

# Dew Piling Ltd – Standard Terms and Conditions

## 1. General Definitions

- 1.1 The Subcontract Conditions : These Terms and Conditions  
1.2 The Contractor : Dew Piling Ltd (generally acting as a Subcontractor to the Client).
- 1.3 The Client The individual, firm or body engaging the Contractor.
- 1.4 The Sub Contract The order and this Agreement together with other documents specified therein.
- 1.6 The Subcontractor Any person or company employed by Dew Piling Ltd on a Subcontract basis.
- 1.7 The Subcontract Works Means the works identified in the associated Subcontract Order.
- 1.8 The Main Contract Wherever the Main Contract is referred to in these conditions, it shall have the meaning, as appropriate, of the Contract which exists between the Client and his Contractor and/or the contract which exists between the Clients Contractor and the Contractor and/or the contract which exists between the Client and the Contractor.
- 1.9 The Subcontract Order The duly completed pro-forma order issued by the Contractor to the Subcontractor.

## 2.0 General Undertakings

- 2.1 The Sub-Contractor is deemed to have satisfied himself as to the Main Contract conditions any other matter affecting his tender and is deemed to have visited the site and fully acquainted himself with the conditions required to execute the works. No claim will be entertained due to the lack of knowledge of such conditions.
- 2.2 The Sub-Contractor shall execute, complete and maintain the Sub-Contract works and any variations in accordance with Sub-Contract and to the reasonable satisfaction of the Contractor and his Client.
- 2.3 The Sub-Contractor shall undertake and comply with all obligations and provisions of the Contract imposed upon the Contractor.
- 2.4 The Sub-Contract is to provide all necessary labour materials and equipment whatsoever to complete his works.
- 2.5 The Sub-Contractor shall carry out and complete the Sub-Contract work so that no act or omission of this shall constitute, cause or contribute to a breach by the Contractor of his obligations under the Contract.
- 2.6 Without prejudice to any other remedies the Company may have, the Sub-Contractor shall indemnify the Contractor against all claims, liabilities, demands, proceedings, damages, costs and expenses made against or incurred by the Contractor in relation to any negligence or breach of duty by the Sub-Contractor or any breach of or failure by him to carry out his obligations under the Sub-Contract.
- 2.7 The Sub-Contract is placed on the understanding that these conditions supersede and over rule any conditions which accompanied the Sub-Contractors quotation save as those noted elsewhere in this agreement.

- 2.8 Commencement of the Subcontract works is deemed to be acceptance of these Terms and Conditions.

## 3.0 DESIGN OBLIGATIONS

- 3.1 Where the Sub-Contractor designs any part of the Sub-Contract works, (including all associated or related works, whether permanent or temporary in nature), the Sub-Contractor warrants to the Contractor that he shall exercise all proper skill and care to be expected of an expertly qualified and competent specialist contractor experienced in carrying out work of a similar scope, nature and size to the Sub-Contract Works in.
- 3.1.1 the design of the Sub-Contract Works and  
3.1.2 the selection of kinds and standards of materials and goods for incorporation into the Sub-Contract Works and  
3.1.3 the co-ordination and integration of the Sub-Contracts design with the remainder of the Works and design by others.
- 3.2 The sub-Contractor further warrants to the Contractor that the Sub-Contract Works shall satisfy any performance specification or other requirements included or referred to in the Sub-Contract and/or Main Contract which relates to the Sub-Contract Works and shall comply with any statutory requirements which are applicable to the Sub-Contract Works.
- 3.3 The Sub-contractor shall comply with any requirement in the Main Contract in relation to the submission of any documents and drawings relating to the Sub-Contract Works and shall revise and return any documents and drawings as may be required in accordance with the Terms of the Main Contract. No approval or revision of any documents or drawings shall relieve the Sub-Contractor of his obligations and the warranties given under the Sub-Contract.
- 3.4 The Sub-Contractor hereby grants to the Contractor a royalty free irrevocable non-exclusive licence to use such documents and drawings prepared and produced by the Sub-Contractor for any purpose relating to the Subcontract Works and shall allow the Employer licence in similar terms. If required, the Sub-Contractor shall supply the Contractor with such drawings, negatives and information showing or describing the Sub-Contract Works as built and concerning the maintenance, operation and management of the Sub-Contract Works as may be required under the Main Contract.

## 4.0 VARIATION/INSTRUCTIONS

- 4.1 The Contractor may by written instruction or verbal instruction which will be confirmed in writing to the Sub-Contractor, alter or modify the design, quantity or quality of, or the conditions under which the Sub-Contract works shall be executed and such alterations or modifications shall not vitiate this Sub-Contract. In the event that such alteration or modification constitutes a variation or change under the terms of the Main Contract or is a requirement of the Contractor then unless the same is due to the Sub-Contractor's negligence, omission or default, such variation or change shall be valued and paid for by the Contractor at the prices contained in the Sub-Contractor's tender or where the varied work differs from that originally tendered for, at prices or charges analogous thereto.
- 4.2 The Sub-Contractor shall comply with instructions forthwith. If, after issue of a written notice by the Contractor requiring compliance with an instruction the Sub-Contractor does not comply within the period specified within the notice (or if no period is specified within seven days) then the Contractor may employ and pay other persons to execute any work which may be necessary to give effect to such instruction. All costs and expenses incurred by the Contractor in connection with such

employment shall be recoverable from the Sub-Contractor as a debt.

- 4.3 The Sub-Contractor must only act on instructions given or confirmed by a Contractor's representative.

## **5.0 COMMENCEMENT AND COMPLETION**

5.1 The Sub-Contractor shall commence the Sub-Contract Works in accordance with the Contractor's notice to do so and shall regularly and diligently carry out the Sub-Contract Works [including the production of and the obtaining of all necessary approvals of any drawings, details or calculations for which he is responsible at such times and such periods as set out in the Subcontract Order or as subsequently amended.

5.2 The Sub-Contractor is to notify the Contractor in writing as soon as he is aware of any delay which affects the progress of the Sub-Contract Work.

5.3 The Sub-Contractor shall comply with the dates set out in the Subcontract Order for the commencement of the work, or with the latest programme amending such dates. If the Sub-Contractor fails to complete the works or to carry out the works strictly in accordance with the drawing and specification, or to maintain or to carry out his obligations under any condition of the agreement, he shall pay, or allow, the Contractor to deduct a sum equivalent to any loss or damage incurred by him and resulting from, or in any way caused by the Sub-Contractor's failure. Where the Sub-Contractor is unable to maintain progress of the works the Contractor reserves the right to employ supplementary labour – after giving the Subcontractor 7 days notice in writing of his intentions to do so making due adjustments to the Sub-Contract sum.

5.4 The Sub-Contractor shall have access to such part or parts of the Site as the Contractor may direct. The Sub-Contractor acknowledges that such access shall be in common with other Sub-Contractors and suppliers and the Sub-Contractor shall not impede other Sub-Contractors and suppliers in the execution of their work on the Site.

5.5 The Sub-Contractor shall satisfy himself before commencing the Sub-Contract Works as to the work previously carried out by others which may affect the Sub-Contract Works and shall immediately notify the Contractor in writing of any difficulties with the same.

## **6.0 HEALTH & SAFETY**

6.1 The Sub-Contractor shall comply with all current health and safety legislation, the Contractors Safety Policy to the Contractors Safety Policies and that of the Client under the Contract.

6.2 Prior to commencement on site, the Sub-Contractor shall submit his company Safety Policy to the Contractor, together with any necessary method statements.

6.3 Notwithstanding the generality of the foregoing the Sub-Contractor shall:

6.3.1 provide the Contractor with any information which the Contractor considers is or may be necessary to ensure that the Health & Safety Plan continues to comply with CDM Regulations.

6.3.2 comply at no cost to the Employer or Contractor with all reasonable requirements of the Contractor to the extent that such requirements are necessary for compliance with the CDM Regulations. No extension of time shall be given in respect of such compliances.

## **7.0 PAYMENT**

7.1 The Sub-Contractor shall make an effective application for payment monthly, unless otherwise advised, by our Quantity Surveyor, to work properly executed in accordance with the Sub-Contract. The contractor shall value the Sub-Contract Works included in each application by the Sub-Contractor and shall submit such valuation to the Client with the Contractor's next application under the Contract. The amount of each interim payment to the Sub-Contractor shall be the Contractor's gross valuation less any amounts which may be deductible in retention and trade discount as stated in the Sub-Contract Order and the total amount due in previous interim payments in respect of the Sub-Contract Works.

7.2 An application for payment will only be effective for the purposes of this Clause to the extent that the information accompanying the application shall include a statement showing how the total amount claimed has been calculated.

7.3 Within 17 days of the end of the calendar month for which an application correctly made under the Subcontract is received. The contractor shall give the Sub-Contractor written notice, setting out the sum which will become due to it in respect of that application and the basis upon which it has been calculated. The sum so notified becomes due to the Subcontractor on the day following provision of the notice.

7.4 The final date for payment of any sum which becomes due to the Sub-Contractor shall be 21 days after the sum becomes due pursuant to Clause 7.3

7.5 Not later than 2 days before the final date for payment of any interim payment, the Contractor may give a written notice to the Sub-Contractor which shall specify any amount proposed to be withheld and/or deducted from the amount notified under Clause 7.3, the ground or grounds for such withholding and/or deduction and the amount of the withholding and/or deduction attributable to each ground. If no notice is given, the Contractor shall pay the amount progress to the programme, stated in his notice under Clause 7.3 by the final date for payment of it.

7.6 The Sub-Contractor shall note that failure to provide the Contractor with such method statements, as built drawings and other as-built documentation, including manuals as may be required under the Sub-Contract, may result in the Contractor withholding monies equivalent to the value of service not provided.

7.7 Without prejudice to Clause 7.3 where the Contractor has a claim for loss and/or expense and/or damage which he has suffered or incurred by reason of any breach of, or failure to observe, the provisions of the Sub-Contract by the Sub-Contractor (whether or not the Contractor may have further claims for loss and/or expense and/or damage by reason of any breach or failure) the Contractor shall be entitled to withhold or deduct or set off the amount, properly demonstrated of such loss and/or expenses and/or damage so suffered or incurred against any money otherwise due under the Sub-contract from the Contractor to the Sub-Contractor including any Sub-Contractor's retention. Save always that the Contractor shall not be entitled to set off against money due pursuant to an award of the Adjudicator.

7.8 In the event that they Employer under the Main Contract is or becomes insolvent as defined in Section 113(2) of Part II of the Housing Grants, Construction and Regeneration Act 1996, the contractor shall not be obliged to make payment to the Sub-Contractor unless payments of sums referable to the Sub-Contract Work is received by the Contractor under the Main Contract.

7.9 Subject to Clause 7.7 where the Contractor fails to pay a sum otherwise due to the Sub-Contractor under the Agreement by the final date for payment of that sum to the Sub-Contractor provided that the Sub-Contractor gives the Contractor written notice of its intention to suspend performance of its obligations under the Agreement and if such failure to pay continues for at least 14 days after the giving of such notice, then at anytime thereafter but provided the failure is still continuing, the Sub-Contractor may suspend performance of the obligations under this Sub-Contract.

7.10 If the Contractor fails to pay the amount, or any part thereof due to the Sub-Contractor by the final date for payment, simple interest will be due on such amounts at 3% over the Bank of England Base Rate which is current at the date the payment by the Contract became overdue.

## 8.0 INSURANCE

8.1 The Sub-Contractor shall be liable for and shall indemnify the Contractor against the matters which the Contractor undertakes to indemnify the Employer under the Main Contract insofar as such matters relate to the Sub-Contract Works. Without prejudice to the obligation to so indemnify the Sub-Contractor shall take out and maintain the necessary insurance against Employer's Liability and third party liability risks for not less than the sums below. The Sub-Contractor shall produce documentary evidence to the Contractor if such insurance ceases to be available so that the parties can discuss the best means of predicting their respective interests.

- (a) Employee Liability £10m
- (b) Public Liability £5m
- (c) Contractors All Risks £2m

8.2 If required, the Sub-Contractor shall take out or maintain professional indemnity insurance for a period of 12 years from practical completion of the Main Contract Work for the minimum amount of £2m in respect of any negligence by the Sub-Contractor in the design of any work, goods and/or matters provided that the same is available at commercially reasonable rates. The Sub-Contractor shall inform the Contractor if such insurance ceases to be available so that the parties can discuss the best means of protecting their respective interests.

8.3 If the Sub-Contractor shall fail to take out or maintain the insurance required in Clauses 8.1 and 8.2 then the Contractor may, without prejudice to any other rights or remedies it possesses, take out or maintain the insurances and the costs thereof including any premiums payable shall be recoverable from the Sub-Contractor as a debt.

8.4 The Contractor will not accept responsibility for any loss or damage to the Sub-Contractor's Work, materials, plant or equipment unless caused directly by the negligence of the Contractor.

## 9.0 ASSIGNMENTS AND SUB-LETTING

9.1 The Sub-Contractor shall not assign the Sub-Contract nor sub-let any portion thereof without the prior written consent of the Contractor.

## 10.0 DEFECTS

10.1 The Sub-Contractor shall rectify at his own cost any defects, shrinkages or other faults in the Sub-contract Works due to his failure to properly carry out and complete the Sub-Contract Works in accordance with the Sub-Contract and shall have the like obligations as the Contractor under the Main Contract to rectify any such defects, shrinkages or faults which may arise until the issue of the Certificate of Making Good Defects or any such similar certificate under the Main Contract.

## 11.0 ADJUDICATION

11.1 Provided always that the order is a qualifying construction contract for the purpose of the Act, either the Contractor or the Sub-Contractor shall apply to have any dispute of difference arising under the order referred to adjudication, where the dispute of difference touches one, which has already been referred to adjudication procedures in the Main Contract, then the adjudication procedures in the Main Contract shall apply as between the Contractor and the Sub-Contractor. The dispute of difference shall be resolved in like manner to the one under the Main Contract and by the same adjudicator, if he is agreeable. Otherwise, the adjudicator shall be appointed on either party's unilateral request to the Construction Industry Council for the appointment of any adjudicator.

11.2 Where there is no concurrent dispute under the Main Contract, in the absence of any agreement as to the choice of an adjudicator, and provided that not less than 14 days have elapsed since either party informed the other in writing of the existence of a dispute or difference, the president or Vice President of the Royal Institute of Chartered Surveyors still appoint the adjudicator.

11.3 Any adjudication proceedings in accordance with Clause 11.2 shall be subject to the then prevailing version of the Construction Industry Council Model Adjudication procedure.

## 12.0 DETERMINATION

12.1 Should the Sub-Contractor:

- 12.1.1 Abandon or without reasonable cause suspend the carrying out of any part of the Sub-Contract Work or
- 12.1.2 refuse or fail to remove defective work, and/or materials, or:
- 12.1.3 fail to comply with Clause 4.2, 5.1, 9.1 or commit any other material breach of the Sub-Contract and fail to remedy the same after notice in writing from the Contractor.

Then if such default shall continue for seven days after the date of a written notice specifying the default has been given to the Sub-Contractor or if the Sub-Contractor shall at any time thereafter repeat such default [whether previously remedied or not], the Contractor may without prejudice to any other rights or remedies thereupon by notice by recorded delivery forthwith determine the Sub-Contractor's employment provided that such notice[s] shall not be given unreasonably or vexatiously.

12.2 If the Sub-Contractor shall make or offer to make any arrangement or composition with his creditors or has a proposal in respect of the company for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 or has an application made under the Insolvency Act 1986 in respect of the company to the court for the appointment of an administrator or commit an act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against him or [if he is a limited company] any resolution or petition to wind-up such company's undertaking property or assets or any part of them shall be appointed, then the Sub-Contract shall automatically determine forthwith.

12.3 Notwithstanding any other provision of the Sub-Contract, if the employment of the Contractor under the Main Contract is determined for any reason then the employment of the Sub-Contractor under the Sub-Contract shall thereupon also automatically determine forthwith.

12.4 If the Sub-Contractor's employment is determined under Clauses 12.1, 12.2 or 12.3 hereof then the following shall apply:

- 12.4.1 the contractor may expel the Sub-Contractor from the Sub-Contract Works and take over all the materials and plant provided by or on behalf of the Sub-Contractor which are upon the Site or are being used in connection therewith and may use the same to complete the Sub-Contract Works.
- 12.4.2 the Contractor shall be liable only for the value of such part of the Sub-Contract Works properly executed at the date of such determination. Such value shall be calculated in accordance with the Sub-Contract and shall include the value of any unfixated materials and goods for incorporation in the Sub-Contract Works, and properly stored on the site and in which property has been passed to the Contractor or the Employer but shall include no other sum or sums whatsoever.
- 12.4.3 Where such determination is due to the default of the Sub-Contractor, all damages, costs, losses and expenses incurred by the Contractor in connection with such determination shall be payable by the Sub-Contractor to the Contractor and shall be recoverable as a debt. The Contractor shall have the right to deduct from or set off against any sums due to the Sub-Contractor under the Sub-Contract all such damages, costs, losses and expenses in the event of a determination under Clause 12.2 only the Contractor shall be entitled as agent for any other company within the Lagan Group of companies under any other contract it has with the Sub-Contractor.
- 12.4.4 The Sub-Contractor shall not be entitled to payment of any sums that may become due under this Clause 12.4 where the determination is due to the Sub-Contractor's default until completion of the Works and ascertainment by the Contractor of such damages, costs, losses and expenses referred to in Clause 12.4.3.

### **13.0 NOTICES**

- 13.1 All notices required to be given hereunder by either party shall be in writing and shall be deemed to be duly given or made when delivered [in the case of personal delivery] or when dispatched [in the case of facsimile transmission] or 2 days after posting if sent by pre-paid post.
- 13.2 Any notice required to be given hereunder by the Sub-Contractor to the Contractor [except a notice sent by facsimile transmission] shall be delivered or sent to the Contractor's registered office with a copy thereof at the same time being sent to the Contractor's relevant site or project office.
- 13.3 Any notice required to be given hereunder by the Contractor to the Sub-Contractor (except a notice sent by facsimile transmission) shall be deemed or sent at the Contractor's option to either the Sub-Contractor's registered office/principal office or to the Sub-Contractor's relevant site or project office.
- 13.4 A written notice includes a notice by facsimile transmission. Any facsimile transmission shall be sent to the parties respective as stated in the Sub-Contract Order or to such other fax number as either party may hereafter specify for this purpose to the other party.
- 13.5 Where under the Agreement, an act is required to be done within a specified period of days, after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday, that day shall be excluded.

### **14.0 LAW**

- 14.1 This order will be governed by and construed in accordance with the law of England and Wales.