

1. Definitions, status and governing law

(a) In these Conditions for Subcontracts:

- Subcontract means the order which refers to these conditions, these conditions for subcontracts, and any other documents referred to within the subcontract purchase order;
- we/us means the company referred to in the order;
- you means the person, firm, company or other organisation with which we have placed our subcontract purchase order;
- goods/services means the goods and/or services which we have ordered from you.

(b) These conditions override any terms and conditions you may have put forward unless we have agreed to any other conditions in writing.

(c) The Subcontract will be governed by Scots law.

2. Your obligations

(a) You must supply and deliver the goods/services in accordance with the Subcontract. Time is of the essence of this Subcontract. If no time for the supply of the goods/services is specified you must supply the goods/services promptly. In the event of any delay or anticipated delay, you must inform us in writing as soon as possible, giving full details including: the delay or anticipated delay, its anticipated duration and effect, and how you propose to mitigate the delay. In the event that you notify us of delays that are outwith your reasonable control, we may, in our absolute discretion, give a revised time for the supply of the goods/services. In the event that the goods and/or services are not supplied when due, we may, without prejudice to any other right or remedy, claim the additional cost of obtaining substitute or replacement goods/services..

(b) You are responsible for all necessary labour, machinery, equipment, transportation and whatever else is necessary in the performance of the Subcontract except where specifically identified otherwise in the Subcontract.

(c) You must perform the Subcontract in a safe, secure and environmentally aware manner, and in compliance with all applicable legislation, industry practice, and all of our health, safety and environmental policies and procedures. You may obtain copies of our policies and procedures from the address given in the Subcontract and it is your responsibility to ensure that all such policies and procedures are at all times complied with in full.

(d) You must perform the Subcontract in accordance with all applicable laws and regulations having the force of law.

(e) You must maintain insurances with coverage and amounts required by applicable law. You are to ensure that we are covered under these insurance policies as additional assured, and must obtain waivers of subrogation in favour of us with respect to the liabilities that you have assumed under this Subcontract. Evidence of insurance cover must be provided to us forthwith on request.

(f) You must ensure that the personnel providing the goods/services under the Subcontract are suitably trained, qualified and experienced.

(g) You must carry out all test and inspections detailed in the Subcontract and provide copies of test records and inspection reports if requested by us.

(h) You must maintain all records in relation to this Subcontract for a period of seven years after final payment, and agree to allow us to audit these records at all reasonable times. You shall ensure and procure that your subcontractors and suppliers maintain similar records as required by you in terms of this Clause and that they shall allow us to audit same at any reasonable time in the said seven year period.

(i) If at any time, we find that, in our reasonable opinion, the goods/services are defective or not in accordance with the Subcontract, we may reject the goods/services in whole or in part (for removal at your expense). You are responsible for errors and omissions in the goods/services, except where these arise directly from inaccurate information that we have supplied.

3. Payment

(a) Payment will be made 35 days from the end of the month in which a valid invoice, supported by details of your charges, is received.

(b) Each invoice must be a VAT invoice showing VAT, where applicable, separately and providing full details of your VAT registration.

(c) We may withhold payment of any amount which we do not believe is payable to you under this Subcontract, in which case we will notify you of the amount of your invoice which we are withholding, and the reason why we do not believe it is payable to you. If you owe any sums to us under any other contract we may apply any sums payable by us to you under this Subcontract in repayment of those sums unpaid by you.

(d) You are responsible for payment of, and the price on the subcontract purchase order includes for, all taxes, duties, fees or similar in connection with this Subcontract. However, we may withhold amounts which are legally required to be withheld from payments to be made to you and remit these to the relevant taxing authority.

4. Variations

(a) Variations to the Subcontract will not be binding on us unless authorised by us in writing. We may instruct a variation at any time by giving notice in writing.

5. Warranty and Indemnities

(a) You warrant that the goods/services will be of satisfactory quality, will be fit for any purpose specified in the Subcontract or, failing any such specification, any purpose for which the goods or services could reasonably be used, will comply with any description given by you, and will achieve the performance specified in the Subcontract or, if not specified, will perform within normal limits. We are entitled, but not obliged, to inspect the goods/services at any stage of the Subcontract, and you must allow us reasonable access to do this. You are not relieved of your responsibilities under the Subcontract if we do this.

(b) Without prejudice to the generality of Clause 5(a) above, you warrant that the goods/services will be free from defects for a period of twelve months after being placed in service, or twenty-four months from date of acceptance by us, whichever period expires earlier. If, within the specified warranty period, we discover any defect, you must repair, re-perform or replace the defective goods/services at your cost. If you fail after reasonable notice to proceed to repair, re-perform or replace the defective goods/services, we may arrange for repair, re-performance or replacements of the defective goods/services and charge all related costs to you, without voiding the warranties you have given under the Subcontract and without prejudice to any other remedy available to us. You agree to extend all warranties to us, to any subsequent purchaser of the goods/services.

(c) You agree to indemnify and hold us harmless against any claim for injury, death or damage to property arising out of the performance of this Subcontract, and against any losses, costs or expenses (including, but not restricted to, legal expenses on a full indemnity basis) that we may incur, howsoever arising, irrespective of our negligence or breach of duty, statutory or otherwise.

(d) You acknowledge and agree that certain losses, claims, costs or expenses (including, but not restricted to, legal expenses on a full indemnity basis) may arise as a result of your failure and that these losses may be direct or indirect and may be incurred by us in respect

of a loss of profit, a loss of anticipated saving or a loss of opportunity, Without prejudice to any other provision of this Subcontract, you shall indemnify us on demand from and against such losses, claims, costs or expenses.

(e) You shall not be entitled to any claim for indirect or consequential losses, including, but not limited to business interruption, loss of production, loss of profit.

6. Circumstances when we may end the Subcontract

(a) We may break this Subcontract if:

- you breach this Subcontract; or
- you become bankrupt; or
- as a company, start to be wound up or a receiver or administrator is appointed over all or part of your assets; or
- you enter into any agreement with your creditors or a voluntary agreement is made which affects you; or
- you enter into a voluntary agreement; or
- you are an individual and you die; or
- you are a partnership and the partnership is dissolved for any reason; or
- there is, in our reasonable opinion, a substantial change in the control of your company.

If we end the Subcontract in these circumstances it will end immediately and we may repossess any or all of the goods/services, which will become our property. If we end the Subcontract it will not affect our right to recover any money you owe us under the Subcontract or damages we claim as a result of you breaching this Subcontract.

(b) We may end the Subcontract at any time for our convenience by giving you written notice. If we end the Subcontract for this reason, you must immediately stop all work under the Subcontract, and protect the goods/services that have been completed or are in progress, which will become our property. You will be entitled only to payment for goods/services satisfactorily performed at the date of termination.

7. Ownership and responsibility for the goods/services and our property

(a) If we buy goods from you, you will continue to own the goods until we have paid for them. We will own the goods to the extent that we have paid for them.

(b) You are responsible for loss and damage to the goods (including any free issue goods in your possession) until they have been delivered to us. Delivery will be deemed to have taken place on the unloading of any goods at our premises in accordance with our instructions.

(c) We will continue to own any free issue goods at all times.

(d) You agree to keep our premises and other property free from any and all claims, liens and encumbrances.

8. Confidentiality and Intellectual Property Rights

(a) All information that we provide you under this Subcontract must be kept confidential, and only used for the purposes of fulfilling the Subcontract. Such information, or the existence of this Subcontract, must not be disclosed to any third party without our prior written consent, except to the extent that this information enters the public domain other than by way of a breach of confidence or that such disclosure is required by law or regulations having the force of law.

(b) We continue to own the intellectual property rights in any designs, data or other information that we have given to you, and they may only be used in relation to and for the duration of this Subcontract.

(c) We own the rights to any intellectual property that you create directly in the course of performing this Subcontract or required to make use of any deliverables under the Subcontract and you hereby assign to us all such intellectual property rights. You will do all things (including then signing and delivering any documents) required by us to confirm the vesting in us of any intellectual property rights.

(d) You agree to indemnify and hold us harmless against any and all claims of infringement of a third party's intellectual property rights which arise out of this Subcontract, except to the extent that such claims relate to designs, data or other information that we have given to you.

9. Assignment and Sub-Contracting

(a) You must not sell, assign or transfer this Subcontract or any part of it or any money due under it without our prior written consent.

(b) We may assign this Subcontract, in whole or in part, to any other party.

(c) We reserve the right to approve or disapprove all subcontractors or suppliers that you propose are involved in the performance of this Subcontract.

10. Relationship between the parties

(a) You shall not be our agent or employee, and in every respect you agree that you shall operate as an independent contractor providing goods/services under this Subcontract.

11. Rights of third parties

(a) We do not grant any right to any person other than you to enforce any term of the Subcontract, except other members of the group of companies to which we belong.

12. Dispute resolution

(a) The parties will attempt in good faith to resolve any dispute or difference which arises out of or in relation to this Subcontract.

(b) The parties submit to the exclusive jurisdiction of the Court of Session in Edinburgh, although it is agreed that we may take steps to recover any sums due by you to us before any competent court.

13. Separate terms

(a) If any term in this Subcontract cannot be or is not enforced, this will not affect the remaining terms.