



## **Subcontract Order Conditions (January 2020)**

### **DEFINITIONS**

1. In this Sub Contract the following terms will have the following meanings:
  - 1.1. "Employer" means the person entering into a contract with the Main Contractor in respect of the Main Contract Works;
  - 1.2. "Main Contractor" means any persons, firms or companies to whom the Contractor has agreed to supply goods, materials and/or services of which the Sub Contract Works comprise part;
  - 1.3. "Main Contract" means the Agreement entered into between the Contractor and the Main Contractor;
  - 1.4. "Main Contract Works" means the works carried out by the Contractor of which the Sub Contract Works form part;
  - 1.5. "Insolvent" shall have the same meaning as Section 13 of the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Enterprise Act 2002 (Insolvency) Order 2003).

### **INCORPORATION OF MAIN CONTRACT**

2. The Sub Contractor shall be deemed to have full knowledge of the Main Contract (including but not limited to the terms relating to liquidated and ascertained damages and quality of work) and shall be bound by and observe the Main Contract insofar as the Main Contract relates to the Sub Contract Works, save where Main Contract conflicts with the Sub Contract, or any instruction given by the Contractor.

### **MODIFICATIONS TO THE SUB CONTRACT**

3. Unless confirmed by the Contractor in writing, no additions modifications or variations nor any terms submitted by the Sub Contractor shall form part of the Sub Contract.
4. Commencing or continuing the Sub Contract Works shall be acceptance by the Sub Contractor of the Works in accordance with the Sub Contract whether or not the Sub Contractor has signed the Sub Contract.
5. The Contractor may cancel the Sub Contract at any time prior to the Sub Contractor commencing the Sub Contract Works without any liability to the Contractor whatsoever (including but not limited to any liability in contract, tort, negligence or otherwise).

### **MATERIALS**

6. Goods, services &/or materials forming part of the Sub Contract Works shall be of the highest quality, fit for their purpose, and conform precisely with the Sub Contract. If any of the goods, services or materials are not of the highest quality or not fit for their purpose or do not conform precisely with the Sub Contract the Contractor may at its option:
  - 6.1. determine the Sub Contract, or
  - 6.2. Re-affirm the Sub Contract and require the Sub Contractor to replace the said goods, services &/or materials with goods, services &/or materials of the highest quality and fit for their purpose and do conform precisely to the Sub Contract.
7. The Sub Contractor shall protect the Sub Contract Works until completion of the Main Contract Works. Without prejudice to the foregoing the Sub Contractor shall not be entitled to any payment or an extension of time in respect of any damage to the Sub Contract Works howsoever caused including water damage or damage caused by the

Contractor.

8. The Sub Contractor shall satisfy itself that the surfaces and work to which the Sub Contract Work is to be applied are in a satisfactory condition to receive the Sub Contract Works. Should the Sub Contractor consider any surface to be unsatisfactory the Sub Contractor shall notify the Contractor in writing immediately. In the absence of such notification the Sub Contractor shall be responsible for rectification of all defects in the Sub Contract and Main Contract Works.

#### **RISK**

9. The property in all materials supplied by the Sub Contractor shall pass to the Contractor upon payment in respect of the said materials or when the materials are delivered to the Site, whichever is the earlier. Risk of damage etc in the materials will remain with the Sub Contractor until completion of the Main Contract Works.

#### **DESIGN LIABILITY**

10. The Sub Contractor will be fully responsible for the design of the Sub Contract Works including any design carried out by others (including but not limited to the Contractor), whether or not the design is referred to in the Sub Contract.
11. The Sub Contractor shall exercise all due diligence, skill and care in the design of the Sub Contract Works.
12. The Sub Contractor shall use his best endeavors to maintain a professional indemnity insurance policy issued by a reputable insurer and acceptable to the Contractor in respect of his obligation pursuant to this Agreement and at law. The minimum level of cover per claim under the policy shall be the same as that required under the Main Contract or £5,000,000, whichever is the greater. The said policy shall be maintained in force for a period of 12 years from completion of the Main Contract Works. The policy or satisfactory evidence of its existence will be produced to the Contractor whenever requested.
13. If the Sub Contractor shall fail to take out the insurance required by this clause, the insurance may be put in place by the Contractor and the cost incurred recovered from the Sub Contractor as a debt.
14. All designs, drawings and specifications are, unless the Contractor instruct otherwise in writing, to be sent to the Contractor and not the Main Contractor or any other party involved in the Main Contract Works or the Sub Contract Works.

#### **VARIATIONS TO THE SUB CONTRACT WORKS**

15. The Contractor may instruct the Sub Contractor in writing to vary the Sub Contract Works. All such changes shall be valued:
- 15.1 in accordance with the rates and prices used by the Sub Contractor to produce the Sub Contract Price; or
- 15.2 if no such rates or prices exist, a reasonable price for the additional/omitted work. Should the Contractor deem the rates &/or prices not to be reasonable, the Contractor shall value the varied works which shall be final. The sub-contractor is required to notify the contractor as soon he becomes aware of any possible change / variation to the works. The sub-contractor is required to submit variations within 15 days at the point of notifying the contractor, if the subcontractor doesn't comply within 15 days then the variation will be rejected and be null and void.
- 15.3 The Sub Contractors is required to price up any works deemed additional works and submit a labour and material breakdown to the Contractor's Contracts Manager prior to carrying out and works. The submitted variation should be accompanied by marked up drawings/specifications/schedules which clearly identify the change to the sub contract works. Any variations received without this information will not be valued until receipt. The sub-contractor is required to notify the contractor as soon he becomes aware of any possible change / variation to the works.

- 15.4 The sub-contractor is required to notify the contractor as soon he becomes aware of any possible change / variation to the works.
- 15.5 The sub-contractor is required to submit variations within 15 days at the point of notifying the contractor, if the subcontractor doesn't comply within 15 days then the variation will be rejected and be null and void.

Daywork rates may not be used unless the Sub Contractor has obtained the Contractor's prior consent in writing to use Daywork rates.

#### **SUB SUB CONTRACTS**

16. Notwithstanding any term to the contrary the Contractor may at any time omit any part(s) of the Sub Contract Works and arrange for the part(s) to be carried out by a third party.
17. Should part(s) of the Sub Contract Works be omitted the Sub Contractor shall not be entitled to any payment in respect of the omitted part(s) (without limitation to the foregoing the Sub Contractor shall not be entitled to any payment of preliminaries, overheads or profit in respect of the omitted part(s)).
18. The Sub Contractor shall not sublet all or part of the Sub Contract Works without the Contractor's prior consent in writing.

#### **PROGRESS OF THE SUB CONTRACT**

19. The Sub Contractor shall start the Sub Contract Works in accordance with the Start Dates and any milestones or sections referred to in the Sub Contract and complete the Sub Contract Works within the Sub Contract Period. Notwithstanding this and any other terms of the Sub Contract, the Contractor shall have the right to instruct the Sub Contractor to alter or amend the sequence order or duration (including the extension or acceleration of the Sub Contract Works), the number of visits to the Site, to suit the Contractor and other Sub Contractors' progress. The Contractor shall have no liability whatsoever to pay any sum in addition to the Sub Contract Price (including without limitation damages or loss or expense) which the Sub Contractor may incur due to the duration sequence or order in which the Sub Contract Works are performed.
20. The contractor will endeavor to provide as much forward notice to commence works on site as possible. In the event of works programme(s) being accelerated, the contractor reserves the right to issue notice to commence works to the subcontractor within ten days. If the sub contractor fails to commence works after the notice period, the contractor can terminate the contract with immediate effect. The Contractor shall have no liability whatsoever to pay any sum to the sub contractor (including without limitation damages or loss or expense) which the Sub Contractor may incur due to this termination.
21. The contractor reserves the right to supplement the sub contractor's labour if the progress of the sub contractor works is not in line with the programme and/or agreements on site, at no cost to the contractor whatsoever.

#### **DELAYS AND EXTENSION OF TIME**

22. If the completion of the Sub Contract Works or any milestone or section thereof is delayed by a breach of the Sub Contract by the Contractor, then the Sub Contractor shall within seven days of the breach give notice in writing to the Contractor of:
- 22.1. the alleged breach;
- 22.2. the effect of the breach on the progress of the Sub Contract Works;



- 22.3. the delay to the completion of the Sub Contract Works or any milestone or section.
23. It shall be a condition precedent to the grant of an extension of time that:
- 23.1. the Sub Contractor gives notice in writing as required by clause 22 above;
- 23.2. the Sub Contractor shall at all times use his best endeavors to minimise any delay in the performance of his obligations under the Sub Contract, whatever may be the cause of such delay.
24. Provided that:
- 24.1. the Sub Contractor complies with the obligations in clause 22;
- 24.2. the Contractor's breach of the Sub Contract has delayed the completion of the Sub Contract Works.
- The Sub Contractor shall be granted an extension to the Sub Contract Period or milestone or section to reflect the delay to the completion of the Sub Contract Works caused by the Contractor's breach.
25. An extension to the Sub Contract Period shall be the Sub Contractor's exclusive and only remedy in respect of any delay to the completion of the Sub Contract Works caused by the Contractor's breach.

#### **COPYRIGHT**

26. The Sub Contractor hereby grants the Contractor an irrevocable royalty free license to copy and amend all information supplied by the Sub Contractor in connection with the Sub Contract Works including (but not limited to) all drawings, calculations, reports, matters in writing, information sent electronically etc.

#### **SITE WORKING CONDITIONS**

27. The Contractor may at any time, and at its absolute discretion, instruct the Sub Contractor to remove any person within the Sub Contractor's control (including but not limited to the Sub Contractor's employees) from the Site. The Sub Contractor shall remove the person from the Sites forthwith and shall not be entitled to any additional payment whatsoever in respect of the removal of the said person.

#### **SETTING OUT**

28. The Sub Contractor shall be responsible for setting out the Sub Contract Works.

#### **SUB CONTRACTORS DEFAULT**

29. If the Sub Contractor:
- 29.1. being an individual, commits an act of bankruptcy or, being a corporation, goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation):
- 29.2. becomes insolvent, or
- 29.3. commits any breach of the Sub Contract.

The Contractor may forthwith cancel the Agreement by giving notice in writing to the Sub Contractor.

30. If the Contractor shall terminate the Sub Contract under the provision of the preceding Clause 29 the Contractor may take possession of and have a lien on all Sub Contractor's equipment, materials, temporary buildings and structures,

and other things whatsoever belonging to the Sub Contractor which are upon the Site. Such lien shall endure until the Contractor has secured the final completion of the Sub Contract Works by other means and received payment from the Sub Contractor such damages as may have become due. During the period of such lien the Contractor may use or permit others to use all such things of the Sub Contractor for the purpose of finally completing the Sub Contract Works and the Contractor shall not be liable to the Sub Contractor for any fair wear or tear or accidental damage that may occur to such things during the period of the lien.

#### **TERMINATION OF THE SUB CONTRACT**

- 31. Without prejudice to any rights which the Contractor may possess, the Contractor may at any time terminate on 2 days notice in writing this Sub Contract or any or part of the Sub Contract Works.
- 32. In the event of a termination under the preceding clause the Contractor shall assess & pay ascertained sums due to the Sub Contractor in accordance with the Order save for:
  - 32.1. demobilisation costs; and
  - 32.2. profit and other consequential losses arising out of or in connection with the termination.

#### **HEALTH AND SAFETY**

- 33. The Sub Contractor shall co-operate and comply with the Contractor's Health and Safety Policy and with the Health and Safety Policy of the Main Contractor.

#### **INDEMNITIES**

- 34. The Sub Contractor indemnifies the Contractor in respect of:-
  - 34.1. any breach by the Sub Contractor of the Sub Contract and Main Contract;
  - 34.2. any act or omission of the Sub Contractor which involves the Contractor in any liability to the Main Contractor;
  - 34.3. any claim made arising out of or in connection with the Sub Contract Works by any third party in respect of injury or death to any person or loss or damage to any property, not caused by the negligence of the Contractor.

#### **INSURANCES**

- 35. The Sub Contractor shall arrange at his expense:
  - 35.1. Public Liability Insurance for not less than £5,000,000.
  - 35.2. Employer's Liability Insurance for not less than £10,000,000or such other sums as the Contractor may agree to in writing.
- 36. The Sub Contractor shall if called upon by the Contractor produce evidence of the insurance arranged and maintained in accordance with this clause.

#### **SUB CONTRACT PRICE**

- 37. The Sub Contract Price is fixed for the duration of the Sub Contract Works, including any extension of time granted in accordance with the Sub Contract.

38. The Sub Contract Price shall be deemed inclusive of all costs in connection with the Sub Contract Works and for the avoidance of doubt includes all travel to and from the Site, overheads, contributions, levies, taxes, insurances holiday or other leave or sickness entitlement of any sort whether statutory or otherwise payable in connection with the Sub Contract Works or otherwise payable by a person firm or company trading in the capacity of a Sub Contractor or as an employer.

#### **PAYMENT**

39. The Sub Contract Price shall be paid by installments.
40. It will be a condition precedent to all payments to the Sub Contractor that the contractor shall receive from the Sub Contractor:
- 40.1. an application in accordance with the particulars described herein received by the application date.
- 40.2. a valid Unique Tax Reference Number (UTR) for each installment of the Sub contract price.
- 40.3. The sub-contractor is required to notify the contractor as soon he becomes aware of any possible change / variation to the works.
- 40.4. The sub-contractor is required to submit variations within 15 days at the point of notifying the contractor, if the subcontractor doesn't comply within 15 days then the variation will be rejected and be null and void.
41. The first installment of the Sub Contract Price shall be calculated on the basis of the proportion of the Sub Contract Works in the Contractor's reasonable opinion carried out from the Start Date to the end of the calendar month (or as required herein) from when the Sub contract Works started on the Site. Subsequent installments shall be calculated on the basis of the value of the Sub Contract Works in the Contractor's reasonable opinion properly carried out up to the end of each subsequent calendar month (or as required herein). Details of our payment assessment shall be provided using the format of our Sub Contract payment certificate which shall be issued in accordance with the dates provided herein.
42. The Sub Contractor's application shall be submitted on the dates set out in the Sub Contract failing which the application shall be sent on the 20<sup>th</sup> day of every calendar month.
43. The Sub Contractor shall be paid for a proportion of the Sub Contract Works in the Contractor's reasonable opinion carried out during the period covered by the application within 60 days from receipt of a valid and approved Sub Contractor invoice. The Sub Contractors VAT Invoice shall align with the Sub Contract Payment Certificate as issued from time to time in accordance with the requirements of the particular Sub Contract.
44. In relation to all payments, the deadline for any notice which may be given pursuant to Section 111 of the Housing Grants, Construction and Regeneration Act 1996 shall be the day before the appropriate final date for payment.
45. The Penultimate application for payment shall be issued within three weeks of completion of the Sub Contract Works and shall be paid on the same basis as Clause 42 above. No other payment shall be made until the Final Account Payment.
46. The Sub Contractor shall submit his Invoice for the Final Account Payment after a Certificate of Making Good Defects is issued pursuant to the Main Contract. The Invoice for the Final Account Payment is to be paid within 60 days of the issue of the Certificate of Making Good Payments.
47. In the event of the payment periods or any part thereof being part of a period of normal holiday closedown for the construction industry according to agreements or decisions made under the current Construction Industry Joint



Council Working Rule Agreement the Valuation Period, Final Date for Payment and deadline for the Section 111 Notice shall be extended by the holiday shutdown period.

48. The Contractor shall deduct the Retention from all sums payable & payments made to the Sub Contractor. Half of the Retention shall be included in the nearest application after 'Practical Completion' of the main contract, with the second half of the retention included in the application due after the defects period.
49. The Contractor shall be entitled to set-off against any sum due in connection with the Sub Contract, the Contractor's bona fide written estimate of any loss, expense or damage or other sum incurred or likely to be incurred which arise out of or in connection with the Sub Contractor's breach of the Sub Contract, or any other agreement between the Sub Contractor and the Contractor. The estimate will bind the Contractor and the Sub Contractor until the matter is finally determined by an Arbitrator or the Courts.
50. Without prejudice to the foregoing the Sub Contract Price includes:
  - 50.1. all fluctuations in cost howsoever arising;
  - 50.2. delays or disruption to the Sub Contract Works;
  - 50.3. non-productive and other overtime or premium time working.
51. The Sub Contractor is deemed to be fully informed in respect of existing conditions and matters which might in any way affect the Sub Contract Price. Any failure by the Sub Contractor to not take into account the foregoing conditions shall not entitle the Sub Contractor to any addition to the Sub Contract Price.
52. The Sub Contractor shall be solely responsible for any errors or omissions in calculating the prices, sums and rates included in the Subcontract.
53. Notwithstanding any other provisions of the Sub Contract or Main Contract or any other rights the Sub Contractor may possess, if the Contractor do not receive payment from the Main Contractor in respect any part of the Sub Contract Works due to the Main Contractor or any other person making payment to the Main Contractor or the Employer becoming Insolvent, the Contractor shall not be obliged to make any further payment to the Sub Contractor whatsoever unless payment in respect of the relevant part of the Sub Contract Works is made by the Main Contractor or the Main Contractor's Liquidator or Administrator or Receiver.

#### **SET OFF**

54. Without prejudice to any other rights and remedies it may possess, the Contractor (Woodford Heating & Energy Ltd) shall be entitled to deduct and withhold from amounts due to the Sub Contractor under the Contract any sums which the Contractor or any Associated Company has suffered or incurred or anticipates suffering or incurring due to a breach of or failure by the Sub Contractor to observe the provisions of the Contract or any other agreement entered into between the Sub Contractor and the Contractor or any Associated Company.

#### **CONTRACT RESTRICTION / DIRECT CLIENT CONTACT**

55. The Sub Contractor has no authority (and shall not hold himself/herself out as having authority) to bind the Client (Main Contractor / Developer), unless we (Woodford Heating & Energy Ltd) have specifically permitted this in writing in advance.

#### **DISPUTE RESOLUTION AND ADJUDICATION**

56. The Scheme for Construction Contracts (England a Wales) Regulations 1998 (SI 1998 No. 649) shall apply to the Order



save that the Sub Contractor shall bear all of the costs and expenses incurred by the Sub Contractor, the Contractor and the Adjudicator (including but not limited to all legal and experts fees) arising out of and in connection with any adjudication. The Adjudicator shall deduct the said costs and expenses from his Decision.

57. The Laws of England and Wales apply to this Sub Contract and the Sub Contractor agrees that in the event of any dispute arising out of or in connection with or touching and concerning in any way the Sub Contract to submit to the exclusive jurisdiction of the English Courts in either London.

#### **BONDS GUARANTEES ETC**

- 55 The Sub Contractor shall provide all guarantees, bonds and warranties as required by:

- 55.1 the Main Contract; and  
55.2 the Contractor's instruction.

- 56 The provision of the said guarantees etc:

- 56.1 shall be included in the Sub Contract price; and  
56.2 shall be a condition precedent to any payment being made under the Sub Contract.

#### **WAIVER**

57. Any waiver by the Contractor of any breach or default by the Sub Contractor shall not be deemed to be a waiver or estoppel of any subsequent breach or default and shall in no way affect the enforceability of the Sub Contract by the Contractor.

#### **LAD's**

58. Any LAD's which are applicable under the main contract shall apply to the sub contract order.  
59. Defects period 24 months from practical completion of works.