

TEi Limited, Subcontract Terms & Conditions SC2 1985 Revision Jan 2005.

The Subcontractor, having been deemed to have read and noted the provisions of the Main Contract (other than details of the Contractor's prices therein) shall perform all the obligations imposed upon or undertaken by the Contractor under the Main Contract in respect of the Subcontract works as directed by the Contractor and to the satisfaction at all times of the Engineer and the Contractor except as so far as the following terms and conditions of Subcontract modify the Conditions of the Main Contract.

DEFINITIONS

The expressions used in this Subcontract shall have the meanings assigned to them in the Main Contract with the exception of the following:

- a "The Contractor" means TEi Limited
- b "The Subcontractor" means the Subcontractor appointed to carry out the Subcontract Works.
- c "The Main Contract" means the contract entered into between the Contractor and the Purchaser and the contract entered into between the Purchaser and the Owner where the Purchaser may not be the Owner.
- d "The Purchaser" means the Party with whom TEi Limited has entered into contract with. The Purchaser may also be the Owner.
- e "The Main Works" shall mean the Works as defined in the Main Contract.
- f "The Subcontract" means the contract entered into between the Contractor and the Subcontractor incorporating the conditions detailed herein.
- g "The Subcontractor's Authorised Representative" means the person nominated in writing at the commencement of the Subcontract.
- h "The Subcontract Works" means the work to be performed under this Subcontract detailed in the Second Schedule hereof and shall include all goods and materials to be supplied by the Subcontractor where the contract so requires.
- i "The Contractor's Representative" means the person appointed by the Contractor at the commencement of the Subcontract or from time to time, as the case may be.
- j "The Price" means the sum payable to the Subcontractor for the execution of the Subcontract Works.
- k "The Engineer" means the Purchaser's and/or Owner's Representative.
- l "The Site" means the place of execution of the Subcontract Works and Main Works.
- m "The Programme" is as defined in Appendix 'A'.
- n Words importing the singular also include the plural and vice-versa where the context requires.

EXECUTION OF THE SUBCONTRACT WORKS

- 2.1 The Subcontractor shall execute, complete and maintain the Subcontract Works in accordance with the Subcontract and other documents detailed in the Third Schedule and to the satisfaction of the Contractor and of the Engineer and in accordance with clause 6 of this subcontract.
- 2.2 The Subcontractor shall provide all supervision, labour, materials and everything whether of a permanent or temporary nature required for the execution, completion and maintenance of the Subcontract Works, except as otherwise agreed in accordance with Clause 4 (Contractor's Facilities).
- 2.3 The Subcontractor shall not assign the whole or any part of the benefit of this Subcontract nor shall he sub-let the whole or any part of the Subcontract Works without the previous written consent of the Contractor.
- 2.4 The Subcontractor shall appoint a Subcontractor's Authorised Representative who shall superintend the carrying out of the Subcontract Works at the Site. The said representative shall be present at the Site during working hours and any orders or instructions that the Contractor may give to the said representative shall be deemed to have been given to the Subcontractor.
- 2.5 When the Subcontract Works include the preparation of designs or details then the Subcontractor undertakes that such designs and details shall be safe and suitable for their purpose and indemnifies the Contractor against any loss or damage howsoever caused arising out of or in connection with such designs or details and against all claims or demands by the Employer or any other person in respect of such loss or damage as aforesaid.
- 2.6 The Subcontractor shall constantly provide competent supervision for the Subcontract Works and shall employ only persons who are fit and skilled in the work assigned to them.
- 2.7 The Subcontractor shall be responsible for the accurate setting out of the Subcontract Works. Without relieving the Subcontractor in any way of his responsibility under this Sub-clause the Contractor may check the accuracy of such setting out.
- 2.8 The Subcontractor shall at all times keep the Subcontract Works free from accumulation of waste material and rubbish and at completion shall leave the whole of the Subcontract Works clean and in a workmanlike condition to the satisfaction of the Contractor and Engineer.

2.9 Without prejudice to the rights of the Contractor under statute or at Common law and notwithstanding anything herein contained or implied the Subcontractor warrants that the quality of workmanship and materials used or supplied shall be fit and proper for their intended uses and to the satisfaction of the Contractor and the Engineer.

3.0 MAIN CONTRACT

3.1 The Subcontractor shall be deemed to have full knowledge of the provisions of the Main Contract other than the details of the Contractor's prices there under as stated in the schedules of rates and prices, and the Contractor shall, if so requested by the Subcontractor, provide the Subcontractor with a true copy of the Main Contract (less such details) at the Subcontractor's expense.

3.2 Save where the provisions of the Subcontract otherwise require, the Subcontractor shall so execute, complete and maintain the Subcontract Works that no act or omission of his in relation thereto shall constitute, cause or contribute to any breach by the Contractor of any of his obligations under the Main Contract and the Subcontractor shall, save as aforesaid, assume and perform hereunder all the obligations and liabilities of the Contractor under the Main Contract in relation to the Subcontract Works.

Nothing herein shall be construed as creating any privity of contract between the Subcontractor and the Purchaser and/or Owner.

3.3 The Subcontractor shall indemnify the Contractor against every liability which the Contractor may incur to any other person whatsoever and against all claims, demands, proceedings, damages, costs and expenses made against or incurred by the Contractor by reason of any breach by the Subcontractor of the Subcontract.

3.4 The Subcontractor hereby acknowledges that any breach by him of the Subcontract may result in the Contractor committing breaches of and becoming liable in damages under the Main Contract and other contracts made by him in connection with the Main Works and may occasion further loss or expense to the Contractor in connection with the Main Works and all such damages loss and expense are hereby agreed to be within the contemplation of the parties as being probably results of any such breach by the Subcontractor.

4. CONTRACTOR'S FACILITIES

4.1 The Subcontractor shall provide all things necessary in order to carry out and complete the Subcontract Works including but not limited to temporary and permanent works, preparatory works and services except to the extent that such services are expressly detailed to be provided by the Contractor in the Second Schedule to the Subcontract.

4.2 The Subcontractor shall indemnify the Contractor against any damage or loss whatsoever arising from the misuse by the Subcontractor, his servants or agents of facilities provided for his use by the Contractor.

4.3 Any use made by the Subcontractor of anything provided under the provision of this Clause shall be at the Subcontractor's risk and he shall be responsible for any loss or accident arising there from to the Subcontractor, his workmen or others and no warranties on the part of the Contractor or liability in tort or otherwise shall be implied by reason of any rights granted hereunder.

5. SITE WORKING

5.1 The Subcontractor shall, in the execution of the Subcontract Works on the Site, normally be required to work the same hours as the Contractor; however, the Subcontractor may be required to work other hours (including working at any time day or night, 7 days a week) the Price is deemed to include the cost of such other hours and the Subcontractor shall at all times observe the hours of work instructed by the Contractor. The Subcontractor shall comply with all rules and regulations of the Contractor governing the execution of the work the arrival at and departure from the Site of materials and equipment and the storage of materials and equipment on the Site.

6. COMMENCEMENT AND COMPLETION

Any commencement dates stated in the Subcontract are indicative. The Subcontract Works are to be commenced when the Subcontractor is instructed to proceed by the Contractor. The Subcontract Works are to be carried out diligently in accordance with the programme for the Main/Principal Works and/or in such order, manner and time as the Contractor may reasonably direct so as to ensure completion of the Works or any portion thereof under the Principal/Main Contract. Without prejudice to the generality of the foregoing, the Contractor gives no guarantee of continuous or economical working conditions. The Subcontract Works are to be completed within the Subcontract period and the key dates specified in the Subcontract, if any, subject to fair and reasonable extension of time as the Contractor shall allow where the Subcontract Works are delayed by causes which result in an extension of time under the Principal/Main Contract or for any breach of this Subcontract by the Contractor. It shall be a condition precedent to the right to an extension of time that the Subcontractor shall request an extension of time by means of written notice to the Contractor specifying the

ground(s) upon which the request is based. Such notice shall/must be received within 48 hrs of the occurrence that entitles the Subcontractor to such extension of time.

7. INSTRUCTIONS AND DECISIONS

7.1 Subject to Clause 8 (Variations), the Subcontractor shall in relation to the Subcontract Works comply with all instructions and decisions of the Engineer that are notified and confirmed in writing to him by the Contractor, irrespective of whether such instructions and decisions were validly given under the Main Contract.

7.2 The Contractor shall have the like powers in relation to the Subcontract Works to give instructions and decisions as the Engineer has in relation to the Main Works under the Main Contract and the Subcontractor shall have the like obligations to abide by and comply therewith and the like rights in relation thereto as the Contractor has under the Main Contract. The said powers of the Contractor shall be exercisable in any case irrespective of whether the Engineer has exercised like powers in relation thereto under the Main Contract.

8. VARIATIONS

8.1 The Subcontractor shall make such variations of the Subcontract Works, whether by way of addition, modification or omission as may be:

(i) Ordered by the Engineer under the Main Contract and confirmed in writing to the Subcontractor by the Contractor; or

(ii) Ordered in writing by the Contractor.

8.2 The Subcontractor shall not act upon an unconfirmed order for the variation of the Subcontract Works that is directly received by him from the Purchaser or Owner or the Engineer. If the Subcontractor shall receive any such direct order, he shall forthwith inform the Contractor's Representative in charge of the Main Works thereof and shall supply him with a copy of such direct order if given in writing. The Subcontractor shall only act upon such order as directed in writing by the Contractor, but the Contractor shall give his directions thereon with all reasonable speed.

8.3 Save as aforesaid the Subcontractor shall not make any alteration in or modification of the Subcontract Works.

8.4 Variations carried out in accordance with this clause shall be valued as provided in Clause 9 (Valuation of Variations) and payment made in accordance with Clause 12 (Payment). Variations not issued in writing are of no consequence and will not be included in the Final Account settlement.

9. VALUATION OF VARIATIONS

9.1 All authorised variations of the Subcontract Works shall be valued in the manner provided by this clause and the value thereof shall be added to or deducted from the Price.

9.2 The value of all authorised variations shall be ascertained by reference to the rates for provisional works specified in the Subcontract for the like or analogous work, but if there are no such suitable rates, or if they are not applicable, then such sum as shall be agreed between the Subcontractor and the Contractor. In the event that no rates are agreed the Contractor shall determine the rates. The Subcontractor shall on receipt of instructions issued under Clause 8 (Variations) immediately proceed to carry out such instructions. Carrying out such instructions shall not be delayed pending agreement on price.

9.3 The Contractor's Representative may, if in his opinion it is necessary or desirable, order in writing that any Subcontract Work for which rates have not been previously agreed shall be executed on a daywork basis. Daywork charges will only be considered where the Subcontractor's record sheets have been properly submitted to the Contractor within the period specified by the Contractor and signed by the Contractor's Representative as being a correct record. Such signature will only be regarded as agreement that the contents of the daywork sheets are an accurate record and will not necessarily entitle the Subcontractor to any payment. If no applicable daywork rates are referred to in the Subcontract then the Contractor and the Subcontractor shall between them agree suitable rates. Should the Contractor and the Subcontractor fail to agree on suitable rates then the Contractor shall after considering the circumstances decide upon the method of evaluating the contents of the signed daywork sheets and upon the amount of money (if any) to be paid to the Subcontractor.

9.4 The Subcontractor shall submit to the Contractor daily, detailed on a daily basis, records for the previous day of the resources employed and the measurement/quantity of work carried out pursuant to a Variation or any other entitlement to additional payment under the Subcontract. This is a condition precedent to the Subcontractor's right to payment for such work/entitlement to additional payment that would have otherwise existed.

10. INDEMNITY AND INSURANCE

10.1 Subcontractor shall indemnify the Contractor and hold the Contractor harmless from and against any and all liability for death, illness or injury to any Third Party or for loss of or damage to the property of any Third Party

and against all claims, demands, proceedings and causes of action resulting there from and any and all other loss which may arise out of or in consequence of the execution, completion or maintenance of the Subcontract Works and against all costs, charges and expenses that may be occasioned to the Contractor by the claims of Third Parties. Provided that such indemnification and hold harmless shall not apply to claims for death, illness or damage to property if caused by the sole negligence of the Contractor.

- 10.2 Subcontractor shall indemnify and hold the Contractor harmless from and against any and all liability for death, illness or injury to any of the Subcontractor's personnel or loss of or damage to the property of the Subcontractor of the property of its personnel, and against all claims, demands, proceedings and causes of action resulting there from howsoever caused.
- 10.3 The Contractor shall indemnify and hold the Subcontractor harmless from and against any and all liability for death, illness or injury to any of the Contractor's personnel and against all claims, demands, proceedings and causes of action resulting there from howsoever caused.
- 10.4 The Subcontractor shall indemnify and hold the Contractor harmless from and against any and all claims for loss of or damage to the property of the Contractor or the property of the Contractor's personnel unless such loss or damage is caused by the sole negligence of the Contractor.
- 10.5 The Contractor shall indemnify the Subcontractor against all liabilities and claims against which the Owner or the Contractor by the terms of the Main Contract undertakes to indemnify the other and to the like extent, but no further.
- 10.6 Subcontractor shall maintain insurance cover in accordance with Appendix 'C' in respect of the liabilities assigned under Sub-clause 10.1 and 10.2 above with an Insurance Company to be approved by the Contractor, such approval not to be unreasonably withheld. Such insurances shall be for limits to be determined by the Contractor and the policies of insurance shall be produced for inspection or re-inspection upon request.

11. MAINTENANCE AND DEFECTS

- 11.1 If the Subcontractor shall complete the Subcontract Works as required by Clause 2 (Execution of the Subcontract Works) before the completion of the Main Works, or where under the Main Contract the Main Works are to be completed by sections before the completion of the section or sections in which the Subcontract Works are comprised, the Subcontractor shall maintain the Subcontract Works in the condition required by the Main Contract to the satisfaction of both the Engineer and the Contractor and shall make good immediately upon discovery every defect and imperfection therein from whatever cause arising until such completion of the Main Works or section thereof is achieved and shall not be entitled to any additional payment for so doing unless such defect or imperfection is caused by the act, neglect or default of the Purchaser or Owner, their servants or agents under the Main Contract or of the Contractor, his servants or agents under the Subcontract.
- 11.2 After completion of the Main Works or the section or sections thereof in which the Subcontract Work are comprised, as the case may be, the Subcontractor shall maintain the Subcontract Works and shall make good immediately upon discovery such defects and imperfection therein as the Contractor is liable to make good under the Main Contract for the like period and otherwise upon the like terms as the Contractor is liable to do under the Main Contract.
- 11.3 At the end of the defects liability period, the Subcontractor shall remain liable for any defects in the Subcontract Works that a reasonable examination would have disclosed and such defects and attributable damage to the Main Works or section thereof the Subcontractor shall promptly make good.

12. PAYMENT

- 12.1 Unless specified elsewhere in the Subcontract or otherwise agreed between the parties that the duration of the Subcontract Works is to be less than forty-five days, then the Contractor shall pay the Subcontractor at monthly intervals in respect of the following, calculated in accordance with the Subcontract:
 - (i) all work properly executed;
 - (ii) the value of materials brought timeously, but not prematurely, onto the site for incorporation into the Subcontract Works, provided that such is provided for in the Principal/Main Contract and the Subcontractor can demonstrate ownership of the said materials;
 - (iii) any other amount or sum properly due under the Subcontract.

The first payment shall be due within one calendar month (subject to receipt of the Written Statement referred to in this clause) after the Subcontractor has commenced on site and subsequent payment shall be due at monthly intervals thereafter. Payment of the amount calculated above shall be paid to the Subcontractor by the Contractor within sixty days of the date payment becomes due, less discount and a retention of ten percent. The Subcontractor shall, within one month of commencement on site and at monthly intervals thereafter and until completion of the Subcontract Works submit to the Contractor a Written Statement showing in detail the value of all work properly executed, materials on site (if admissible) and any other amount less discount, if any,

and retention. Payment shall become due to the Subcontractor seven days following receipt by the Contractor of such written statement from the Subcontractor.

The Contractor shall, not later than five days after the date on which any payment:

- (i) becomes due from the Contractor, or
- (ii) would have become due, if:
 - (a) the Subcontractor had carried out his obligations under the Subcontract and
 - (b) no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts.

give notice to the Subcontractor specifying the amount, if any, of the payment the Contractor has made or proposes to make, specifying to what the payment relates and the basis on which that amount is calculated.

The Contractor shall pay retention monies to the Subcontractor:

- (i) the first half one month after the date of Practical Completion (or its equivalent) under the Principal/Main Contract.
- (ii) the final half one month after the issue of the Final Certificate (or its equivalent) under the Principal/Main Contract.

Final payment of all monies due to the Subcontractor shall be paid by the Contractor one month after the issue of the Final Certificate (or its equivalent) under the Principal/Main Contract. The Contractor shall not have the right to withhold any payment due to the Subcontractor after the final date for payment determined in accordance with the foregoing unless the Contractor shall:

- (i) give written notice to the Subcontractor not less than one day before the payment is to be made in accordance with the relevant clauses above; and
- (ii) specify in that notice the amount to be withheld and the ground for withholding same. Should there be more than one ground, then each ground and the amount attributable to it shall also be specified; or
- (iii) have already included in any other notice given full details complying with the provisions of this clause.

The Subcontractor shall not be entitled to payment from the Contractor in the event that the Employer/Purchaser under the Principal/Main Contract has become insolvent before the final date for payment under the Principal/Main Contract or because the Contractor's Employer/Purchaser has not received payment from another person (or persons) who has (or have) become insolvent before the final date for payment under the contract between the Contractor's Employer/Purchaser and the other person (or persons) and which was a pre-condition of the Contractor's Employer/Purchaser making payment to the Contractor.

For the purposes of interpretation of the above paragraph, Insolvency occurs in the circumstances mentioned in Sections 113(2) to (5) of Part II of the Housing Grants, Construction and Regeneration Act 1996 and the equivalent in the Construction Contract (Northern Ireland) Order 1997.

- 12.2 No amount shall be paid in full without the production of a valid 714 certificate in accordance with the current rules of the Inland Revenue's Construction Industry Tax Deduction Scheme or as the case may be the new Construction Industry Tax Deduction Scheme from 1 August 1999. Where the Subcontract fails to provide adequate evidence of a valid certificate, the Contractor shall deduct tax at source from payments due on behalf of the Inland Revenue. Any subsequent repayment shall be a matter solely between the Subcontractor and the Inland Revenue.
- 12.3 The Contractor may deduct from any sum paid or payable hereunder to the Subcontractor any amount levy or other sum that the Contractor may be or become liable to deduct from or pay on account of such sum paid or payable to the Subcontractor hereunder by reason of any Act of Parliament or instrument rule or regulation made there under which may be or become law during the subsistence of the Subcontract.
- 12.4 The Subcontractor shall at his own expense measure the Subcontract Works and make application for work done to the Contractor in such manner and form and quantity and according to such regulations and at such dates and times as may under the provisions the Main Contract be required of the Contractor and in every case shall be delivered to the Contractor at the Contractor's site office within such times as will enable the Contractor to comply with the provisions of the Main Contract in regard to the like matters.

13. DETERMINATION OF THE MAIN CONTRACT

- 13.1 If the Main Contract is determined for any reasons whatsoever before the Subcontractor has fully performed his obligations under this Subcontract, then the Contractor may at any time thereafter by written notice to the

Subcontractor forthwith determine the Subcontractor's employment under the Subcontract and thereupon the Subcontractor shall, with all reasonable speed, remove his men, materials and equipment from the Site.

- 13.2 Upon such a determination of the Subcontractor's employment, the other provisions of this Subcontract shall cease to have effect and subject to Sub-clause 13.3 hereof, the Subcontractor shall be entitled to be paid the full value, calculated by reference to the Price and to the rates and prices contained in Appendix 'A' forming part of the Subcontract, of all work properly done on the Site by the Subcontractor and of all materials properly bought and left on the Site by the Subcontractor, but less such sums as the Subcontractor has already received on account.

Provided always that nothing herein shall affect the rights of either party in respect of any breach of this Subcontract committed by the other prior to such determination.

- 13.3 If the Main Contract is determined by the Purchaser in consequence of any breach of this Subcontract by the Subcontractor, then the provisions of the preceding Sub-clause as to payment shall not apply, but the rights of the Contractor and the Subcontractor hereunder shall be the same as if the Subcontractor had by such breach repudiated this Subcontract and the Contractor had by his notice of determination under Sub-clause 13.1 elected to accept such repudiation.

14. SUBCONTRACTOR'S DEFAULT AND CONTRACTOR'S RIGHT OF SET OFF

- 14.1 If the Subcontractor:

- (a) Fails to proceed with the Subcontract Works in accordance with the agreed Programme or with due diligence after being required in writing so to do by the Contractor; or
- (b) Fails to execute the Subcontract Works or to perform his other obligations in accordance with the Subcontract after being required in writing so to do by the Contractor; or
- (c) Refuses or neglects to remove defective materials or make good defective work after being directed in writing so to do by the Contractor; or
- (d) Fails to maintain the area where the Subcontractor is working and the Subcontractor's accommodation in a clean and tidy condition to the satisfaction of the Contractor; or
- (e) Commits an act of bankruptcy or enters a deed of arrangement with his creditors or, being a company goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction), or has a receiver appointed of all or part of its undertaking.

then in any such event and without prejudice to any other rights or remedies, the Contractor may by written notice to the Subcontractor forthwith determine the Subcontractor's employment under this Subcontract and thereupon the Contractor may take possession of all materials and other things whatsoever brought on to the Site by the Subcontractor and may use them for the purpose of executing, completing and maintaining the Subcontract Works and may, if he thinks fit, sell all or any of them and apply the proceeds in or towards the satisfaction of monies otherwise due to him from the Subcontractor.

- 14.2 Upon such a determination, the rights and liabilities of the Contractor and the Subcontractor shall, subject to the preceding Sub-clause, be the same as if the Subcontractor had repudiated this Subcontract and the Contractor had by his notice of determination under the preceding Sub-clause, elected to accept such repudiation.
- 14.3 The Contractor may in lieu of giving notice of determination under this Clause take part only of the Subcontract Works out of the hands of the Subcontractor and may by himself, his servants or agents execute, complete and maintain such part and in such event the Contractor may recover all his costs of so doing from the Subcontractor, or deduct such costs from monies otherwise becoming due to the Subcontractor.
- 14.4 The Contractor may without prior notice to the Subcontractor deduct from monies due to the Subcontractor or the Subcontractor shall forthwith repay to the Contractor under this or any other Subcontract between the Contractor and the Subcontractor any costs incurred or envisaged to be incurred by the Contractor as a consequence of the default or defaults of the Subcontractor under this Subcontract.

15. PROPERTY IN MATERIALS AND PLANT

- 15.1 Where it is provided by the Main Contract that the property in any equipment, materials or things whatsoever shall in certain events vest in the Purchaser or Owner or re-vest in the Contractor, then in so far as such equipment, materials or things are to be provided by the Subcontractor in connection with the Subcontract Works, the property therein shall unconditionally pass from the Subcontractor to the Contractor immediately before it is due to vest in the Purchaser or

Owner in pursuance of the Main Contract and shall re-pass from the Contractor to the Subcontractor immediately after it has re-vested in the Contractor in pursuance of the Main Contract.

- 15.2 Notwithstanding any vesting in the Contractor or Purchaser or Owner the Subcontract Works and any materials or goods on Site for incorporation therein or for use in connection therewith shall until completion of the whole of

the Subcontract Works be at the risk of the Subcontractor and any loss or damage to the same shall be made good by the Subcontractor at its own expense save where such loss or damage is caused by the negligent act, error or omission of the Contractor, his servants or agents.

- 15.3 Plant tools equipment or other property belonging to or provided by or on behalf of the Subcontractor, his servants or agents and any materials which are not properly on Site for incorporation into the Subcontract Works shall be at the sole risk of the Subcontractor and any loss or damage to the same shall be the entire liability of the Subcontractor save where such loss or damage is caused by the negligent act, error or omission of the Contractor, his servants or agents.

16. CONDITIONS RELATING TO SITE WORK

It is the responsibility of the Subcontractor to obtain and familiarise himself with the Site Regulations and conditions, which must be compiled with in full, in particular the requirements with respect to trade union membership or National Agreements. The Contractor gives no guarantees as to the suitability of the site for the Subcontractor's operations to allow the Subcontract Works to proceed in a regular and orderly manner. Claims as a consequence of lack of knowledge of Site Regulations and conditions will be invalid.

17 BREACH OF CONTRACT BY THE CONTRACTOR

- 17.1 The Contractor shall pay to the Subcontractor damages for breach of contract subject to sub clause 17.2
- 17.2 The Contractor shall have no obligation to pay damages for any breach of contract by him unless the Subcontractor has given written notice that it intends to claim damages, stating the ground(s), within seven days of the breach occurring.

18 SEVERABILITY

- 18.1 If and to the extent that any provision(s) of this subcontract is unlawful in relation to the law governing to this subcontract it shall not affect the interpretation and effect of any other provision of the subcontract.

LIFTING EQUIPMENT, SCAFFOLDING AND SAFETY REGULATIONS

- 19.1 The Subcontractor shall maintain a register of lifting equipment, such as cranes and hoists, on the Site and shall ensure that such equipment has all necessary current test certificates. Where the Subcontractor is erecting scaffolding he shall maintain any required scaffolding register.
- 19.2 The Subcontractor shall, in all respects, conform to the requirements of the Main Contract and shall comply with all Acts of Parliament applicable to the Subcontract Works, including, by way of example, the Factories Act 1961 and the Health and Safety Act 1974, and in addition, shall strictly observe the Purchaser's and or Owner's Safety rules and Codes of Practice for the Site.
- 19.3 The Contractor reserves the right to inspect the documents detailed in Sub-clause 19.1 above at any time and in addition to carry out a Safety Audit to ensure that the Subcontractor is fulfilling all safety requirements required by the Purchaser or Owner, Contractor or by law. The Subcontractor shall indemnify the Contractor against all loss and liability arising from any contravention by the Subcontractor of the foregoing provisions.

20 CONSTRUCTION OF CONTRACT

For the avoidance of doubt, the order of precedence of the documents forming the Subcontract is as follows:

- The Purchase Order
- The Appendices to the Purchase Order
- The Appendices to the Subcontract Conditions
- The Subcontract Conditions

21 ARBITRATION

- 21.1 If any dispute or difference of any kind whatsoever shall arise between the Contractor and the Subcontractor in connection with or arising out of the Subcontract or the carrying out of the Subcontract, or the carrying out of the Subcontract Works (excluding disputes about VAT) whether arising during the progress of the Works or after their completion, including any disputes as to the jurisdiction of an adjudicator under clause 26, it shall be settled in accordance with the following provisions:
- 21.2 For the purposes of this clause, in cases of a genuine dispute, a dispute is deemed to arise when one party services on the other a notice in writing (herein called Notice of Dispute) stating the nature of the dispute. Provided always that the party wishing to give the Notice of Dispute has used reasonable endeavours to resolve the matter, this includes giving sufficient particularity so as to allow the other party to properly respond.
- 21.3 Either party may within 28 days of the service of the Notice of Dispute refer the dispute to the arbitration of a

person to be agreed upon by the parties by serving on the other party a Notice to Refer. Where a Notice to Refer is not served within the said period of 28 days, the Notice of Dispute shall be deemed to have been withdrawn.

- 21.4 If the parties fail to agree upon an arbitrator within 28 days of either party serving on the other party a written Notice to Concur in the appointment of an arbitrator, the dispute will be referred to a person to be appointed on the application of either party by the President (or if he is unable to act, by any Vice President) for the time being of the Institute Of Arbitrators.
- 21.5 The seat of arbitration shall be England or, as the case may be Scotland.
- 21.6 Any such reference to arbitration shall be conducted in accordance with the rules of the Chartered Institute of Arbitrators
- 21.7 If any dispute arises in connection with the Main/Principal contract and the Contractor is of the opinion that such dispute touches or concerns the Subcontract Works and the dispute is referred to adjudication, arbitration or litigation under the Main/Principal Contract may by notice in writing require that the Subcontractor provide such information and attend such meetings in connection therewith as the Contractor may request. The Contractor may also by notice in writing require that any such dispute under this Subcontract be dealt with jointly with the dispute under the Main/Principal Contract and in like manner. In connection with any joint dispute the Subcontractor shall be bound in like manner as the Contractor on any decision, opinion or award.

22 LAW

The law applying to the Main Contract shall apply to this Subcontract. Where no law is specified in the Main Contract, then the applicable law shall be English under the sole jurisdiction of the English Courts.

23 VALUE ADDED TAX

- 23.1 The Subcontractor is deemed not to have allowed in the Subcontract Price for any tax payable by him as a taxable person to the Commissioners of Customs and Excise
- 23.2 Where the Contractor operates the Authenticated Receipt System the Subcontractor will, within seven days of receipt of payment issue an Authenticated Receipt as required by the relevant VAT Regulations detailing the net payment and the Value Added Tax on the said payment.

24 SET OFF

If by reason of any breach or failure to observe the provisions of this Subcontract by the Subcontractor the Contractor suffers, or is likely to suffer, loss or damage as a consequence thereof, the Subcontractor shall, without prejudice to and pending final determination or agreement between the parties forthwith pay or allow to the Contractor without prejudice to clause 12 such sum(s) as the Contractor shall bona fide estimate as the amount of such loss until final determination or agreement. It is deemed to be within the contemplation of the parties that if the Subcontractor is in breach or fails to observe the provisions of the Subcontract, that such breach is likely to result in the Contractor breaching the terms of the Main/Principal contract and that this may result in damages naturally flowing from the breach together with any special damages, including liquidated damages, being recovered by the Employer/Purchaser from the Contractor.

25 NOTICES, etc

If under the Main/Principal Contract, the Contractor is required to give any notice or return, then the Subcontractor shall give such notices to the Contractor in respect of the Subcontract Works so as to ensure the Contractor may timeously comply with such notices under the Main Contract. The Subcontractor acknowledges that any failure on its part to provide such notices or returns may prejudice the Contractor's rights under the Main/Principal Contract, including the payment of monies otherwise due and/or result in the Contractor being in breach of the Main/Principal Contract and/or causing the Contractor loss.

26 ADJUDICATION

If this Subcontract falls within the meaning of "construction operations" under the Housing Grants Construction and Regeneration Act 1996, then the following provision shall apply:

Either the Contractor or the Subcontractor has a right to refer a dispute or difference arising under the Subcontract for adjudication.

Such adjudication shall be in accordance with the rules of the Technology and Construction Court Solicitors Association (TeSCA), current at the time of referral.

The Adjudicator is to be a person selected by the Chairman (or Vice Chairman) of the Technology and Construction Court Solicitors Association.

The intention is that the adjudication provisions in this Subcontract are in accordance with such provisions in Part II of the House Grants, Construction and Regeneration Act 1996 and the Construction Contracts (Northern Ireland) Order 1997.

For the avoidance of doubt, it is declared that this Subcontract provides that:

- (a) either party to the Subcontract may give notice at any time of his intention to refer a dispute to adjudication.
- (b) the adjudication is to be carried out with the object of securing the appointment of the Adjudicator and referral of the dispute to him within seven days of such notice.
- (c) the Adjudicator is required to reach a decision within 28 days of referral or such longer period as is agreed by the Parties after the dispute has been referred.
- (d) the Adjudicator may extend the period of 28 days by 14 days, with the consent of the Party by whom the dispute was referred.
- (e) a duty to act impartially is imposed on the Adjudicator.
- (f) the Adjudicator is enabled to take the initiative in ascertaining the facts and the law.
- (g) the decision of the Adjudicator is binding until the dispute is finally determined by legal proceedings, by arbitration (if the Subcontract provides for arbitration or the Parties otherwise agree on arbitration) or by agreement.
- (h) the parties may agree to accept the decision of the Adjudicator as finally determining the dispute.
- (i) the Adjudicator is not liable for anything done or omitted in the discharge of his function as Adjudicator unless it is in bad faith, and any employee or agent of the Adjudicator is similarly protected from liability.