fire, strikes, lockout, force majeure or to any other causes arising from any acts of demands of the British Government or any Government or as a consequence of war or outbreak of hostilities, work at the Contractor's premises where the goods the subject of the Order are required to be delivered, or work at the premises of a third party where the goods the subject thereof are required to be delivered cannot function normally, the Contractor reserves the right to cancel this Order or any part thereof uncompleted.
- 9.6 The Services shall be completed to the satisfaction of the Architect, Engineer, Contract Administrator, as appropriate, or any other person acting for the Employer and to the satisfaction of the Contractor. The Subcontract Sum shall include the cost of compliance with Local Authority regulations, by-laws, Acts of Parliament and Statutory Undertaker's requirements in connection with the Subcontract Works.
- 9.7 The Services are to be executed as directed by the Contractor with due regard for the progress and sequencing of the other Services, if applicable. If as a consequence of the Sub-Contractor's failure to complete the Services, the completion of the Main Contract is delayed, the Sub-Contractor shall pay the Contractor for any direct or consequential loss or damages. The Contractor shall inform the Sub-Contractor in writing at the earliest opportunity when it becomes evident that damages have been levied and seek to recover the sums due from any monies outstanding to the Sub-Contractor.
- 9.8 In the event of a delay caused by the Sub-Contractor where no liquidated damages are deducted or levied by the Employer, the Sub-Contractor shall pay liquidated damages to the Contractor on demand or the Contractor may deduct from its payments to the Sub-Contractor a sum of the Contractor's payments to the Sub-Contractor as liquidated damages in accordance with the Main Contract. The parties confirm that this sum represents a genuine pre-estimate of the Contractor's loss.
- 9.9 The Sub-Contractor shall keep the Contractor indemnified against all claims for loss, injury or damage as a consequence of the breach of contract, breach of statutory duty or negligence by the Sub-Contractor or their employees, servants or agents. The Sub-Contractor will further indemnify the Contractor against all costs, charges and expenses incurred by the Contractor as a consequence of the breach of contract, breach of statutory duty or negligence by the Sub-Contractor, their employees, servants or agents.
- 9.10 The Sub-Contractor shall maintain a clean and tidy Site at all times during the term of the Sub-Contract. All surplus materials, refuse and packing shall be removed from the Site at the Sub-Contractor's own expense.

- 9.11 The Sub-Contractor shall provide all scaffolds, safety barriers, temporary works, hoists, mobile access vehicles and craneage, etc. as necessary, at the Sub-Contractor's own cost, to carry out the Services in a safe manner.

10 Termination

- 10.1 The Contractor shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Sub-Contractor at any time prior to delivery or performance, in which event the Contractor's sole liability shall be to pay to the Sub-Contractor the Price for the Goods or Services in respect of which the Contractor has exercised its right of cancellation, less the Sub-Contractor's net saving of cost arising from cancellation.
- 10.2 The Contractor shall be entitled to terminate the Sub-Contract without liability to the Sub-Contractor by giving notice to the Sub-Contractor at any time if the Sub-Contractor commits a material breach of the Sub-Contract including, but not limited to, if:
- 10.2.1 the Sub-Contractor makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 10.2.2 an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Sub-Contractor; or
- 10.2.3 the Sub-Contractor ceases, or threatens to cease, to carry on business;
- 10.2.4 a Creditor secures Judgment over the Sub-Contractor's major assets;
- 10.2.5 the Contractor reasonably apprehends that any of the events mentioned above is about to occur in relation to the Sub-Contractor and notifies the Sub-Contractor accordingly;
- 10.2.6 the Sub-Contractor repeatedly breaches any of the terms of the Sub-Contract in such a manner as to reasonably justify the opinion that the Sub-Contractor's conduct is inconsistent with it having the intention or ability to give effect to the terms of the Sub-Contract; or
- 10.2.7 the Sub-Contractor fails to comply with instructions or fails to proceed with the Services regularly and diligently.
- ## 11. General
- 11.1 The Order is personal to the Sub-Contractor and the Sub-Contractor shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-Sub-Contract any of its obligations under the Sub-Contract.
- 11.2 The Sub-Contractor agrees to provide collateral warranties if expressly required in accordance with the requirements of the Main Contract. Should the Sub-Contractor not provide such collateral warranties to the Contractor within 14 days of being requested to do so, the Contractor will be entitled to withhold payments to the Sub-Contractor until such time as the relevant collateral warranty has been delivered.
- 11.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any notice may be served either by hand or first class letter post or by facsimile transmission. Notice shall be deemed served if by hand upon delivery if by first class letter post 48 hours after posting and if by facsimile transmission upon being so transmitted.
- 11.4 No waiver by the Contractor of any breach of the Sub-Contract by the Sub-Contractor shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 11.6 If the Contract between the Employer and the Contractor is defined as a "Construction Contract" for the purposes of the Housing Grants Construction and Regeneration Act 1996 ("the Construction Act") the terms implied into a Construction Contract by the Construction Act and the Scheme for Construction (England and Wales) Regulations 1998 (as amended) ("the Scheme") shall, where considered to be applicable, be incorporated into these Conditions, but subject to any amendments to those implied terms made in these Conditions, which amendments where permissible shall take precedence.
- 11.7 The Sub-Contract shall be governed by the laws of England, and the Sub-Contractor agrees to submit to the non-exclusive jurisdiction of the English courts.
- 11.8 Adjudication is available as a dispute resolution procedure in accordance with the Construction Act and the Scheme.
- ## 12. Third Parties
- A person who is not named as a party in the Order shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these conditions. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Act.