

A. TERMS AND CONDITIONS OF SUBCONTRACT

(To apply to order where work is to be carried out on site and materials are supplied by the Subcontractor)

1. EXISTENCE AND SCOPE OF CONTRACT

- 1.1 These Terms and Conditions together with the Purchase 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 notice of the terms and conditions of the Principal Contract.
- 1.5 If requested by the Subcontract 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 Except where the context provides otherwise the provisions of the Principal Contract shall form part of this Subcontract and the Subcontractor shall be bound to AAR by the same obligations and enjoy the same rights and benefits as those conferred on AAR under the Principal Contract, *mutatis mutandis* (i.e. the necessary changes being made), as though the terms and conditions of the Principal Contract were each severally written herein
- 1.7 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 its successors and assigns.
 - (ii) The "Subcontract Works" means all materials to be supplied and work to be done by the Subcontractor including incorporation of Free Issue Equipment, as specified in the Purchase Order.
 - (iii) The "Subcontract Price" means the total price payable exclusive of Value Added Tax in the amount stated in the Purchase Order.
 - (iv) "Variation" means any change or addition to or omission from the Subcontract Works, or any change in the manner order or time in which the Subcontract Works are required by AAR to be carried out.
 - (v) The "Site" means the location notified by AAR to the Subcontractor as the place where the Subcontract Works are to be carried out.
 - (vi) "Defect" and "Defective" means materials supplied or work carried out not in accordance with the Subcontract.
 - (vii) "CDM Regulations" means the Construction (Design and Management) Regulations 1994.
 - (viii) "Principal Contract" means the contract between AAR and its Customer.
 - (ix) "Subcontract" means AAR's Purchase Order and the Subcontractor's acceptance thereof, these Terms and Conditions, and any documents referred to therein including the provisions of the Principal Contract.
 - (x) "Customer" means the customer of AAR under the main contract.
 - (xi) "Completion Date" means the date (if any) specified in the Purchase Order as the date on which the Subcontract Works shall be Complete.
 - (xii) "Free Issue Equipment" means Equipment or goods or materials supplied by AAR to the Subcontractor without charge for incorporation in the Subcontract Works.

- (xiii) “Substantially Complete” means finished except for de minimus items which are capable of being finished without material affect on the Customer’s use of the Site.
- (xiv) “Client” means the name registered as the Client with the Health and Safety Executive under the CDM Regulations.

3. SUBCONTRACTOR’S OBLIGATIONS

- 3.1 The Subcontractor shall carry out and complete the Subcontract Works in accordance with the Subcontract and to the reasonable satisfaction of AAR and its Customer and any other person whose satisfaction is expressly required under the Principal Contract.
- 3.2 The Subcontractor shall not assign whole or part of the benefit of this subcontract nor sublet the whole or part of the Subcontract Works without first obtaining AAR’s written consent.
- 3.3 If a Completion Date is stated in the Purchase Order the Subcontract Works shall be completed by that date or such extended date as shall be fixed under **Clause 6.3**. If no such date is stated the Subcontractor shall carry out and complete the Subcontract Works in a reasonable time from the date on which it is requested to commence by AAR.

4. INSTRUCTIONS AND VARIATIONS

- 4.1 AAR may issue written instructions which the Subcontractor shall carry out.
- 4.2 The Subcontractor shall not make any Variation except Variations ordered by or approved by AAR and the Subcontractor shall not accept instructions relating to this subcontract from anyone except AAR or any person expressly authorised by AAR or any person having statutory powers to give the relevant instruction.
- 4.3 AAR may instruct the Subcontractor to carry out a Variation. No Variation shall vitiate the Subcontract.
- 4.4 AAR may require the value of any Variation to be agreed before its execution by the Subcontractor
- 4.5 If the value of any Variation is not agreed as provided in **Clause 4.4** AAR may require such Variation to be executed, and on completion of the Variation it shall be valued using rates and prices set out in this Subcontract (if any) or in the absence of such rates and prices on a fair and reasonable basis in all the circumstances which shall take into account any rates or prices for similar work contained in the Subcontract.

5. COMPLETION AND DEFECTS

- 5.1 The Subcontractor shall notify AAR in writing when in his opinion the subcontract works are Substantially Complete giving dates when such works will be complete. Within 17 days of such notification AAR shall either dissent in writing giving reasons for such dissent or shall accept that the Subcontract Works are substantially complete. It is agreed that the period required to fully complete the Subcontract Works shall be taken into account in determining whether the Subcontracts Works are Substantially Complete.
- 5.2 Any part of the Subcontract Works which are not complete when the Subcontract Works are accepted to be Substantially Complete under **Clause 5.1** shall be completed by the Subcontractor as soon as practicable or as may be agreed between the parties.
- 5.3 The Subcontractor shall until the end of the Defects Liability Period (if any) stated in the Purchase Order be responsible for making good at its own cost any Defect in or damage to the Subcontract Works to the extent that AAR is responsible to make good under the Principal Contract. Provided that if such damage was caused by the act neglect or default of AAR or others (except the Subcontractor) for whom it is responsible AAR shall pay the reasonable costs of making good such damage.

6. DELAY AND EXTRA TIME

- 6.1 If the Subcontractor fails to complete the Subcontract Works
 - a) in a reasonable time under **Clause 3.3**, or
 - b) by the Completion Date or extended Completion Date under **Clause 3.3** AAR shall be entitled at its discretion to claim from the Subcontractor any loss and/or expense suffered as a result of such

failure. The amount of such claim may be deducted from sums otherwise due under the contract or may be recovered from the Subcontractor as a debt.

6.2 If it becomes apparent that the Subcontract Works will not be complete by the Completion Date, the Subcontractor shall notify AAR in writing stating all the reasons for delay.

6.3 AAR shall grant an appropriate extension of time for completion of the Subcontract Works to the extent that delay has been caused by

- a) any reason which shall entitle AAR to a similar extension of time under the terms of the Principal Contract, or
- b) any act neglect or default of AAR or others for whom AAR is responsible except the Subcontractor.

7. PRICE AND PAYMENT

7.1 In consideration of performance of the Subcontract Works in accordance with the Subcontract AAR shall pay the Subcontract price to the Subcontractor at the times and in the manner set out in the Subcontract

7.2 Subject to the provisions of the Subcontract the cost of executing the Subcontract Works shall be at the risk of the Subcontractor, which shall be deemed to have obtained all information and taken into account of all circumstances which may affect such cost. Save as expressly provided elsewhere all such costs shall be deemed to be included in the Subcontract price which shall not be adjusted in any way other than in accordance with these terms and conditions.

7.3 The Subcontract price excludes Value Added Tax.

7.4 Unless otherwise stated in the Purchase Order the Subcontract Price is fixed for the duration of the Subcontract Works.

7.5 Payment to the Subcontractor shall be made in the following manner

- (a) The Subcontractor may submit application for payment together with details of amounts claimed for work properly executed under the Subcontract and for any unfixed goods or materials properly supplied and stored on the site accompanied by such documents as AAR may require and for any other amounts due under the Subcontract. Applications for payment may be submitted at intervals of one month starting either one month after the Subcontractor commences work on site or on completion of the Subcontract Works whichever is the sooner
- (b) Payment shall become due 25 days after the end of the calendar month during which AAR receives the Subcontractor's application and payment shall be made within 10 days of becoming due.
- (c) Within 5 days after a payment becomes due AAR shall notify the Subcontractor in writing giving details of the amount to be paid and the basis on which such amount is calculated.
- (d) If in respect of any application for payment AAR intends to withhold payment (or part thereof) of a sum previously notified as due under (c) above AAR shall give written notice of such intention not later than 3 days before the latest date for payment under (b) above giving details of each amount to be withheld and the grounds for withholding each amount.
- (e) Payment of retention monies (if any) shall fall due and, subject to the Subcontractor first submitting an application for payment thereof, the final dates for payment shall be:
 - (i) the first half of the retention shall be due on the date when the Subcontract Works are agreed to be Substantially Complete and its final date for payment shall be 30 days thereafter.
 - (ii) the second half of the retention shall be due on the date when all Defects notified to the Subcontractor within the defects liability period (if any) specified in the Purchase Order have been properly made good and its final date for payment shall be 30 days thereafter.

7.6 Value Added Tax where properly chargeable shall be added to any payments made under the Subcontract

7.7 Notwithstanding the provisions of **Clause 7.5** payment shall not be made until AAR receives payment under the Principal Contract in respect of work or materials or other amounts incorporated in the Subcontractor's application for payment.

- 7.8 Subject to **Clause 7.5(d)** AAR shall be entitled to set off against any payment otherwise due to the Subcontractor, under this Subcontract or otherwise, the amount of any damages costs losses and expenses which have been incurred by AAR and/or the Customer or which AAR bona fide estimates are likely to be incurred by reason of any breach of or failure to observe the provisions of this Subcontract by the Subcontractor.
- 7.9 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.

8 SUPERVISION, HEALTH AND SAFETY, QUALITY

- 8.1 At all times during the carrying out of the Subcontract Works the Subcontractor shall provide all necessary supervision to ensure the proper execution of the Subcontract Works and shall have a competent person in charge on the site who shall be authorised to accept instructions and directions on behalf of the Subcontractor.
- 8.2 The Subcontractor shall make itself familiar and comply with the requirements for health and safety and quality control under the provisions of the Principal Contract insofar as they relate to the Subcontract Works.
- 8.3 Without prejudice to the Subcontractor's obligations under **Clause 8.2** the Subcontractor shall comply with the provisions of AAR's current Health and Safety Regulations a copy of which shall be given to the Subcontractor on demand.
- 8.4 To the extent that the Subcontractor is a Designer or a Contractor for the purposes of the CDM Regulations the Subcontractor shall provide such information as may be required for it to comply with the said Regulations including but not limited to information for incorporation by duty holders under the said Regulations in the Health and Safety Plan and the Health and Safety File for the Client's project.
- 8.5 All materials and goods supplied shall so far as procurable be of respective kinds and standards described in the specification drawings or other documents specified in the Purchase Order.
- 8.6 All workmanship shall be of the standard described in the specifications drawings and other documents specified in the Purchase Order. If no such standards are described the workmanship shall be of a standard appropriate to the Subcontract Works.
- 8.7 All work shall be carried out in a proper and workmanlike manner.
- 8.8 To the extent that the Subcontractor carried out design including the choice of materials, the Subcontract Works shall be fit for any purpose made known to the Subcontractor.

9 FREE ISSUE EQUIPMENT

- 9.1 AAR may provide Free Issue Equipment to the Subcontractor for incorporation in the Subcontract Works.
- 9.2 Title in Free Issue Equipment shall at all times remain with AAR.
- 9.3 The Subcontractor shall be responsible for unloading Free Issue Equipment at the Site, storage and protection on the site, and for proper installation of such equipment into the Subcontract Works in accordance with any specification drawing and other document provided by AAR including manufacturer's instructions and recommendations.

10 ACCESS, FACILITIES AND ATTENDANCE

- 10.1 AAR shall provide the facilities and attendance (if any) described in the Purchase Order for use by the Subcontractor.
- 10.2 AAR shall provide access to the Site for the purpose of executing the Subcontract Works.

11 INDEMNITY AND INSURANCE

- 11.1 The provisions of the Principal Contract in respect of liability, insurance and indemnification in respect of death of or injury to persons and loss or damage to property shall apply between AAR and the Subcontractor under this Subcontract as though they were respectively the Customer and AAR.

- 11.2 Notwithstanding the provisions of **Clause 11.1** AAR may require the Subcontractor to effect insurance against such risks and in such sums and for the benefit of such persons as are specified in the Purchase Order, and shall provide evidence and details of such insurance to AAR on request.
- 11.3 Notwithstanding title in Free Issue Equipment remains with AAR under **Clause 9.2**, the Subcontractor shall indemnify AAR in respect of loss or damage to such equipment and shall effect insurance for the benefit of AAR in the sum specified (if any) in the Purchase Order.

12 TERMINATION

- 12.1 If the Principal Contract is determined or if the AAR's employment under the Principal Contract is determined for any reason, then the Subcontract shall thereupon be terminated, and the Subcontractor shall be entitled to payment in respect of the Subcontract Works properly carried out, but the Subcontractor shall not be entitled to any claim for loss and/or expense and/or damages including loss of profit resulting from such termination.
- 12.2 AAR may, after giving 7 days written notice to the Subcontractor expel the Subcontractor from the Site and/or terminate the Subcontract if the Subcontractor:
- Fails to comply with **Clause 3.2**, or
 - Fails to proceed regularly and diligently with the Subcontract Works, or
 - Has abandoned the Subcontract, or
 - Has suspended the progress of the Subcontract Works other than by entitlement conferred on it by the provision of any Act of Parliament and has not resumed progress within 7 days after receiving notice from AAR to proceed, or
 - Becomes bankrupt or insolvent or has a receiving order made against it compounds with its creditors or being a corporation commences to be wound up or has an administrative order made against it carries on business under an administrator, a receiver or a manager for the benefit of any of its creditors.
- 12.3 Any such expulsion under **Clause 12.2** shall be without prejudice to any other right or power of AAR under the Subcontract. Upon such expulsion the respective rights and duties of AAR and the Subcontractor shall be:
- AAR may use all goods and materials delivered to the Site and shall unless their value has previously been included in a payment to the Subcontractor, purchase such goods and materials at a fair price. Payment for such goods and materials shall be made in accordance with subclause (c) below.
 - AAR shall as soon as possible after the date of expulsion or termination value the Subcontract Works as at that date in accordance with the provisions of the Subcontract.
 - The Subcontractor shall not be entitled to payment of any amounts valued under subclauses (a) or (b) above until after completion of the Subcontract Works. Upon such completion the Subcontractor may apply to AAR and AAR shall pay to the Subcontractor the value of any work properly executed or goods and materials supplied to the extent that their value has not been included in previous payments.
 - When calculating the payment to be made to the Subcontractor AAR may deduct without prejudice to any other rights of AAR, the amount of any loss and/or expense and/or damages caused to AAR by the termination.

13 NOTICES

- 13.1 Where AAR is required by the terms of the Principal Contract to give any return, notice, account or information to the Customer, the Subcontractor shall in relation to the Subcontract Works provide AAR with a similar return, notice, account or information in sufficient detail to enable AAR to comply with its obligations under the Principal Contract
- 13.2 To be served effectively, any notice or communication in writing required under the Subcontract shall be sent to the registered office or the address of the respective parties set out in the Purchase Order.

14 SETTLEMENT OF DISPUTES

- 14.1 Should any dispute or difference arise between the parties under the Subcontract whether during the Subcontract Period or after its completion and whether before or after the termination, abandonment or breach of the contract then 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
- 14.2 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.
- 14.3 The Notice under **Clause 14.2** shall also be served forthwith by the Applicant on the Adjudicator named in the Purchase Order or if not so named, forthwith either upon his identity being subsequently agreed or upon him being appointed under **Clause 14.4** below as the case may be.
- 14.4 In the event that no Adjudicator is named in the Subcontract, then 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.

15 ADJUDICATION

- 15.1 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) 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.

16 LAW

- 16.1 The Subcontract shall be governed by English Law and the Subcontractor consents to the exclusive jurisdiction of the English Courts in matters regarding the Subcontract except to the extent that AAR invokes the jurisdiction of the Courts of any other country.

MER/SCH/2145-06/172145
May 1998