



## 1 DEFINITIONS

1.1 The following terms shall have the following meanings:

- (i) "The Company" means JCW Energy Services Limited its successors and assigns.
- (ii) "Subcontractor" means the name to whom the Order is addressed.
- (iii) "Subcontract" means The Company'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 The Company's Purchase Order.
- (v) "Principal Contract" means the contract between The Company 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 The Company as being the value of the Subcontract Works.

## 2. EXISTENCE AND SCOPE OF CONTRACT

2.1 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.

2.2 Unless otherwise expressly agreed, commencement of the Subcontract Works shall signify acceptance of these Terms and Conditions. For the avoidance of doubt The Company does not intend to enter into contract on any terms and conditions other than those set out herein.

2.3 The Subcontract Works are executed as part or all of work to be carried out by The Company for its Customer under the Principal Contract.

2.4 The Subcontractor shall have reasonable opportunity to inspect and is deemed to have full knowledge of The Company'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.

2.5 If requested by the Subcontractor, The Company shall provide the Subcontractor free of charge with a copy of the Principal Contract other than the details of The Company's prices.

2.6 In the event of conflict between the terms and conditions of the Principal Contract and these Terms and Conditions the latter shall take precedence.

## 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 The Company.

3.2 The Subcontractor shall ensure that the personnel providing the goods/services that are the Subcontract Works are suitably trained, qualified and experienced. A copy of the Subcontractors personnel training records and qualifications may be requested at any time by The Company.

3.3 The Subcontractor shall carry out all tests and inspections that are required under the Order, Subcontract or Principal Contract and provide copies of the test records and inspection reports as requested by The Company.

3.4 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

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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.

3.5 The Subcontractor shall not assign, transfer or sub-let the Works or any part thereof without the written of The Company.

3.6 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 The Company from time to time upon request.

#### 4. INSTRUCTIONS AND VARIATIONS

4.1 The Company 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 The Company 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 The Company 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. The Company 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, The Company 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 The Company 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 The Company before withdrawing operatives and/or leaving site.

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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 The Company, the Subcontractor shall pay or allow to The Company a sum equivalent to any loss and/or expense suffered or incurred by The Company and caused by the failure of the Subcontractor as aforesaid. The Company 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 The Company from the Subcontractor by way of deduction from any monies due to the Subcontractor under this Subcontract or any other contract between The Company and Subcontractor. The Company shall also be entitled to apply monies due to the Subcontractor under this Subcontract towards payment of any sum owing by the Subcontractor to The Company 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 The Company.

7.2 The Subcontractor may submit applications for payment together with details of amounts claimed for work properly executed 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.

7.3 The Company 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 a Retention Percentage as stated in Clause 7.5, less any discount to which The Company is entitled and less any other sums to which The Company is entitled. Retention monies shall be withheld and released at the times and in the manner stated in the Principal Contract.

7.4 Payment shall become due 60 days after the end of the calendar month during which The Company receives the Subcontractor's application and payment shall be made within 10 days of becoming due. (The final date for payment)

7.5 (a) Where the Subcontract Order Works have not reached practical completion, The Company may deduct and retain from the gross valuation the amount equal to 5% of the gross valuation.

(b) 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 by The Company to be practically complete and its final date for payment shall be 60 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 Subcontract Order have been properly made good, and the final date for payment shall be 30 days after the date when final payment is due to The Company under the Principal Contract.

7.6 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 The Company 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, The Company shall add to the amount of each payment due, VAT at the rate or rates properly chargeable on any supply by the Subcontractor.

7.7 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

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Subcontract and Income Tax shall be deducted from any payment due under this Subcontract upon the failure of the Subcontractor to provide to The Company from time to time with satisfactory evidence of its exemption under the said Act.

#### 8. PAYMENT IN INSOLVENCY

8.1 Notwithstanding anything else to the contrary elsewhere in this Order if the ultimate employer or the Client or The Customer is insolvent as defined in Sections 113(2)-(5) of Part II of the Housing Grants, Construction and Regeneration Act 1996 (as amended from time to time and subject to the change to section 113(2)(a) made by the Enterprise Act 2002 (Insolvency) Order 2003 (SI 2003/2096), The Company shall not be obliged to make any further payment to the Subcontractor of any amount which is due or may become due to the Subcontractor unless The Company has received payment in respect thereof from The Customer and then only to the extent of such receipt.

#### 9. SUPERVISION, HEALTH AND SAFETY

9.1 The Subcontractor shall allow for working with and around other subcontractors and cooperating fully as necessary and instructed by The Company.

9.2 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.

9.3 The Subcontractor shall provide The Company with a Labour on Site Return on a daily basis or otherwise as may be agreed with The Company.

9.4 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 2007.

9.5 The Subcontractor shall comply with the provision for health safety and quality of works under the Principal Contract and the provisions of The Company's current Health and Safety Regulations, a copy of which shall be given to the Subcontractor.

#### 10. INDEMNITY AND INSURANCE

10.1 The Subcontractor shall indemnify The Company 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 The Company 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.

10.2 The Subcontractor shall without prejudice to its liability to indemnify The Company 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.

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10.3 The Subcontractor shall produce for inspection on demand by The Company the policies of insurance required by Clause 10.2 and the premium receipts thereof. In the event of any failure by the Subcontractor to comply with the provision of Clause 10.2, The Company may itself insure and deduct the cost of the premiums so incurred from any monies due or to become due to the Subcontractor.

## 11. TERMINATION

11.1 Without prejudice to any other rights and remedies which The Company 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 The Company to remove defective work or materials, or
- (e) If it refuses or persistently neglects after notice in writing from The Company 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 The Company, The Company may thereupon by notice or registered post, or recorded delivery determine the employment of the Subcontractor under this Subcontract.

11.2 In the event of determination of the Subcontractor's employment The Company may either complete the Works 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 The Company from the Subcontractor.

11.3 If for any reason The Company'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 is has not already received such payment, but it shall not be entitled to recover from The Company any amount in respect of loss of profit on work not carried out as a result of such determination.

## 12. RULING LAW AND DISPUTES

12.1 Should any dispute or difference arise between the parties under the contract at any time including 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. Nothing in this clause shall be construed to deprive either party of its rights to commence proceedings in the Courts.

12.2 If any such dispute or difference arises then one party ("the Applicant") may serve upon the other ("the Responder") a notice in writing ("the Notice") which shall state in sufficient detail but in no more than 20 A4 pages the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.

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12.3 Subject to any other agreement between the parties as to who shall act as Adjudicator, the Adjudicator shall be the person named in The Company's quotation or the person selected by the President or Vice President of the Royal Institute of Chartered Surveyors.

12.4 The Adjudicator's decision is binding until the dispute or difference is finally determined as provided in clause 12.6.

12.5 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator is similarly protected.

12.6 Subject to the provisions of Clause 12, the Contract shall be read and construed in accordance with English law and the parties hereto are deemed to have submitted any disputes arising out of or in connection with the Contract to the exclusive jurisdiction of the English Courts subject to the rights of the parties to enforce a judgement or order obtained in the English Courts in any other jurisdiction.

12.7 Notwithstanding the provisions of Clause 12.6, if the Contract provides that the ruling law of the Contract is other than English law and/or the courts of a country other than England shall have jurisdiction over any disputes under or in respect of the Contract, then such law shall apply to the Contract and/or such courts shall have jurisdiction over any disputes under this Contract as the case may be subject only to the rights of the parties to enforce a judgement or order obtained in such courts in any other jurisdiction.

### 13. NOTICES

13.1 To be served effectively, any notice or communication in writing required to be given pursuant to these Conditions shall in the case of a notice or communication to The Company be sent to it at its address stated in the Quotation and/or Schedule and shall in the case of a notice or communication to the Customer at its registered office if the Customer is a company and in any other case to the address of the Customer last known to The Company. Any such notice or communication may be given by registered or recorded delivery post or facsimile transmission. To prove service in the case of a notice given by facsimile transmission it shall be sufficient to show that it was despatched to the correct facsimile number. Service shall be deemed to have been effected 24 hours after despatch by post or facsimile transmission.

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