



Rooff Limited General Conditions of Contract

1.0 Definitions

In these Conditions the following words and expressions shall have the following meanings:

- 1.1 "Completion Date" shall mean the date for completion of the Sub-Contract Works set out in the Sub-Contract Order and/or the Sub-Contract Documents.
- 1.2 "Conditions" shall mean the terms and conditions herein numbered as clauses 1-16 and any additional conditions specifically incorporated into the Sub-Contract Order by the Contractor.
- 1.3 "Contractor" shall mean Rooff Limited.
- 1.4 "Employer" shall mean the party or parties to the Main Contract other than the Contractor.
- 1.5 "Main Contract" shall mean the contract between the Employer and the Contractor.
- 1.6 "Main Contract Works" shall mean the works to be undertaken by the Contractor under the terms of the Main Contract.
- 1.7 "Maintenance Period" shall mean the period from the Completion Date until the Contractor has confirmed in writing that all defects or other faults in the Sub-Contract Works have been repaired, rectified or made good.
- 1.8 "Sub-Contractor" shall mean the company, firm or person who has been engaged by the Contractor to carry out the Sub-Contract Works pursuant to these Conditions.
- 1.9 "Sub-Contract" shall mean the agreement between the Contractor and the Sub-Contractor which is governed by these Conditions.
- 1.10 "Sub-Contract Documents" shall mean those documents described in the Sub-Contract Order, including these Conditions.
- 1.11 "Sub-Contract Order" shall mean the order to which these Conditions are attached.
- 1.12 "Sub-Contract Sum" shall mean the sum stated in the Sub-Contract Order"
- 1.13 "Sub-Contract Works" shall mean the works to be undertaken by the Sub-Contractor as defined in the Sub-Contract Order and carried out pursuant to these Conditions.

2.0 General Obligations

- 2.1 The Sub-Contract will be deemed to have commenced on the date of the Sub-Contract Order and any Sub-Contract Works carried out prior to the date of the Sub-Contract Order shall be treated as having been carried out under the terms of the Sub-Contract which shall supersede any previous agreements with regard to the Sub-Contract Works and any payments made shall be deemed to have been made on account of the Sub-Contract Sum.
- 2.2 The Sub-Contractor shall carry out and complete the Sub-Contract Works in accordance with the Sub-Contract Documents, to the satisfaction of the Contractor and in conformity with all reasonable directions and requirements of the Contractor.
- 2.3 The Contractor may vary the quality, quantity or form of the Sub-Contract Works (including omitting works) by authorising the variations in writing to the Sub-Contractor and the Sub-Contractor shall comply with such authorised variations fully and promptly. No such authorised variations shall invalidate the Sub-Contract. The valuation of such authorised variations shall be carried out in accordance with the valuation rules set out in the Main Contract or if there are none, agreed between the Contractor and Sub-Contractor and the Sub-Contract Sum shall be adjusted accordingly. Where agreement cannot be reached as to the value of such variations, the Sub-Contractor shall be entitled to be paid a fair and reasonable sum for carrying out such variations. The Contractor shall have no liability whatsoever to pay for any variations to the Sub-Contract Works unless this clause has been properly complied with, but nevertheless the Contractor shall be entitled to the benefit of such work. For the avoidance of doubt, oral instructions shall not be effective unless confirmed in writing by the Contractor within 3 days of the oral instruction.
- 2.4 The workmanship of the Sub-Contractor shall be of a standard so that it complies with good working practices and to the approval of the Contractor and the Employer.
- 2.5 The Sub-Contractor shall have a reasonable opportunity of inspecting, and is deemed to have notice of, the terms and conditions of the Main Contract (with the exception of the detailed prices of the Contractor and any other commercially sensitive material), and so far as they are applicable to the Sub-Contract shall be bound to observe and perform the obligations, duties and conditions to be observed and performed by the Contractor as if the Sub-Contractor had been named in the Main Contract as the Contractor and the Contractor had been named therein as the Employer. The Sub-Contractor warrants and undertakes that he shall perform its obligations in accordance with the requirements of the Sub-Contract so that no act, omission, breach or negligence by the Sub-Contractor shall constitute, cause or contribute to any breach by the Contractor of any of its obligations under the Main Contract or shall cause, contribute or otherwise give rise to any other liability on the part of the Contractor to the Employer or pursuant to any necessary consent or law. The Sub-Contractor further warrants and undertakes that (without restricting the right of the Contractor to claim damages or other relief on any basis available to it) the Sub-Contractor shall indemnify the Contractor against all losses, damages, costs and expenses (whether direct or consequential) recoverable by the Employer from the Contractor (pursuant to the Main Contract) as a result of any act, omission or breach by the Sub-Contractor of the Sub-Contract.
- 2.6 If any conflict shall appear between any provisions of the Main Contract and the Sub-Contract then the latter shall prevail. Should any conflict appear between these Conditions and any other Sub-Contract Documents then the former shall prevail.
- 2.7 The Sub-Contractor shall provide all notices and other particulars in respect of the Sub-Contract within a reasonable time so as to allow the Contractor to provide the same in accordance with the Main Contract.
- 2.8 The Sub-Contractor shall not assign the Sub-Contract or sub-let any portion of the Sub-Contract Works without the written consent of the Contractor provided always that if such consent is given it shall not relieve the Sub-Contractor from any of his obligations, duties or liabilities under the Sub-Contract.
- 2.9 The commencement of the Sub-Contract Works will be deemed to signify the acceptance by the Sub-Contractor of the Sub-Contract including these Conditions and that the conditions of the site are ready to receive the Sub-Contract Works and are satisfactory to enable the Sub-Contractor to properly carry out the Sub-Contract Works.
- 2.10 The Sub-Contractor shall exercise all proper care in the use of plant, equipment, materials or other property supplied by the Contractor to carry out the Sub-Contract Works. The plant, equipment, materials or other property belonging to the Sub-Contractor (other than materials or goods on site for use in the Sub-Contract Works) shall be at the sole risk of the Sub-Contractor and any loss or damage to the same, or caused by the same, shall be the sole liability of the Sub-Contractor who shall indemnify the Contractor against any loss, claims or proceedings arising therefrom.
- 2.11 If, during the course of carrying out the Sub-Contract Works, the Sub-Contractor becomes aware of any issue, matter or thing, whether in the form of defects or otherwise, which may materially affect the carrying out and completion of the Sub-Contract Works and/or the Main Contract Works, the Sub-Contractor shall forthwith draw such issue, matter or thing to the attention of the Contractor.
- 2.12 Collateral Warranties will be provided by the Sub-Contractor as reasonably requested by the Contractor.

3.0 Programme, Extension of Time and Loss and Expense

- 3.1 The Sub-Contractor shall commence the Sub-Contract Works on 2 days written notice to commence being given by the Contractor.
- 3.2 Subject to clause 3.4, the Sub-Contractor shall carry out and complete the Sub-Contract Works by the Completion Date in conformity with the requirements of the Main Contract and in such a manner as to avoid delay and/or hindrance to the progress of others.
- 3.3 In the event that the Contractor incurs any delay to the progress of the Main Contract Works as a result of the failure by the Sub-Contractor to provide information (including but not limited to the information required pursuant to clause 2.7), or otherwise progress the Sub-Contract Works in accordance with the Sub-Contract, or any agreed variations or supplements thereto, then the Sub-Contractor shall take all reasonable and timely measures to mitigate the effects of such delays and such measures shall include but shall not be limited to the employment of additional resources at no additional cost to the Contractor. In the event the Sub-Contractor fails to employ additional resources within 3 days of the Contractor's written instruction to do so, the Contractor shall be entitled to either employ such additional resources itself and recover the cost incurred from the Sub-Contractor or determine the Sub-Contract pursuant to clause 9.1.4.
- 3.4 Subject to clause 2.7, the Contractor shall grant to the Sub-Contractor an extension of time for completion of the Sub-Contract Works to the extent that delay has been caused to the Sub-Contract Works by reason of any event which can be grounds under the Main Contract for an extension of time, provided always that the Contractor shall not be obliged to grant the Sub-Contractor an extension of time for completion of the Sub-Contract Works until such time as the Contractor has been awarded an extension of time under the Main Contract by reason of the said event.
- 3.5 The provisions of the Main Contract relating to the payment to or allowance by the Contractor of direct loss and/or expense caused by the disturbance of regular progress shall apply like for like to the Sub-Contract as between the Contractor and the Sub-Contractor as if they were respectively the Employer and the Contractor.
- 3.6 If the Sub-Contractor fails to complete the Sub-Contract Works by the Completion Date or as extended by the Contractor by any reason other than those entirely beyond the control of the Sub-Contractor, then the Sub-Contractor shall pay or allow to the Contractor a sum equivalent to any direct loss and/or expense suffered or incurred by the Contractor and caused by the failure of the Sub-Contractor as aforesaid.

4.0 Indemnity

- 4.1 The Sub-Contractor shall indemnify the Contractor against any liability for personal injury (whether fatal or otherwise) loss of, or damage to property and/or any losses, damages, costs and expenses (whether direct or consequential) howsoever caused or incurred by reason of the Sub-Contractor's errors, omissions or negligence in connection with the carrying out of the Sub-Contract Works.
- 4.2 Where the Sub-Contract Works require the Sub-Contractor to select materials or goods for incorporation into the Sub-Contract Works, such materials or goods shall be safe and suitable for the purpose for which they are required and the Sub-Contractor shall indemnify the Contractor against all losses, damages, costs and expenses (whether direct or consequential) arising out of such materials or goods not being safe or suitable as stipulated.

5.0 Insurances

- 5.1 Without prejudice to his liability to indemnify the Contractor under clause 4.1, the Sub-Contractor shall have in place and maintain in terms to be approved by the Contractor employer's liability insurance, public liability insurance, all risks insurance for the Sub-Contract Works and all other insurances deemed necessary by the Contractor which shall include the Employer (if required) and the Contractor as joint insured. The Sub-Contractor will, in particular, insure any plant, equipment or materials owned by, hired and/or loaned to the Sub-Contractor.
- 5.2 Whenever reasonably required by the Contractor the Sub-Contractor shall produce for inspection evidence that such policies of insurance referred to in this clause 5 are valid and are being maintained.
- 5.3 For the avoidance of doubt, the insurance of the Main Contract Works (if any) by the Contractor shall not limit or relieve the Sub-Contractor of its obligations and responsibilities to insure under this clause 5.

6.0 Design Warranty and Indemnity [*Only applicable to sub-contractors with design responsibility]

- 6.1 The Sub-Contractor warrants to the Contractor that it will exercise all the reasonable skill and care to be expected of a competent sub-contractor insofar as the Sub-Contractor is responsible for any design under the Sub-Contract and that the design of the Sub-Contract Works is strictly in accordance with the requirements of the Sub-Contract Documents. The Sub-Contractor shall indemnify the Contractor against any and all costs, loss, expense or other sums which the Contractor may incur as a consequence of the failure of the Sub-Contract Works to comply with this warranty.
- 6.2 The Sub-Contractor warrants to the Contractor that it has in force a policy of professional indemnity and/or product liability insurance covering its liabilities under the Sub-Contract with a reputable insurer authorised to carry on business in the United Kingdom for at least £5 million for each and every claim in any 12 month period which will remain in force for a period of 12 years from practical completion (or its equivalent) of the Main Contract Works, provided always that such insurance is available in the market place at commercially reasonable rates. If for any period such insurance ceases to be available at commercially reasonable rates then the Sub-Contractor shall retain in respect of such period such reduced level of insurance as is available and as would be fair and reasonable in the circumstances for the Sub-Contractor to obtain. Whenever required by the Contractor the Sub-Contractor shall produce the relevant policy or policies of insurance referred to in this clause 6 for inspection.
- 6.3 The Sub-Contractor shall retain copyright in any drawings, details, specifications and designs (the "Documents") produced by the Sub-Contractor or on the Sub-Contractor's behalf in respect of the Sub-Contract Works and the Sub-Contractor shall grant the Contractor a royalty free non exclusive licence to use and reproduce all Documents for any purpose whatsoever connected with the Main Contract Works. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.

7.0 Valuation and Payment

- 7.1 The sum to be paid to the Sub-Contractor in relation to the Sub-Contract Works shall be determined in accordance with this clause 7.
- 7.2 The Sub-Contractor shall submit monthly applications (properly detailed with full particulars covering the valuation of measured works, variations, the valuation of materials on site and any other reasonably necessary details to enable the same to be considered by the Contractor) to the Contractor specifying the sum the Sub-Contractor considers is due and the basis on which that sum is calculated. Each application shall be submitted no later than 3 days before the submission of the Contractor's applications or valuations under the terms of the Main Contract, provided that the first application shall be submitted to the Contractor no earlier than 30 days after the date of the commencement of the Sub-Contract Works on site.

- 7.3 The due date for payment of any monthly application submitted by the Sub-Contractor shall be five (5) days from receipt of the particular application (the "Due Date") provided always that if any application is received late the Contractor shall not be obliged to consider such application until the following month. The final date for payment of the first and each subsequent monthly application shall be thirty (30) days after the Due Date.
- 7.4 Not later than 5 days after the Due Date of any application the Contractor shall give written notice to the Sub-Contractor specifying the sum which the Contractor considers is due to the Sub-Contractor and the basis on which such sum is calculated (the "Payment Notice"). Should the Contractor fail to serve a Payment Notice on time in accordance with this clause 7.4, the sum due to the Sub-Contractor shall be the sum stated as due in the Sub-Contractor's relevant application, subject to any Pay Less Notice served by the Contractor in accordance with clause 7.5.
- 7.5 If the Contractor intends to pay less than the sum stated as due in the Payment Notice (or, if no Payment Notice has been served by the Contractor, the sum stated as due in the Sub-Contractor's relevant application), the Contractor shall serve on the Sub-Contractor no later than one (1) day before the final date for payment a notice specifying the sum the Contractor considers is due to the Sub-Contractor on the date the notice is served and the basis on which that sum is calculated (the "Pay Less Notice"). The Contractor shall then pay to the Sub-Contractor the sum specified in the Pay Less Notice by the final date for payment.
- 7.6 Notwithstanding any other provision of the Sub-Contract, no further sum shall become due to the Sub-Contractor under the Sub-Contract and the Contractor need not pay any sum that has already become due either:
- 7.6.1 insofar as the Contractor has given or gives a Pay Less Notice in accordance with clause 7.5; or
- 7.6.2 if the Sub-Contractor, after the last date on which a Pay Less Notice could be given by the Contractor in respect of that sum, has become insolvent within the meaning of clause 9.2 below.
- 7.7 In the event of the Contractor failing to pay any sum due to the Sub-Contractor by the relevant final date for payment, the Contractor shall pay to the Sub-Contractor interest on such overdue sum at the rate of 1% per annum above the official dealing rate of the Bank of England current at the final date for payment. Both parties agree that the rate of interest payable under this clause 7.7 is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.8 Any payments to be made under this clause 7 shall be subject to the deduction of retention stated on the Sub-Contract Order, any statutory taxes (where appropriate) and payments previously certified and made. Retention shall be released as follows; half within 35 days of the Completion Date and the balance within 1 year of the expiry of the maintenance period, provided the Sub-Contractor has completed all making good of their defects.
- 7.9 It shall be a pre-condition of payment by the Contractor that the Sub-Contractor shall have complied with all CIS or similar requirements in force in respect of any payment and presented a unique tax reference number for verification by Her Majesty's Revenue & Customs and/or valid VAT documentation or any other documents reasonably required by the Contractor to enable payment to be made.
- 7.10 Notwithstanding anything to the contrary elsewhere in these Conditions, in the event of the insolvency of the Employer or any other person upon whom payment to the Contractor is conditional (whether directly or indirectly) as defined in Section 113 of the Housing Grants, Construction and Regeneration Act 1996 (or any amendment or re-enactment thereof) (the "Construction Act") as a result of which the Contractor does not receive monies otherwise due and owing, the Sub-Contractor shall only be paid any sums due and owing under the Sub-Contract 14 days after receipt by the Contractor of the sums identified as relating to the Sub-Contract Works and in the proportion received by the Contractor. Should the Contractor not receive monetary sums in a manner which clearly identifies the same as relating to the Sub-Contract Works, the Sub-Contractor shall only receive 14 days after receipt by the Contractor a percentage of such amount received reflecting a fair and reasonable proportion of the amount due and owing to the Sub-Contractor.

8 Maintenance

- 8.1 The Sub-Contractor shall promptly comply with the Contractor's instructions to carry out all works of repair, rectification and making good of defects, imperfections, shrinkages or other faults in the Sub-Contract Works which may appear within the defects liability period (or its equivalent) under the Main Contract, and such work shall be carried out at the Sub-Contractor's own cost if the same is due to any failure on the part of the Sub-Contractor to comply with the provisions or requirements of the Sub-Contract. The said works of repair, rectification and making good shall be carried out within the following periods depending on their category of seriousness: Emergency – within 24 hours; Urgent – within 48 hours; and Non-Urgent – within 7 days.
- 8.2 In the event the Sub-Contractor fails to carry out such maintenance work within 10 days of the date of the Contractor's written instruction to do so, the Contractor shall be entitled to carry out such work by his own workforce or by other contractors, and if such work should have been carried out at the Sub-Contractor's expense the Contractor shall be entitled to recover the cost incurred from the Sub-Contractor.

9 Determination

- 9.1 If the Sub-Contractor shall make default in any of the following respects:
- 9.1.1 if, without reasonable cause, he suspends the Sub-Contract Works before completion;
- 9.1.2 if he fails to proceed with the Sub-Contract Works with reasonable diligence;
- 9.1.3 if he refuses or neglects to remove or repair defective work or improper material within a period of 7 days after written notice has been given by the Contractor to do so;
- 9.1.4 if he fails to employ sufficient additional resources in accordance with clause 3.3;
- 9.1.5 if he fails to otherwise perform the Sub-Contract Works in accordance with the provisions of the Sub-Contract; then the Contractor (without prejudice to any other rights or remedies it has) may immediately determine the Sub-Contract without any payment to the Sub-Contractor other than that to which the Sub-Contractor may be entitled under the Sub-Contract for work already executed and not paid for at the date thereof, less the amount of damage suffered or likely to be suffered by the Contractor (including the cost of completing and carrying out remedial works to the Sub-Contract Works) and/or loss and expense incurred or likely to be incurred by the Contractor by reason of the determination of the Sub-Contract.
- 9.2 If the Sub-Contractor (being an individual) becomes bankrupt or makes a composition or arrangement with his creditors or (being a company) makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangements to be approved in accordance with the Insolvency Act 1986, or any amendment or re-enactment thereof (the "Act") or has a provisional liquidator appointed, or has a winding up order made or passes a resolution for voluntary winding up (except for the purpose of amalgamation or reconstruction) or under the Act has any administrator or administrative receiver appointed, then the employment of the Sub-Contractor under the Sub-Contract shall forthwith be automatically determined but the said employment may be reinstated if the Contractor and the Sub-Contractor (his trustee in bankruptcy, liquidator,

provisional liquidator, receiver or manager as the case may be) shall so agree. Until such time as the employment of the Sub-Contractor is reinstated the provisions of clause 9.1 above shall apply in terms of the Sub-Contractor's entitlement to further payment.

9.3 In the event of the employment of the Sub-Contractor under the Sub-Contract being determined under clauses 9.1 or 9.2 above, the Sub-Contractor shall, as and when requested in writing by the Contractor to do so (but not before), remove from the site any temporary buildings, plant, tools, equipment, goods and materials either belonging or loaned to him.

9.4 If for any reason the employment of the Contractor under the Main Contract is determined (whether by the Contractor or otherwise) then the employment of the Sub-Contractor under the Sub-Contract shall also determine in which case the Sub-Contractor shall only be entitled to be paid the following sums namely:

9.4.1 the value of the Sub-Contract Works assessed by the Contractor under clause 7 at the date of such determination;

9.4.2 the value of the Sub-Contract Works begun and executed but not yet certified by the Contractor at the date of such determination, such value to be calculated and certified by the Contractor upon proper receipt of particulars from the Sub-Contractor;

9.4.3 the value of any unfixed materials and goods delivered to site for incorporation into the Sub-Contract Works, the ownership in which has passed to the Employer under the terms of the Main Contract;

For the avoidance of doubt, the Contractor shall not be liable for any other costs, losses, expenses or other sums howsoever incurred by the Sub-Contractor due to the determination of the Sub-Contract.

10 Health and Safety

10.1 All work performed under the Sub-Contract shall comply fully with the requirements of current health and safety legislation and related regulations, codes of practice and European Community requirements. In addition to statutory responsibilities in respect of safe working practices, the Sub-Contractor shall comply in all respects with the particular site requirements of the Employer and the Contractor in relation to health and safety matters and shall comply with all requirements of the Construction (Design and Management) Regulations 2007.

11 As Built Drawings and Operation and Maintenance Manuals

11.1 The Sub-Contractor shall within 14 days of the Contractor's written request, produce and provide in relation to the Sub-Contract Works, two copies of as built drawings and operation and maintenance manuals and any other documents reasonably required by the Contractor.

12 Bribery Act

12.1 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.

13 Adjudication

13.1 Either party has the right at any time to refer any dispute arising under the Sub-Contract to adjudication in accordance with the Construction Act and the adjudication shall be conducted in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended).

14 Third Party Rights

14.1 Nothing in the Sub-Contract confers or purports to confer on any third party any benefit or right to enforce any term of the Sub-Contract.

15 Applicable Law

15.1 The Sub-Contract shall be governed by the laws of England and Wales.

16 General

16.1 These terms and conditions may not be used or copied by the Sub-Contractor and may only be amended as agreed with the Contractor in writing.

16.2 The Sub-Contract represents the entire agreement between the parties and no other agreements or documents, other than those contained within the Sub-Contract Documents, shall be incorporated.

16.3 If any provision of these Conditions is found to be wholly or partially illegal, invalid or unenforceable, that provision shall, to the extent of such illegality, invalidity or unenforceability be severable and the remaining provisions of the Sub-Contract shall continue in full force and effect.