

B. TERMS AND CONDITIONS OF LABOUR ONLY SUBCONTRACT

(To apply to orders for Services where work is to be carried out on site but materials are not supplied by the Subcontractor)

1. EXISTENCE AND SCOPE OF CONTRACT

- 1.1 These Terms and Conditions together with the Order set out all the rights and obligations of the parties each to the other and no other terms or conditions shall be implied save to the extent that such terms and conditions are implied by statute.
- 1.2 Unless otherwise expressly agreed, commencement of the Subcontract Works shall signify acceptance of these Terms and Conditions. For the avoidance of doubt AAR do not intend to enter into contract on any terms and conditions other than those set out herein.
- 1.3 The Subcontract Works are executed as part or all of work to be carried out by AAR for its Customer under the Principal Contract.
- 1.4 The Subcontractor shall have reasonable opportunity to inspect and is deemed to have full knowledge of AAR's obligations under the terms and conditions of the Principal Contract, and the Subcontractor shall assume and perform the same in relation to the Subcontract as though they were expressly written herein.
- 1.5 If requested by the Subcontractor AAR shall provide the Subcontractor free of charge with a copy of the Principal Contract other than the details of AAR's prices.
- 1.6 In the event of conflict between the terms and conditions of the Principal Contract and these Terms and Conditions the latter shall take precedence.

2. DEFINITIONS

- 2.1 The following terms shall have the following meanings:
 - (i) "AAR" means Andrews Air Conditioning & Refrigeration Limited.
 - (ii) "Subcontractor" means the name to whom the Order is addressed.
 - (iii) "Subcontract" means AAR's Order and the Subcontractor's acceptance thereof these Terms and Conditions and any document referred to therein including the provisions of the Principal Contract.
 - (iv) "Order" means AAR's Purchase Order.
 - (v) "Principal Contract" means the contract between AAR and its Customer.
 - (vi) "Subcontract Works (or the Works)" means the works to be carried out by the Subcontractor
 - (vii) "Subcontract Sum" means the amount stated in the Order and any adjustment thereto which is accepted by AAR as being the value of the Subcontract Works.

3. SUBCONTRACTORS OBLIGATIONS

- 3.1 The Subcontractor shall with due diligence and in a good and workmanlike manner carry out and complete the Works in accordance with the Order and subject to these Terms and Conditions using materials where applicable and appropriate and workmanship of the quality and standards therein specified or in accordance with current British Standards and Codes of Practice, all to the reasonable satisfaction of AAR.
- 3.2 The Subcontractor shall comply with and give all notices required by any Act of Parliament any Instrument, rule or order made under any Act of Parliament or any regulation or bye-law of any Local Authority or of any Statutory Undertaker or Public Utility which has any jurisdiction with regard to the Subcontract Works or with whose systems the same are or will be incorporated. The Subcontractor shall fully acquaint itself of all restrictions, local conditions, requirements and the like which will affect the execution of the Subcontract Works. No claim will be allowed due to a lack of knowledge of any such matter.
- 3.3 The Subcontractor shall not assign, transfer or sub-let the Works or any part thereof without the written consent of AAR.
- 3.4 The Subcontractor shall fully comply with its Industry's Working Rule Agreement current in force and shall supply such evidence in verification of its compliance as may reasonably be required by AAR from time to time upon request.

4. INSTRUCTIONS AND VARIATIONS

- 4.1 AAR may, without invalidating this Subcontract, issue instructions, order additions to or omissions from or other change in the Works which the Subcontractor shall carry out forthwith.
- 4.2 Variations, additions or omissions shall not be made unless ordered by AAR in writing. The expression “variation” or “change” shall have the same meaning assigned to it as provided in the Principal Contract and the valuation of all variations instructed to the Subcontractor shall be made in accordance with the rules for valuing variations contained in the Principal Contract; provided that in respect of daywork the Subcontractor shall only be entitled to payment at the Daywork rates contained in the Order or as otherwise agreed if, prior to the commencement of that work AAR shall have issued express written instructions that the work shall be valued upon a daywork basis, and conditional always on provision by the Subcontractor of detailed particulars in accordance with the terms of the Principal Contract.

5. DEFECTS

- 5.1 The Subcontractor shall be liable for and shall make good at his own expense any defects in the Subcontract works which are due to a failure of the Subcontractor to comply with his obligation hereunder and which are notified to the Subcontractor.

6. TIME

- 6.1 On the date or dates for commencement stated in the Order the Subcontractor shall commence the Subcontract Works on site and regularly and diligently proceed with and complete the Works within the period or periods (if any), specified in the Order. AAR may issue from time to time directions to amend the phasing, sequencing or co-ordination of the Subcontract Works to facilitate the overall progress of the Principal Contract works. It is the responsibility of the Subcontractor to ensure that it is aware of the requirements of the construction programme on a daily basis. If it becomes reasonably apparent that the Subcontractor is failing to maintain progress in accordance with the requirements of the construction programme, AAR may employ other persons to carry out that part of the Subcontract Works so affected without being in breach of the Subcontract. The costs of labour, plant and materials incurred by AAR including a reasonable allowance for overheads and profit in carrying out that part of the Subcontract Works shall be deducted from any monies due to the Subcontractor.
- 6.2 The Subcontractor shall have allowed for the required number of visits to site to properly complete the Subcontract Works in accordance with the construction programme including any amendments thereto. If the Subcontractor considers it necessary to leave site at any time and make additional visits to complete the Subcontract Works, then it is its responsibility to ensure that any such arrangements are confirmed in writing to AAR before withdrawing operatives and/or leaving site.
- 6.3 If the Subcontractor fails to complete the Works or any section thereof within the period or periods specified or any extended period or periods which may be granted by AAR, the Subcontractor shall pay or allow to AAR a sum equivalent to any loss and/or expense suffered or incurred by AAR and caused by the failure of the Subcontractor as aforesaid. AAR shall at the earliest opportunity give reasonable notice to the Subcontractor that loss or damage or expense is being or has been suffered or incurred.
- 6.4 The loss, damage or expense referred to in **Clause 6.3** shall be recoverable by AAR from the Subcontractor by way of deduction from any monies due to the Subcontractor under this Subcontract or any other contract between AAR and Subcontractor. AAR shall also be entitled to apply monies due to the Subcontractor under this Subcontract towards payment of any sum owing by the Subcontractor to AAR in relation to any matter whatsoever.

7. PRICE AND PAYMENT

- 7.1 The Subcontract Sum shall include the cost of labour, holidays, overtime, site restrictions on working hours, small tools, travel, subsistence, statutory payments, overheads and profit and all other matters necessary to enable the Subcontractor to fulfil its obligations except items listed in the order as being provided by AAR.

- 7.2 AAR shall pay to the Subcontractor, at the intervals stated in the Order, the total value of all work properly executed by the Subcontractor under these Conditions less: amounts previously paid; less the Retention Percentage stated in the Order on the balance, less any discount to which AAR is entitled and less any other sums to which AAR is entitled. Retention monies shall be withheld and released at the times and in the manner stated in the Principal Contract.
- 7.3 Interim valuations of work in progress shall be made by measurement and valued by using the schedule of rates/schedule of works/bills of quantities if any referred to in the Order or some other such method as shall be agreed.
- 7.4 The Subcontract Sum unless specifically stated to the contrary shall be exclusive of VAT. If the Subcontractor is a registered person within the meaning of the VAT legislation, it shall immediately after signing this Subcontract give to AAR the registration number shown on the registration certificate issued to the Subcontractor by HM Customs and Excise and shall produce the certificate to the customer on demand. Provided the Subcontractor complies with this clause, AAR shall add to the amount of each payment due, VAT at the rate or rates properly chargeable on any supply by the Subcontractor.
- 7.5 The Statutory Tax Deduction Scheme shall be applied in accordance with Finance (No. 2) Act 1975 and any subsequent amendments to or revisions thereof to all payments due in accordance with the Subcontract and Income Tax shall be deducted from any payment due under this Subcontract upon the failure of the Subcontractor to provide to AAR from time to time with satisfactory evidence of its exemption under the said Act.

8. SUPERVISION, HEALTH AND SAFETY

- 8.1 The Subcontractor shall allow for working with and around other subcontractors and co-operating fully as necessary and instructed by AAR.
- 8.2 The Subcontractor as part of its own management role, shall be responsible for the proper and effective co-ordination of the Subcontract Works with all the other subcontractors either already working or about to commence work on the site.
- 8.3 The Subcontractor shall provide AAR with a Labour on Site Return on a daily basis or otherwise as may be agreed with AAR.
- 8.4 The Subcontractor shall take whatever steps are necessary to comply with all relevant health and safety regulations including the obligations on a Contractor as defined in the Construction (Design and Management) Regulations 1996.
- 8.5 The Subcontractor shall comply with the provision for health safety and quality of works under the Principal Contract and the provisions of AAR's current Health and Safety Regulations, a copy of which shall be given to the Subcontractor.

9. INDEMNITY AND INSURANCE

- 9.1 The Subcontractor shall indemnify AAR against and from any breach, non-observance or non-performance by the Subcontractor, its servants or independent contractors of any of the provisions of the Principal Contract, any act, omission or default of the Subcontractor, its servants, agents or independent contractors which involves AAR in any liability whatsoever and against any claim, damage, loss or expense due to or resulting from any negligence or breach of duty of the Subcontractor, its servants, agents or independent contractors. The limit of such indemnity shall be as stated on the Order.
- 9.2 The Subcontractor shall without prejudice to its liability to indemnify AAR as aforesaid, adequately insure against any expense, liability, loss, claim or proceedings whatsoever arising under any statute in force or at common law in respect of personal injury to or death of any person whomsoever and arising out of, or in the course of, or caused by or in connection with the carrying out of the Subcontract Works and against any expense, liability, loss, claim or proceedings in respect of any injury, loss or damage whatsoever to any property real or personal in so far as such injury or damage arises out of, or in the course of, or is caused by, or by reason of or in connection with the carrying out of the Subcontract Works and provided that the same is due to any act, omission or default of the Subcontractor or anyone for whom the Subcontractor is responsible.

9.3 The Subcontractor shall produce for inspection on demand by AAR the policies of insurance required by **Clause 9.2** and the premium receipts therefor. In the event of any failure by the Subcontractor to comply with the provision of **Clause 9.2**, AAR may itself insure and deduct the cost of the premiums so incurred from any monies due or to become due to the Subcontractor.

10 TERMINATION

10.1 Without prejudice to any other rights and remedies which AAR may possess, if the Subcontractor shall make default in any of the following respects, viz:

- (a) If without reasonable cause it fails to commence the Works on the date or dates set for commencement, or
- (b) If without reasonable cause it wholly suspends the carrying out of the Subcontract Works before completion thereof, or
- (c) If it fails to proceed regularly and diligently with the Subcontract Works, or any part thereof, or
- (d) If it refuses or persistently neglects after notice in writing from AAR to remove defective work or materials, or
- (e) If it refuses or persistently neglects after notice in writing from AAR to comply with any of his obligations under this Subcontract.

then if such default shall continue for three days after a notice by registered post or recorded delivery specifying the default has been given to it by AAR, AAR may thereupon by notice or registered post or recorded delivery determine the employment of the Subcontractor under this Subcontract.

10.2 In the event of determination of the Subcontractor's employment AAR may either complete the Works itself or employ others in place of or in addition to the Subcontractor and in any event retain monies which may be due to the Subcontractor and apply the same towards the amount of the damage suffered and/or loss and expense incurred by reason of the said determination, the balance of any such damage, loss and expense being a debt recoverable by AAR from the Subcontractor.

10.3 If for any reason AAR's employment under the Principal Contract is determined then the employment of the Subcontractor under this Subcontract shall automatically be determined and the Subcontractor shall be entitled to payment for work properly carried out to the extent that it has not already received such payment, but it shall not be entitled to recover from AAR any amount in respect of loss of profit on work not carried out as a result of such determination.

11 SETTLEMENT OF DISPUTES

11.1 Should any dispute or difference arise at any time between the parties under the Subcontract, either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. For the avoidance of doubt, the following conditions are drafted to comply with Section 108 of the Housing Grants, Construction and Regeneration Act 1996 and any doubts or ambiguities shall be construed accordingly.

11.2 If any such dispute or difference arises then one party ("the Applicant") may serve upon the other ("the Respondent") a notice in writing ("the Notice") which shall state in sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.

11.3 The parties shall within four days of the Notice being served upon the Respondent agree upon a suitable Adjudicator. Failing agreement the Applicant shall and the Respondent may apply for an appointment to the Academy of Construction Adjudicators (whilst at the same time serving a copy of the application on the other party) whose written notification of an appointment of an Adjudicator shall be served on both parties and shall be binding on both parties.

12 ADJUDICATION

12.1 The Adjudication is to be carried out in accordance with **Andrews Sykes Group plc Rules for Adjudication - Construction Projects** (a copy of which shall be provided on request) and with the object of securing the appointment of and the referral of the dispute to the Adjudicator within seven days and requiring a Decision by him within twenty-eight days of such referral.

13 LAW

13.1 The Subcontract shall be governed by English Law and the Subcontractor consents to the exclusive jurisdiction of the English Courts.

MER/SCH/2145-16/172145