

RILMAC HOLDINGS LIMITEDS
STANDARD TERMS AND CONDITIONS OF SALE
FOR CONSTRUCTION WORK

1. DEFINITIONS

Unless the context otherwise requires or these terms and conditions specifically provides otherwise, the following words and phrases, where they appear in capitalised form in these terms and conditions (excluding the Requirements), shall have the meanings stated or referred to below:

- "Base Date"** means the date the Sub-Contract is awarded to the Sub-Contractor
- "Base Rate"** means the rate set from time to time by the Bank of England's Monetary Policy Committee or any successor
- "CDM Regulations"** means the Construction (Design and Management) Regulations 2015
- "Change"** means
- (a) any alteration by the Contractor in the Requirements that gives rise to an alteration in the design, quality or quantity of anything that is required to be executed in accordance with this Sub-Contract; or
 - (b) any alteration by the Contractor of any restriction or obligation set out in the Requirements as to the manner in which the Sub-Contractor is to execute the Sub-Contract Works or the imposition of additional restrictions or obligations.
- "CIS"** means the current Construction Industry Scheme under the Finance Act 2004
- "Construction Act"** means the Housing Grants, Construction and Regeneration Act 1996
- "Contractor"** means the person or firm who purchases the Sub-Contract Works from the Sub-Contractor

"Defect" means any fault in the Sub-Contract Works that arises as a consequence of a failure by the Sub-Contractor to comply with his obligations under this Sub-Contract

"Employer" means the Employer named in the Main Contract
has the meaning given to it in clause 31

"Force Majeure"

"Hold Point"

means an identified point in the work process, beyond which subsequent activity cannot proceed without release of the hold point

"Insolvent"

means either Party is insolvent when it:

- (a) suspends, or threatens to suspend, payments of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (b) commences negotiation with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors; or
- (c) a petition is filed against it, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up; or
- (d) an application is made to the Court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given or an administrator is appointed over it; or
- (e) a floating chargeholder over its assets has become entitled to appoint, or has appointed, an administrative receiver; or
- (f) a person becomes entitled to appoint a receiver over its assets, or

a receiver is appointed over its assets; or

- (g) one of its creditors or an encumbrancer attaches or takes possession of, or a distress, execution, sequestration forced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days.

"Joint Fire Code"	means the edition of the 'Joint Code of Practice on the Protection from Fire of Construction Sites and Building Undergoing Renovation' published by the Construction Confederation and the Fire Protection Association that is current at any particular time
"Main Contract"	means the Contract between the Employer and the Contractor for the execution of the Project
"Others"	means persons whose presence on the Site has been authorised by the Employer, other than the Contractor, his sub-contractors and suppliers and any other persons under the control and direction of the Contractor
"Party"	means either the Contractor or the Sub-Contractor
"Payment Plan"	means the plan submitted by the Sub-Contractor to the Contractor detailing the points within the Sub-Contractor for which payment is due to be made.
"Period for Completion"	means the period for completion agreed between the Contractor and the Sub-Contractor at the Base Date
"Practical Completion"	means when the Sub-Contract Works have been completed in accordance with the Requirements to the Contractor's reasonable satisfaction.
"Practical Completion of the Project"	Practical Completion of the Project occurs in the manner specified in the Main Contract

"Price"	means the price payable by the Contractor to the Sub-Contractor for the provision of the Sub-Contract Works.
"Project"	means the works being undertaken by the Contractor in accordance with the Main Contract
"Rectification Period"	means the period commencing on Practical Completion and expiring 12 months after the date of Practical Completion of the Project occurs
"Requirements"	means the documents that have been prepared by the Contractor and agreed by the Sub-Contractor setting out the requirements for the SubContract Works
"Scheme"	means for construction contracts made in accordance with section 114 of the Construction Act
"Site"	means the site where the Project is to be constructed
"Specified Peril"	means fire, lightning, explosion, storm, tempest, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft or other aerial devices or articles therefrom , riot or civil commotion
"Statutory Requirements"	means in relation to the Project: <ul style="list-style-type: none"> (a) any Act of Parliament and any instrument, rule or order made under any Act of Parliament; (b) any regulation or bye-law of any local authority or of any statutory undertaker which has jurisdiction with regard to the Project or with whose systems those of the Project are or will be connected; and (c) any directive of the European Union having the force of law

- "Sub-Contract"** means these Terms and Conditions, the Schedules and the Requirements
- "Sub-Contractor"** means the member of the Rilmac group of companies with whom the Contract is formed in accordance with clause 2. Members of the Rilmac Group include Rilmac Holdings Limited (registered number 00587816), Rilmac Insulation Limited (registered number 01022984), Rilmac Fabrication Limited (registered number 00938327), Rilmac Scaffolding Limited (registered number 02511474), Rilmac Scaffolding Scunthorpe Limited (registered number 03817964), Rilmac Fire Protection Limited (registered number 03655192), Rilmac Limited (registered number 00389566) and Rilmac Scaffold Hire Limited (registered number 05902450). The registered office for all of the Rilmac group of companies is Unit 7, Crofton Drive, Allenby Road Industrial Estate, Lincoln, LN3 4NJ.
- "Sub-Contract Works"** means the works to be undertaken by the Sub-Contract in accordance with the Sub-Contract and which form part of the Project being undertaken by the Contractor in accordance with the Main Contract
- "VAT"** means Value Added Tax

2. HEADINGS, REFERENCES TO PERSONS, LEGISLATION ETC

In these Sub-Contract Conditions and Schedules unless the context otherwise requires:

- 2.1 the headings are included for convenience only and shall not affect the interpretation of this Sub-Contract;
- 2.2 the singular includes the plural and vice versa;
- 2.3 a gender includes any other gender;
- 2.4 a reference to a "person" includes any individual, firm, partnership, company and any other body corporate; and
- 2.5 a reference to a statute, statutory instrument or other subordinate legislation ("**legislation**") is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it with or without modification

3. RECKONING PERIODS OF DAYS

Where under this Sub-Contract an act is required to be done within a specified period of days (but not weeks, months or years) after or from a specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales, that day shall be excluded.

4. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Notwithstanding any other provision of this Sub-Contract, nothing in this Sub-Contract confers or is intended to confer any right to enforce any of its terms upon any person who is not a party to it

5. COMMUNICATIONS

5.1 Save as provided in clause 5.2 all communications required to be made by one Party to the other in accordance with this Sub-Contract shall be in writing and shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties from time to time agree in writing for the purposes of this Sub-Contract. All communications shall be sent to either the address notified from time to time by a Party for the purposes of communications or if no address has been notified, the address given in these Sub-Contract Conditions

5.2 Any notice required to be given by clauses 30 to 33 shall be delivered by hand or sent by Recorded Signed for or Special Delivery Post

6. APPLICABLE LAW

This Sub-Contract (including non-contractual disputes or claims) shall be governed and construed in accordance with the law of England and the English courts shall have exclusive jurisdiction over any dispute or difference that may arise (including non-contractual disputes or claims).

7. GENERAL OBLIGATIONS OF THE SUB-CONTRACTOR

7.1 The Sub-Contractor shall execute and complete the Sub-Contract Works in accordance with these terms and conditions.

7.2 The Sub-Contractor warrants that the Sub-Contract Works will be carried out with reasonable skill and care.

7.3 The Sub-Contractor shall take all reasonable steps to encourage employees and agents of the Sub-Contractor and his sub-contractors, employed in the execution of the Sub-Contract Works to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme

8. STATUTORY REQUIREMENTS

8.1 The Sub-Contractor shall comply with the Statutory Requirements so far as they relate to the Sub-Contract Works

8.2 If compliance with the Statutory Requirements necessitates an amendment to the Requirements the Contractor shall direct the necessary amendments.

8.3 The Contractor shall make any applications and give any notices required by the Statutory Requirements. The Sub-Contractor shall as soon as reasonably possible provide to the Contractor:

8.3.1 the information and assistance necessary in order to permit such applications to be made and notices to be given in respect of the SubContract Works; and

8.3.2 any specific information that may be reasonably requested concerning the Sub-Contract Works in order to permit such applications to be made and notices to be given in respect of other elements of the Project

9. CONFLICT AND DISCREPANCY

9.1 If either Party identifies any discrepancy within or between the Requirements and/or the Statutory Requirements, including any discrepancy that arises as a consequence of an alteration to the Statutory Requirements, he shall as soon as reasonably possible notify the other Party accordingly

9.2 Where a discrepancy is identified within the Requirements, the Contractor shall direct the Sub-Contractor which of the discrepant provisions the Sub-Contractor is required to adopt and the Sub-Contractor shall proceed accordingly. Any direction given under this clause 9.2 shall be treated as a Change.

9.3 Where a discrepancy is identified between the Requirements and/or the Statutory Requirements, the Contractor shall direct which of the discrepant provisions he wishes the

Sub-Contractor to adopt and that direction will be treated as giving rise to a Change. No direction shall require the Sub-Contractor to act otherwise than in accordance with the Statutory Requirements

10. STANDARDS OF MATERIALS

The Sub-Contractor shall use in the execution of the Sub-Contract Works materials and goods of the kinds and standards described in this Sub-Contract or, if no such kinds or standards are described, materials and goods that are fit for their intended purpose. All materials and goods used for the Sub-Contract Works shall be of satisfactory quality. Where materials or goods of the kinds and standards described in this Sub-Contract are not procurable the Sub-Contractor shall propose for the acceptance of the Contractor an alternative that is wherever possible of an equivalent or better kind or standards, such acceptance not to be unreasonably delayed or withheld.

11. USE OF SCAFFOLDING

The Sub-Contractor shall at its own risk and at such times and for such periods as the Contractor may direct have free use of the Contractor's scaffolding, ladders and the mechanical hoisting facilities which may be available on the Site and will make good at its own expense any damage, loss or injury suffered by the Contractor or others as a result of such use.

12. TEMPORARY SERVICES, WORKSHOPS AND OFFICES

12.1 The Sub-Contractor shall, at his own risk have reasonable and free use, in common with others engaged upon the Site, of any water supply, temporary plumbing, temporary safety lighting, temporary electric power, hoisting facility and craneage available at the Site.

12.2 The Sub-Contractor shall provide where in the Sub-Contractor's opinion necessary, at his own expense any requisite task lighting, temporary site office, workshop, accommodation, lighting, power, fuel etc and any other utilities, supplies and facilities required for the performance of the Sub-Contract. Electrical power supplied for small tools and equipment used on the Site shall not exceed 110v AC single phase. Any such tools and electrical equipment must be in good mechanical condition and suitable for the electric power supply and fittings made available and fitted with suitable plug sockets and connectors to BS4343 (CEE17) or any other standard that the Contractor may direct.

13. WELFARE FACILITIES

13.1 The Sub-Contractor shall, at its own risk, have reasonable and free use, in common with others engaged upon the site of the temporary welfare accommodation and/or services (including first aid facilities and treatment) which the Contractor or the Employer may provide on the Site in connection with the Sub-Contract.

14. ATTENDANCE

14.1 Except as set out in Clauses 11, 12 and 13 or unless agreed otherwise the Sub-Contractor shall be solely responsible for the provision of all plant, equipment, services, accommodation and the like necessary for the execution of the Sub-Contract Works

14.2 All rubbish arising from the execution of the Sub-Contract Works shall be regularly cleared away by the Sub-Contractor so as to ensure that the Site is at all times free of accumulations of such rubbish

14.3 Prior to Practical Completion the Sub-Contractor shall properly clear up and leave the Sub-Contract Work and all areas made available to him for the purposes of carrying out the SubContract Works clean and tidy.

15. HEATH AND SAFETY

15.1 The Sub-Contractor shall comply with all health and safety legislation applicable to the execution of the Sub-Contract Works and comply with all reasonable directions issued by the Contractor in order to secure compliance by the Sub-Contractor and the Contractor with health and safety legislation applicable to the Sub-Contract Works. Compliance with such directions shall not be treated as giving rise to a Change except to the extent that they require the Sub-Contractor to exceed his legal obligations

15.2 Where the Contractor notifies the Sub-Contractor prior to the Base Date that the Joint Fire Code applies to the Project, both Parties shall comply with its requirements. Where either Party is notified of any remedial measures considered necessary by an insurer as a consequence of non-compliance with the Joint Fire Code, the other Party shall be notified and the Party responsible for the non-compliance shall implement the remedial measures without delay. The implementation of such remedial measures shall not be treated as giving rise to a Change

16. COMMENCEMENT AND COMPLETION

- 16.1 The Contractor shall give the Sub-Contractor the period of notice specified in the Requirements of the date on which access to the Site will be given and shall thereafter give to the Sub-Contractor such access to part or parts of the Site at such times and for such periods as may be necessary to enable the Sub-Contractor to execute and complete the Sub-Contract Works in accordance with this Sub-Contract. Access to the Site shall be subject to any restrictions set out in the Requirements. The Sub-Contractor shall not be entitled to exclusive possession of the Site or any part of it and acknowledges that other works may be undertaken on the Site at the same time as the Sub-contract Works, either by the Contractor or by Others.
- 16.2 Upon access to the Site being given in accordance with clause 16.1 the Sub-Contractor shall commence the execution of the Sub-Contract Works on Site and shall proceed with the Sub-Contract Work in such manner as to achieve Practical Completion within the Period for Completion
- 16.3 The Sub-Contractor shall at all times use his reasonable endeavours to prevent or reduce delay to the progress or to the completion of the Sub-Contract Works and the Project
- 16.4 The Contractor shall use its best efforts to ensure that the Sub-Contractor is aware of the actual and projected progress of the Project, including the date by which the Contractor reasonably anticipates completing the Project or any section of it (if applicable)
- 16.5 The Sub-Contractor shall notify the Contractor when in his opinion Practical Completion has occurred and, if he agrees, the Contractor shall issue a statement recording the date of Practical Completion. Where the Contractor does not agree that Practical Completion has occurred, he shall notify the Sub-Contractor of the work that he requires to be completed before Practical Completion will occur. When the Sub-Contractor considers such work has been completed, he shall notify the Contractor and, if and when reasonably satisfied that it has been completed, the Contractor shall issue a statement recording the date of Practical Completion
- 16.6 Where no statement is issued by the Contractor, Practical Completion will be deemed to have occurred on the same date that Practical Completion of the Project occurs

17. CONTRACTOR'S DAMAGES

THE CONTRACTOR'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

17.1 Nothing in these conditions shall limit or exclude the Sub-Contractor's liability for:

17.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;

17.1.2 fraud or fraudulent misrepresentation; or

17.1.3 breach of the terms by section 2 of the Supply of Goods and Services Act 1982.

17.2 Subject to clause 17.1:

17.2.1 the Sub-Contractor shall under no circumstances whatever be liable to the Contractor, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Sub-Contract; and

17.2.2 the Sub-Contractor's total liability to the Contractor in respect of all other losses arising under or in connection with the Sub-Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price.

17.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

17.4 This clause 17 shall survive termination of the Sub-Contract.

18. TESTING AND COMPLIANCE

18.1 Where the Contractor directs the Sub-Contractor to open up for inspection or to test any work executed or materials or goods supplied for the Sub-Contract Works and that opening up, inspection or test is not provided for by this Sub-Contract, the direction shall be treated as giving rise to a Change unless the opening up, inspection or test discloses that the work, materials or goods are not in accordance with this Sub-Contract. Where the work, materials or goods are found not to be in accordance with this Sub-Contract the direction shall not be treated as giving rise to a Change.

18.2 Where work, materials or goods are not in accordance with this Sub-Contract the Contractor may direct the Sub-Contractor to rectify any non-compliance

19. RECTIFICATION OF DEFECTS

19.1 During the Rectification Period the Contractor may direct the Sub-Contractor to remedy any Defect. The Sub-Contractor shall comply with any reasonable directions within a reasonable time and at no cost to the Contractor

19.2 After the expiry of the Rectification Period and when all Defects that the Sub-Contractor has been directed to remedy under clause 19.1 have been remedied the Contractor shall issue a statement to that effect

20. CHANGES

20.1 Each Party shall as soon as reasonably possible notify the other:

20.1.1 whenever he considers that a direction gives rise to a Change; and/or

20.1.2 of the occurrence of any event that under this Sub-Contract is required to be treated as giving rise to a Change

20.2 The consequences of any Change shall be determined in accordance with the provisions of clause 20 so that either:

20.2.1 the value of the Change and any adjustment to the Period for Completion is agreed in accordance with clause 20.5 prior to a direction being issued; or

20.2.2 a fair valuation of the Change is made in accordance with clause 20.6 and any adjustment to the Period for Completion is notified in accordance with clause 20.4

20.3 Prior to directing any Change the Contractor may provide details of the proposed change and request the Sub-Contractor to submit a quotation in respect of the Change. The Sub-Contractor shall provide the quotation within 10 days of the request, or within such longer period as the Contractor states in his request

20.4 The quotation provided by the Sub-Contractor shall:

20.4.1 give a valuation of the Change calculated in accordance with the principles

- set out in clause 20.6;
 - 20.4.2 identify any adjustment to the Period for Completion that will be required as a consequence of the Change;
 - 20.4.3 be in sufficient detail for the Contractor to assess the amounts and periods required and, in particular, shall state separately any amounts included in respect of loss and/or expense;
 - 20.4.4 identify the period for which the quotation remains open for acceptance
 - 20.5 The Contractor may accept the quotation or request the Sub-Contractor to submit a revised quotation. When the Contractor accepts a quotation he shall issue a direction identifying the quotation that is being accepted, the agreed value and any agreed adjustment to the Period for Completion
 - 20.6 Where agreement is not reached under clause 20.5 within 10 days of a change being identified a fair valuation of any Change shall be made by the Sub-Contractor. A fair valuation shall have regard to the following:
 - 20.6.1 the nature and timing of the Change;
 - 20.6.2 the effect of the Change on other parts of the Sub-Contract Works; and
 - 20.6.3 any loss and/or expense that will be incurred as a consequence of the Change provided always that the fair valuation shall not include any element of loss and/or expense if that element was contributed to by any cause other than a Change
- and such valuation shall be binding on the Contractor.

21. HOLD POINTS

- 21.1 Unless specified otherwise, any Hold Point referenced in this Sub Contract shall only be released by the Contractor.
- 21.2 Details of any Hold Point shall be agreed between the parties. Release of the Hold Point is required prior to the Sub Contractor proceeding to the next stage of providing the Sub Contract Works dependent on that Hold Point. Release of any Hold Point shall not be unreasonably withheld or delayed.

22. PAYMENTS

- 22.1 No later than 7 days before any date when the Sub-Contractor consider an interim payment advice should be issued by the Contractor he shall submit a detailed application for payment to the Contractor setting out the amounts he considers should be included within a payment advice and the amount that he considers due
- 22.2 Prior to Practical Completion the Contractor shall pay to the Sub-Contractor on the dates stated in the agreed Payment Plan the relevant interim payment. At Practical Completion the Contractor shall pay all outstanding sums to the Sub-Contractor
- 22.3 The Contractor's obligation to make any payment to the Sub-Contractor is subject to the provisions of the CIS.
- 22.4 Notwithstanding anything to the contrary elsewhere in this Sub-Contract if the Employer or any such person as is responsible for discharging payment to the Contractor under the Main Contract, as the case may be is subject to:

- (a) Winding up proceedings under the Companies Act
- (b) Examinership proceedings under the Companies Act
- (c) A winding-up or similar order by a court
- (d) Appointment of a receiver over any of its property or assets

Then the Contractor shall not be obliged to make any further payment to the Sub-Contractor of any amount which is due or may become due to the Sub-Contractor unless the Contractor has received payment in respect thereof from the Employer or such other person, as the case may be and then only to the extent of such receipt.

23. INTEREST

- 23.1 If either Party fails to make payment in accordance with this Sub-Contract the other Party shall be entitled to compound interest on the amounts outstanding calculated at a rate of 4% per annum in excess of the Base Rate for the period until payment is made
- 23.2 It is agreed that the provisions of clause 23.1 constitute a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998

23.3 If, in connection with any exercise of his rights or suspension under section 112 of the Construction Act the Sub-Contractor claims an entitlement to costs and expenses incurred as a result, he shall with his application to the Contractor or subsequently on request supply such details of those costs and expenses as are necessary to enable his entitlement to be ascertained.

24. VAT

24.1 All amounts within this Sub-Contract are exclusive of any VAT that may be due to the Sub-Contractor in respect of the Sub-Contract Work

24.2 Where required by applicable legislation VAT shall be added to any payment by either Party to the other and the Party receiving payment shall provide any documentation reasonably necessary in order to permit such a payment to be properly made

25. INSURANCES

25.1 The Sub-Contractor shall effect and maintain such insurance as the Sub-Contractor feels is reasonably necessary

25.2 The terms of any insurance or the amount of cover shall not relieve the Sub-Contractor of any liabilities under these conditions.

26. ASSIGNMENT

26.1 The Contractor may not assign either the benefit or the burden of this Sub-Contract without the consent of the other Contractor

26.2 The Sub-Contractor may assign the benefit of this Sub-Contract at any time without the consent of the Sub-Contractor

27. PROVISIONS APPLICABLE TO TERMINATION GENERALLY

27.1 The provisions of clauses 28 to 30 are without prejudice to any other rights or remedies that the Parties may possess

28. TERMINATION BY SUB-CONTRACTOR

28.1 Without limiting its other rights and remedies, the Sub-Contractor may terminate this SubContract with immediate effect by giving written notice to the Contractor if:

- 28.1.1 the Contractor commits a material breach of any term of the contract and (if such breach is remediable) fails to remedy that breach within 7 days of being notified in writing to do so;
- 28.1.2 the Contractor suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, (being a company or a limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing applies;
- 28.1.3 the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- 28.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- 28.1.5 the other party (being an individual) is the subject of a bankruptcy petition or other;
- 28.1.6 a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 28.1.7 an application is made to the court, or an order is made, for the appointment

- of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Contractor (being a company);
- 28.1.8 the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 28.1.9 a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
- 28.1.10 any event occurs or proceeding is taken with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 28.1.2 to 28.1.9 (inclusive);
- 28.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 28.1.12 the other party's financial position deteriorates to such an extent that in the Sub-Contractor's opinion the Contractor's capability to adequately fulfil its obligations under the Sub-Contract has been placed in jeopardy; or
- 28.1.13 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 28.2 Without limiting its other rights or remedies, the Sub-Contractor may terminate the SubContract with immediate effect by giving written notice to the Contractor if the Contractor fails to pay any amount due under this Sub-Contract on the due date for payment and fails to pay all outstanding amounts within five days after being notified in writing to do so.
- 28.3 Without limiting its other rights or remedies, the Sub-Contractor may suspend the SubContract Works under the Sub-Contract or any other contract between the Contractor and the Sub-Contractor if the Contractor becomes subject to any of the events listed in clause 28.1.2 to 28.1.13, or the Sub-Contractor reasonably believes that the Contractor is about to become subject to any of them, or if the Contractor fails to pay any amount due under this Sub-Contract on the due date for payment.

29. CONSEQUENCES OF TERMINATION

29.1 On termination of the Sub-Contract for any reason:

29.1.1 the Contractor shall immediately pay to the Sub-Contractor all of the Sub-Contractor's outstanding unpaid invoices and interest and, in respect of subcontract work undertaken but for which no invoice has been submitted, the Sub-Contractor shall submit an invoice, which will be payable by the Contractor immediately on receipt;

29.1.2 the Contractor shall return any materials or deliverables which have not been fully paid for. If the Contractor fails to do so, then the Sub-Contractor may enter the Contractor's premises and take possession of them. Until they have been returned, the Contractor shall be solely responsible for their safekeeping and will not use them for any purpose not connected with this Sub-Contract;

29.1.3 the accrued rights, remedies, obligations and liabilities of the parties at the expiry or termination of this Sub-Contract shall be unaffected, including the right to claim damages in respect of any breach of the Sub-Contract which has existed at or before the date of termination or expiry; and

29.1.4 clauses which expressly or by implication survive termination shall continue in full force and effect.

30. TERMINATION OF THE MAIN CONTRACT

30.1 The Sub-Contractor's employment under this Sub-Contract shall automatically terminate upon the termination of the Contractor's employment under the Main Contract. The Contractor shall immediately notify the Sub-Contractor of such termination

30.2 Where the Contractor's employment is terminated under the Main Contract, the provisions of clause 29 shall be applied

31. FORCE MAJEURE

31.1 For the purposes of this Sub-Contract, "**Force Majeure**" means an event beyond the reasonable control of the Sub-Contractor including but not limited to unforeseen shortages of personnel and/or goods and services, strikes, lock-outs or other industrial disputes (whether

involving the workforce of the Sub-contractor or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, epidemic/pandemic, breakdown of plant or machinery, fire, flood, storm or default or delay of suppliers or other subcontractors.

31.2 The Sub-Contractor shall not be liable to the Contractor as a result of any delay or failure to perform its obligations under this Sub-Contract as a result of a Force Majeure Event.

31.3 If it becomes reasonably apparent that the progress of the Sub Contract Works (or any part thereof) is being or is likely to be delayed by a Force Majeure Event, the Sub-Contractor shall give the Contractor written notice within 28 days of becoming aware of the delay. The notice shall give details of material circumstances and shall include particulars of the expected effects, including an estimate of the anticipated delay to the time for provision of the Sub Contract Works and the Sub-Contractor's reasonable additional losses and expenses occasioned by the delay.

31.4 The Contractor shall grant the Sub-Contractor such extension as is reasonable and the time for completion of the Sub Contract Works shall be adjusted accordingly.

31.5 The Contractor agrees that the Sub-Contractor's reasonable additional losses and expenses shall be payable by the Contractor to the Sub-Contractor.

31.6 If the Force Majeure Event prevents the Sub-Contractor from providing any of the Sub-Contract Works for more than 4 weeks, the Sub-Contractor may, without limiting its other rights or remedies, terminate this Contract immediately by giving written notice to the Contractor.

31.7 The occurrence of a Force Majeure Event shall be treated as a Change and shall be determined in accordance with the provisions of clause 20 above.

32. RESOLUTION OF DISPUTES

Should any dispute or difference arise between the Parties in relation to the Sub-Contract Works:

32.1 where the Parties agree to do so, the dispute or difference may be submitted to mediation in accordance with the provisions of clause 32

32.2 the dispute or difference may be referred to adjudication in accordance with the provisions of clause 34

32.3 the dispute or difference may be resolved by legal proceedings

33. MEDIATION

33.1 Either Party may identify to the other any dispute or difference as being a matter that he considers to be capable of resolution by mediation and upon being requested to do so, the

other Party shall within 7 days indicate whether or not he consents to participate in a mediation with a view to resolving the dispute. The objective of mediation under clause 36 shall be to reach a binding agreement in resolution of the dispute

33.2 The mediator or selection method for the mediator shall be determined by agreement between the Parties

34. ADJUDICATION

34.1 Either Party may at any time refer any dispute or difference arising under this Sub-Contract to the adjudication in accordance with the provisions of The Scheme, as amended by clause 34.3

34.2 The Adjudicator shall be a person nominated by the Managing Director for the time being of the Centre for Dispute Resolution

34.3 In the event that the Adjudicator does not have appropriate expertise in relation to any specialist matter in dispute, the Adjudicator shall appoint an independent expert possessing such expertise to report in writing to the Adjudicator upon that matter. The Adjudicator shall make available to the Parties both his written instructions to the independent expert and the report received from the independent expert as soon as is practicable and, in any event, prior to the issue of the Adjudicator's decision