



Hankinson
Whittle

Hankinson Whittle Limited

Sub-Contract Terms & Conditions

Effective for all orders dated on or after 1 October 2024

1 Definitions

- 1.1 'Act' means the Housing Grants, Construction and Regeneration Act 1996, as amended.
- 1.2 'Adjudicator' means a person appointed in accordance with clause 16 of the Conditions who shall be an Adjudicator for the purposes of the Act and not otherwise.
- 1.3 'Business Day' a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.4 'Client' means Hankinson Whittle Limited (company number: 11415123).
- 1.5 'Conditions' means these Sub-Contract Conditions.
- 1.6 'Data Breach' means any event comprising an unauthorised loss, corruption, damage, destruction, alteration, disclosure or access to any Personal Information, any unauthorised or unlawful processing of Personal Information or any breach of the Data Protection Legislation (each a Data Breach), or any action that causes or could reasonably be deemed to cause a Data Breach.
- 1.7 'Data Protection Legislation' means all laws in any relevant jurisdiction that relate to data protection, privacy, and the use of information relating to, and the information rights of, individuals, including, without limitation: the Data Protection Act 1998 and any other laws in force from time to time which implement the Data Protection Directive 1995/46/EC and; the General Data Protection Regulation ((EU) 2016/679) and the equivalent in any other relevant jurisdictions all as amended or replaced from time to time.
- 1.8 'Employer' means the party by whom the Client is employed pursuant to the Main Contract.
- 1.9 'Employer Liability' pertains to section 3 of the Employers Liability (Compulsory Insurance) Act 1969.
- 1.10 'Main Contract' means any Contract or Contracts specified in the Order.
- 1.11 "Mandatory Policies" the Client's business policies listed in the Schedule.
- 1.12 'Order' is the Sub-Contract Purchase Order that is issued to the Sub-Contractor from the 'LiveCosts' system, setting out the agreement to undertake the Sub- Contract Works.
- 1.13 'Personal Data' shall have the meaning prescribed under Data Protection Legislation.
- 1.14 'Process' shall have the meaning prescribed under Data Protection Legislation.
- 1.15 'Processing' shall have the meaning prescribed under Data Protection Legislation.
- 1.16 'Sub-Contractor' means the Sub-Contractor specified in the Order and apply to their chosen Sub-Contractors.
- 1.17 'Sub-Contract' shall comprise the Order and the Conditions and any other conditions that may be implied, or shall apply, by statute. Save and except where otherwise expressed, no other terms shall apply and form part of the Sub-Contract save as stated herein and the Sub-Contract shall constitute the entire agreement between the Client and the Sub-Contractor.
- 1.18 'Sub-Contract Completion' is the date on when the Sub-Contractor actually completes the Sub-Contract Works, including correction of all defects that affect use or occupation of the building and the submission of all documents and warranties required under the Sub-Contract.
- 1.19 'Sub-Contract Completion Date' is the date on which the Sub-Contractor is obliged to complete the Sub-Contract Works as specified in the Order.
- 1.20 'Sub-Contract Works' means the works referred to in the Order which shall be executed as part of the works contained within the Main Contract including Variations
- 1.21 'Variations' shall mean those variations which are identified and defined in clause 4.1 of the Sub-Contract Conditions

2 Main Contract & other Condition

- 2.1 The Sub-Contractor shall satisfy itself and is deemed to have full knowledge of the Client's Mandatory Policies, as listed in the Schedule, copies of which are available for inspection upon written request.
- 2.2 The Sub-Contractor shall satisfy itself and is deemed to have full knowledge of the Client's "Contractor Policy & Guidance Handbook". The Sub-Contractor shall have a total of 7 days from the date of the Order to obtain and review this document and provide correspondence to the Client should they not be able to adhere to any of the content.
- 2.3 The Conditions shall apply to the Order and all works carried out thereunder. No amendments or additions to the Conditions shall apply unless notified by the Client in writing.
- 2.4 Any terms and conditions that may be included within the Sub-Contractor's quotation or any other document supplied by or on behalf of the Sub-Contractor shall be of no effect and shall be null and void.
- 2.5 The Sub-Contractor shall, within 14 days of each request made by the Client from time to time, execute and deliver as a deed and (unless otherwise directed by the Client) shall procure that its ultimate holding company shall similarly execute and deliver a warranty agreement or agreements in the form as specified by the Client from time to time in respect of the Sub-Contract Works in favour of the Employer, any purchaser and/or tenant or tenants of the whole or any part of the relevant property.

3 Performance

- 3.1 The Sub-Contractor shall carry out and complete the Sub-Contract Works in accordance with the Sub-Contract and the law, to include any obligations imposed on the Sub-Contractor by the Construction (Design & Management) Regulations (CDM 2015). The Sub-Contractor shall also comply with all directions given by the Client and to the satisfaction of the Client so far as such requirements are applicable to the Sub-Contract works and in accordance with the drawings and/or any other specification and instructions as may be supplied to the Sub-Contractor by the Client from time to time.
- 3.2 The Sub-Contractor warrants that all goods and materials supplied pursuant to the Order shall be of satisfactory quality, in accordance with any specific requirements as stated within the Order and fit for the purpose required. All work shall be executed with proper skill and care and diligence expected of like qualified Sub-Contractors experienced in work of a similar nature, scope and complexity.
- 3.3 The Sub-Contractor shall not sub-contract or assign work without the written consent of the Client whose consent shall not be unreasonably withheld.
- 3.4 The Sub-Contractor shall, when requested by the Client, provide drawings to the sub- contract works or such other information as may be required to the Client expeditiously to avoid disruption to the Sub-Contract Works.

- 3.5 Where the Order is for scaffolding, the Sub- Contractor shall maintain detailed records showing weekly inspections were undertaken by the Sub-Contractor. These records will be made available to the Client immediately on their request.
- 3.6 Where the Sub-Contractor plans to sub-contract their works to a third party, prior written approval must be sought from the Client. If accepted by the Client, the Sub-Contractor must take reasonable steps to ensure that their Sub-Contractor:
- (a) Is inducted to site by an appropriate Client Supervisor
 - (b) Has accepted responsibility for adherence to the relevant guidance on site conduct, health and safety and other applicable Client policies and procedures, as would be the case if they were a direct Sub-Contract engagement of the Client
 - (c) Has the relevant levels of insurance as outlined in clause 11.2 of this agreement
 - (d) Has the required level of skills, knowledge, expertise and qualifications to deliver services to the required standards of the Client
 - (e) Accepts their responsibilities in respect of the defects clause 7 of this agreement.

4 Variations

- 4.1 The Client may vary the scope of the Sub- Contract Works by way of addition, omission or substitution of work, which shall all constitute Variations. All Variations shall be authorised in writing by the Client and / or its agents, and the Sub-Contractor shall thereafter respond with all proper dispatch. The Sub-Contractor must not vary the Sub- Contract Works without written authorisation from the Client.
- 4.2 The valuation of variations shall be made by the Client using those rates and prices in any Bill of Quantities or Schedule of Rates or other pricing document that is incorporated into the Order for work that is similar in nature and extent. If such rates or prices do not apply, the variation shall be valued using fair rates and prices.
- 4.3 If work performed under a Variation cannot be measured, the Client may direct the Sub- Contractor to value the Variation on a daywork basis using those daywork rates or percentages that are included in the Order. No Variation shall be valued on daywork unless instructed beforehand by the Client.
- 4.4 The Client shall only be obliged to pay the Sub-Contractor for those Variations which have been authorised by the Client in writing, in advance of works being completed.

5 Time

- 5.1 The Sub-Contractor shall commence the Sub-Contract Works on the date stated in the Order or within one week from a notice to commence, whichever date is the later. The Sub-Contractor shall proceed with the Sub-Contract Works regularly and diligently to achieve completion by the Subcontract Completion Date or any other milestone date that is specified in the Order. If a milestone date is specified in the Order any reference to the Sub-Contract Completion Date shall also mean the milestone date that is specified in the Order.
- 5.2 The Client may reasonably instruct the Sub- Contractor to progress the Sub-Contract Works in a specific sequence or order so as to comply with the Main Contract program. The Sub-Contractor shall comply with any such reasonable instruction without any adjustment to the Sub-Contract Sum.
- 5.3 If, due to the fault of the Sub-Contractor, the Client reasonably decides that the Sub- Contractor will not complete the Sub- Contract Works by the Sub-Contract Completion Date the Client may either supplement the Sub-Contractor's resources or omit the remaining Sub-Contract Works, or part thereof, and instruct others to complete such work to meet such obligations. The Sub-Contractor shall pay or allow to the Client any additional cost that the Client incurs because of appointing others under this clause.
- 5.4 If the Sub-Contractor fails to complete the Sub-Contract Works by the Sub-Contract Completion Date or to meet any milestone date Liquidated Damages will apply if specified in the Order. Where Liquidated Damages are not specified in the order the Sub-Contractor shall pay or allow to the Client any loss and expense that the Client incurs, or bona fide estimates to incur, as a direct result of such failure to complete.

6 Extension of time

- 6.1 As soon as the Sub-Contractor becomes aware of any event that has, or is likely to delay the Sub-Contract Completion Date, the Sub-Contractor shall issue a written notice of this event to the Client. The notice shall identify the event and its effect, or likely effect on the Sub-Contract Completion Date.
- 6.2 If, on receipt of the notice under clause 6.1, the Client decides that the event notified by the Sub-Contractor is an event which is either:
- (a) An event entitling the Client to an extension of time under the Main Contract, or
 - (b) An authorised Variation by the Client, or
 - (c) Any breach of the Sub-Contract by the Client

the Client shall award a fair and reasonable adjustment to the Sub-Contract Completion Date to the extent that the Sub-Contract Completion Date is delayed by the event. Any delay which is concurrent with another delay for which the Sub-Contractor is responsible shall not be considered.

7 Defects

- 7.1 The Sub-Contractor shall not unreasonably refuse a request from the Client to inspect the Works to include the opening for inspection or testing of any work, materials or goods (including making good) at no cost to the Client, and with no allowances for extensions of time being made.
- 7.2 All defects in the Sub-Contract works shall be made good by the Sub-Contractor within a reasonable time of the defect being notified to them. The Sub-Contractor shall be responsible for correcting defects at their own cost until 52 weeks after the date of Subcontract Completion.
- 7.3 If the Sub-Contractor fails to correct a defect within a reasonable time of it being notified, the Client shall have the right to engage others to correct the defect and the Sub-Contractor shall pay the Client the additional cost that the Client incurs in doing so.

8 Valuation and payment

- 8.1 Provided that the Sub-Contractor submits an invoice in accordance with these conditions, the Client shall assess the amount due as at each 'Valuation Date'. Valuation Dates shall be the last day of every month up to the Sub-Contract Completion Date.
- 8.2 The amount due shall be the value of work properly executed by the Sub-Contractor at each Valuation Date less retention where applicable, plus any other amounts payable under the Sub-Contract, less the total amount previously paid by the Client. The Client is entitled to set off from the amount due any amount that is payable by the Sub-Contractor to the Client under these conditions. The amount due does not include the value of any unfixed materials (on or off site) unless otherwise agreed between the Client and Sub-Contractor in writing.
- 8.3 The Sub-Contractor shall submit their invoice to the Client as per the relevant Sub-Contractor payment timetable, whether on fortnightly or monthly payment terms. Where the Sub-Contractor submits their invoice more than 60 days after the works completion date, the Client is under no obligation to settle the amount due.
- 8.4 Qualification for either the fortnightly or monthly Sub-Contractor payment timetable is at the discretion of the client, and is based on certain factors including but not limited to:
- (a) CIS status
 - (b) VAT registration status
 - (c) Legal status
 - (d) Projected annual work effort value with the client
- 8.5 The Due Date for each payment shall be determined by the achievement of the invoice cut-off date disclosed on the relevant Sub-Contractor payment timetable.
- 8.6 The Client shall issue to the Sub-Contractor a remittance advice note confirming the net sum to be paid, no later than one working day prior to the scheduled due date for payment. This will be followed by a CIS statement confirming deductions of income tax in the last tax month, to be issued between the 6th and 19th of any given month.



- 8.7 If the Client intends to pay less than the Notified Sum then, not later than 5 days before the due date for payment, they must give the Sub-Contractor a Pay Less Notice specifying the amount the Client considers is due and the basis on which that sum has been calculated.
- 8.8 The Client is entitled to apply a retention (where appropriate) on the gross valuation of the Sub-Contract Works, on each interim payment that becomes due up to the Sub-Contract Completion Date. This will be released at the end of the relevant retention period, assuming the conditions of the retention period have been satisfied by the Sub-Contractor
- 8.9 Where applicable invoices must display materials supplied and plant hired as separate items. Invoices not submitted in this format will be taxed in full. They must state whether plant is 'hired in' from a third party for use on our sites or if it is 'owned' plant. If this distinction is not clear then it will be assumed to be owned plant and will be taxed accordingly. The Client reserves the right to request back-up supplier invoices in respect of materials and 'hired in' plant to support the values being claimed by the Sub-Contractor.
- 8.10 All Payments due to the Sub-Contractor shall be made by the Client using the BACS method of direct payment into the nominated account. Where the nominate bank account details do not match the name of the Sub-Contractor supplying services, the Client reserves the right to withhold payment.
- 8.11 Where a change of bank account for the Sub-Contractor occurs, details must be provided on letterhead and signed by a responsible person for the Sub-Contractor e.g. for a limited company, the person of significant control. The client will subsequently verbally verify the change in bank account details prior to any payments being made to the new account.
- 8.12 In the event the Sub-Contractor utilises an invoice finance facility, with payment going to the invoice finance provider rather than the Sub-Contractor, it is the Sub-Contractor's responsibility to share the assigned trust bank account details with the Client on signed letterhead. For the avoidance of doubt, the Client carries no liability with any invoice finance provider in respect of the invoices due for settlement.
- 8.13 The value and payment of all orders issued by the Client will be deemed to include any entitlement of the Sub-Contractor to payments of holiday pay or auto enrolment contributions howsoever arising.

9 Additional cost claims

- 9.1 If the Sub-Contractor incurs or is likely to incur additional cost as a result of the regular progress of the Sub-Contract Works being significantly affected by a breach of this Sub-Contract by the Client, the Sub-Contractor shall forthwith notify the Client in writing. Such notice shall identify the alleged breach and provide details of how such additional cost has arisen from such breach. If the Client is satisfied that the Sub-Contractor has incurred additional cost as a result of such breach, then he shall adjust the Sub-Contract Sum provided always that the Sub-Contractor has notified the claim forthwith and not later than 14 days from when the Sub-Contractor ought to have reasonably become aware of the additional cost being incurred as a result of the breach notified.

10 VAT / Income Tax

- 10.1 VAT is currently dealt with via the appropriate disclosures on the tax invoice raised by the Sub-Contractor.
- 10.2 With regard to the relevant Finance Act the Sub-Contractor is obliged prior to any payment being made to supply the Client with the following details to enable the Client to verify the Sub-Contractor details as shown on the HM Revenue and Customs database:
- i) Name as held by HM Revenue and Customs
 - ii) Company Registration or National Insurance Number
 - iii) Unique Tax Reference (UTR)
- 10.3 The Client will make payments in accordance with the results of this verification and any dispute that the Sub-Contractor may have over the rate of tax deducted must be addressed by the Sub- Contractor to HM Revenue and Customs.
- 10.4 For the avoidance of doubt, the Client shall be entitled to deduct an amount in respect of Tax from any payment as required by law.
- 10.5 If the reverse charge for construction services comes into effect during the duration of this contract, then the Sub- contractor shall provide written confirmation to the Supplier if they believe that supplies and payment under this contract be exempt from the reverse charge.

11 Liability Insurance Risks

- 11.1 The Sub-Contractor is to insure against all Employer's and Public Liability Risks. Contractors' All Risks and other policies must be extended to indemnify the Client, holding the Client and Employer harmless from any liability whatsoever. The Client will require sight of the policies and subsequent renewals, which it is the responsibility of the Sub-Contractor to provide. Should the Sub- Contractor supply plant or equipment to the Client, the Client's responsibility for the plant and equipment shall be limited to the terms of their insurance which will cover replacement for those plant/equipment materials that are less than three years old at the date of any incident and/or damage caused by the Client. In the event the plant materials are more than three years old, the Client's terms of insurance will allow for re- instatement by way of redress only.
- 11.2 The following minimum levels of are required:
- (a) Employer's liability insurance - £5m minimum cover
 - (b) Public liability insurance - £5m minimum cover
 - (c) Professional Indemnity Insurance – requirement for cover (and resultant level of cover) dependent upon the project being undertaken

12 Safety

- 12.1 All works, operations, hire or deliveries of goods to site carried out by the Sub- Contractor shall comply with the safety policy of the Client which is available upon request which includes all relevant Health & Safety legislation and any other statute which may be applicable.
- 12.2 All Sub-Contractors must be approved by our Health & Safety department before work commences.
- 12.3 All Sub-contractors must adhere to the "Contractor Policy & Guidance Handbook". which details the Hankinson Whittle way of working. All Sub-contractors have 7 days from receipt of the Order to notify the Contractor should they not be able to adhere to any aspect of the content.

13 Suspension

- 13.1 If the Client shall, subject to any notice issued pursuant to Clause 8.6 fail to pay the Sub-Contractor the Notified Sum in full by the final date for payment as required by these Conditions and such failure shall continue for 14 days after the Sub- Contractor has given to the Client written notice of his intention to suspend performance of his obligations under this Contract and the ground or grounds on which it is intended to suspend performance then the Sub-Contractor has the right to suspend such performance of his obligations under this Contract to the Client until such payment in full occurs.
- 13.2 For the avoidance of doubt, the right to suspend performance ceases upon payment in full by the Client of the amount due.

14 Termination

- 14.1 Without prejudice to any other rights of the Client at common law if the Sub-Contractor shall:
- i) Suspend performance of the Sub- Contract Works other than pursuant to Clause 14 or
 - ii) Fail to proceed with the Sub-Contract Works with due diligence or in accordance with the directions of the Client or
 - iii) Refuse to remove, repair or reinstate defective work or materials or
 - iv) In any manner breach the Sub-Contract or
 - v) Become bankrupt or insolvent.
 - vi) Fails to perform the Sub-Contract Works in accordance with the dates and times included within the Order (to include the Sub-Contract Completion date and/or any milestone date) or in accordance with the program referred to within the Order.

The Client shall at its sole discretion, terminate the Sub-Contract forthwith by written notice.

- 14.2 In the event of termination by the Client (under the Sub-Contract or otherwise) the Client's obligation to make any further payment under the Sub-Contract shall cease. Within three months of the Sub- Contract Completion Date (as completed by others) the Client shall assess the final payment, which shall consider any loss and or expense that the Client has incurred because of such termination, to include the costs of instructing another contractor to complete the works for which the Sub-Contractor had been instructed.

- 14.3 The final payment shall be made in accordance with clause 8, or upon the completion of the works by an instructed Third Party in the event of termination owing to a breach of these terms by the Sub- Contractor, whichever is later.
- 14.4 The Client's rights of termination pursuant to this clause 15 are without prejudice to the Client's common law rights to bring the Sub- Contract to an end without prejudice to any other rights or remedies which may apply.

15 Adjudication

- 15.1 If any dispute of difference arises under the Sub-Contract the dispute may be referred to adjudication in accordance with Part I of the Scheme for Construction Contracts (England and Wales) Regulations 1998 and any subsequent amendment thereto. The referring party shall apply to the RICS for the nomination of an adjudicator.

16 Arbitration

- 16.1 Subject to Clause 16.1 above if any dispute or difference as to any matter of thing of whatsoever nature arising under the Sub- Contractor in connection therewith, shall arise between the parties it shall either be referred to a Court of law or to arbitration. The Client shall decide at its discretion whether the dispute or difference should be dealt with by the Courts or in arbitration.
- 16.2 Where a dispute or difference is to be referred to arbitration then the JCT 1998 Edition of the Construction Industry Model Arbitration Rules (CIMAR) shall apply.

17 Third Party Rights

- 17.1 The Sub-Contract does not confer or purports to confer any right to enforce any of its terms on any person who is not a party to it.

18 Data Protection

- 18.1 The parties anticipate that the Client may need to pass Personal Data to the Sub- Contractor as necessary for the delivery of the Sub-Contract Works. Such Personal Data shall only be used by the Sub- Contractor for the duration of the Main Contract or as long as necessary to deliver the Sub-Contract Works, whichever period is shorter. Such Personal Data may include names, contact details and certain health information (such as disability information) about the individual end-customers of the Client who are to benefit from the Sub-Contract Works. All such Processing of Personal Data shall be conducted in accordance with this clause 19.
- 18.2 The Sub-Contractor shall:
- 18.3 process the Personal Data only on the documented instructions of the Client.
- 18.4 ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality.

- 18.5 Implement appropriate technical and Organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental, loss, destruction, damage, alteration or disclosure;
- 18.6 not appoint a third party to Process Personal Data on its behalf without the prior specific written consent of the Client;
- 18.7 assist the Client with its obligations under Data Protection Legislation including assisting with any privacy impact assessments that are required;
- 18.8 at the choice of the Client, delete or return to the Client all Personal Data after the end of the provision of the Sub-Contract Works under the Order;
- 18.9 make available to the Client all information necessary to demonstrate compliance with its obligations and allow for and contribute to audits, conducted by the Client if (A) in its opinion, an instruction infringes Data Protection Legislation or other Union or Member State data protection provisions; and (B) there is a Data Breach;
- 18.10 in the case of a Data Breach shall provide reasonable support and assistance (at no additional cost) in responding to a Data Breach and any notifications required to those data subjects affected by the Data Breach.
- 18.11 The Sub-Contractor shall not sub-contract its Processing of Personal Data to a third party without the Client's prior specific or general written authorisation. Where any sub- contracting is based on the Client's general written authorisation, the Sub-Contractor shall inform the Client of any intended changes concerning the addition or replacement of any sub-contractors and the Client shall notify the Sub-Contractor of any objections it has to such changes in writing within 5 days.
- 18.12 The Sub-Contractor shall not transfer Personal Data to any country outside of the European Economic Area without the prior written consent of the Client.
- 18.13 The provisions of clause 19 shall survive the termination or expiry of the Main Contract and these Conditions.

19 Bribery

- 19.1 The Sub-Contractor shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti- corruption including but not limited to the Bribery Act 2010.
- 19.2 Breach of this Clause 20 shall be deemed a material breach under clause 15 without further liability to the Client.

20 Anti-Facilitation of Tax Evasion

- 20.1 The Sub-Contractor shall not engage in any activity, practice or conduct which would constitute either a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017 or a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
- 20.2 Breach of this Clause 21 shall be deemed a material breach under clause 15.

21 Modern Slavery

- 21.1 The Sub-Contractor shall comply with all applicable laws, statutes, regulations and codes relating to the Modern Slavery Act 2015.
- 21.2 Breach of this Clause 22 shall be deemed a material breach under clause 15.

22 General

- 22.1 No waiver by the Client of any breach of the Sub-Contract by the Subcontractor shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 22.2 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Sub-Contract and the remainder of the provisions in question shall not be affected.
- 22.3 The Order and the Conditions shall be constructed in accordance with English law and insofar as any matter arising out of the order or the Conditions or the Arbitration Agreement is required to be referred to a Court of law the Courts of England and Wales shall have exclusive jurisdiction.

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