

T. Sullivan Engineering Limited - Terms and Conditions of Subcontract, 2013 Edition

- 1 Definitions and interpretation**
- 1.1** In this Subcontract, unless the context otherwise requires, the following words and expressions have the following meanings:
- “**Business Day**” shall mean any day on which banks are open for business in the City of London (other than Saturdays, Sundays and public holidays);
- “**Client**” shall mean the party for whom the Subcontract Works are being carried out by the Subcontractor;
- “**Documents**” shall mean all documents of any kind or provided by or received by, or on behalf of the Parties, and whether in paper form or stored electronically or on disk, or otherwise;
- “**Intellectual Property**” includes all right to, any interest in, any patents, designs, trade marks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) in respect of any technology, concept, idea, data, programme or other software (including source and object codes), specification, plan, drawing, schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark, style, or other matter or thing, existing or conceived, used, developed or produced by any person;
- “**Parties**” shall mean the Subcontractor and the Client;
- “**Project**” shall mean the project described in the Proposal and any enquiry from the Client on which the Subcontractor has based its Proposal;
- “**Proposal**” shall mean the offer document prepared by the Subcontractor in response to an enquiry or otherwise, in connection with the proposed Subcontract Works;
- “**Subcontract**” shall mean these Terms, the Proposal, any document recording the Client’s acceptance of the Proposal and any other documents or parts of other documents expressly referred to in any of the foregoing;
- “**Subcontractor**” shall mean T. Sullivan Engineering Limited (company number 02644496) whose registered office is at Unit 5,6 & 7 New Way Business Park, Oakdale Road, Wallasey, Wirral Ch44 7HT;
- “**Subcontract Works**” shall mean the work and services relating to the Project to be provided by the Subcontractor pursuant to this Subcontract and as set out in the Proposal and shall include any additions, variations or amendments thereto made in accordance with this Subcontract;
- “**Terms**” shall mean these terms entitled “T. Sullivan Engineering Limited – Terms and Conditions of Subcontract, 2013 Edition”.
- 1.2** Words importing the singular only shall also include the plural and vice versa where the context requires.
- 1.3** Words importing persons or parties shall include firms, corporations and any organisation having legal capacity and vice versa, where the context requires; and words importing a particular gender include all genders.
- 1.4** The sub-headings to the clauses of these Terms are for convenience only and shall not affect the construction of this Subcontract.
- 1.5** A reference to legislation includes that legislation as from time to time amended, re-enacted or substituted and any Orders in Council, orders, rules, regulations, schemes, warrants, by-laws, directives or codes of practice issued under any such legislation.
- 1.6** In the event of conflict between the documents forming part of this Subcontract the Terms shall prevail.
- 1.7** No amendment or variation to this Subcontract shall take effect unless it is in writing, signed by each of the Parties.
- 2 Obligations of the Subcontractor**
- 2.1** The Subcontractor agrees to carry out and complete the Subcontract Works in accordance with the provisions of this Subcontract in a proper and workmanlike manner using reasonable skill and care as may be expected from a similar subcontractor who is experienced in carrying out similar subcontract works under similar conditions.
- 3 Obligations of the Client**
- The Client shall:-
- 3.1** provide, for the Subcontractor, its servants, agents, subcontractors and employees, in a timely manner and as far as it is reasonably able to do so, access to any site and facilities as requested by the Subcontractor;
- 3.2** obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Subcontract Works are to start;
- 3.3** notify the Subcontractor in writing of all special site and/or plant conditions prior to the commencement of the Subcontract Works;
- 3.4** provide the Subcontractor with all health and safety information and any relevant operating procedures including any site safety operating procedures relevant to the carrying out of the Subcontract Works and the Subcontractor shall not be obliged to commence the Subcontract Works until it is satisfied that it has received all such information; and
- 3.5** advise the Subcontractor in writing of any conflict, defect or other fault in the information or designs provided to the Subcontractor and the Subcontractor shall have the right to rectify the same or where necessary, to design the solution for rectification of any Subcontract Works carried out by others pursuant to the conflicting, defective or in any other way faulty information or designs.
- 4 Third Parties**
- 4.1** Neither the Client nor the Subcontractor shall without the consent of the other assign this Subcontract or any rights thereunder.
- 4.2** This Subcontract shall not confer and shall not purport to confer on any third party any benefit or any right to enforce any term of this Subcontract for the purposes of the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 4.3** The Subcontractor will consider and may consent to any request from the Client for the Subcontractor to enter a collateral warranty with a third party in relation to the Subcontract Works. The giving of such consent shall be at the sole discretion of the Subcontractor and the Subcontractor will only enter into a collateral warranty on its terms and on payment of the Subcontractor’s fee to cover the Subcontractor’s legal and other costs associated with a collateral warranty.
- 5 Limitations on Liability**
- 5.1** Except in the case of death or personal injury caused by the Subcontractor’s negligence, the Subcontractor’s total liability in contract, tort, and negligence, breach of statutory duty or otherwise arising under or in connection with this Subcontract shall be limited to the value of the Subcontract Works included in the Proposal.
- 5.2** No action or proceedings under or in respect of this Subcontract whether in contract, tort, negligence, under statute or otherwise shall be commenced against the Subcontractor after the expiry of a period of six years from the earlier of the date of the completion or termination of the Subcontract Works.
- 5.3** The Subcontractor shall not be liable to the Client for any indirect or consequential loss or damage (whether loss of profit, loss of chance, loss of business, depletion of goodwill or otherwise), costs, expense or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Subcontract.
- 6 Insurance**
- 6.1** The Subcontractor shall have, and shall maintain, employer’s liability insurance of not less than £10 million (ten million pounds) and public liability insurance of not less than £5 million (five million pounds). If the Subcontract Works involve any design then the Parties shall agree prior

to entering into this Subcontract an appropriate level of provisional indemnity insurance required from the Subcontractor's sub-consultant (to reflect the level of design responsibility and value of design services), and such insurance shall be no greater than £3 million (three million pounds). Responsibility for maintaining such professional indemnity insurance remains with the Subcontractor's sub-consultant.

7 Payment

7.1 Subject to any terms agreed in writing between the Subcontractor and Client, the Subcontractor may submit an invoice(s) to the Client for Subcontract Works completed and services rendered no earlier than 7 days after commencing the Subcontract Works and thereafter the Subcontractor may submit fortnightly invoices.

7.2 The due date for payment shall be the date of the invoice and not later than 5 days after the due date the Client shall give notice to the Subcontractor stating the amount due to the Subcontractor, to what the amount relates and the basis on which the amount has been calculated ("Interim Payment Notice"). If the Client fails to give an Interim Payment Notice the Subcontractor's invoice issued in accordance with clause 7.1 above shall be deemed to be a Subcontractor's Interim Payment Notice. The final date of payment for an invoice shall be 28 days from the due date. Subject to any Interim Payment Notice and Pay Less Notice the amount to be paid by the Client on or before the final date for payment shall be the amount stated in the Subcontractor's invoice.

7.3 If the Client intends to pay less than the sum stated in the invoice or Interim Payment Notice, as the case may be, it shall not later than 7 days before the final date for payment give notice to the Subcontractor of its intention to pay less, including a statement of the sum it considers is due to the Subcontractor and the basis on which the sum has been calculated.

7.4 In relation to the giving of notices under this clause 7, it is immaterial if the amount considered to be due may be zero.

7.5 The Client may deduct up to 3% retention from each invoice, excluding the value of any additional or varied Subcontract Works, up to a maximum retention of 10% of the Subcontract value save for retention amounts of less than £250 which the Client may not deduct. If the Client retains a retention it shall release half the retained amount to the Subcontractor on the date of completion of the Subcontract Works (as determined by the Subcontractor) and the balance shall be released no later than 6 months later.

7.6 In the event of failure on the part of the Client to pay any monies in accordance with the foregoing payment provisions, the Subcontractor shall be entitled to charge interest on any monies owed to it by the Client at 5% per annum above the base rate of the Bank of England from time to time calculated from the final date for payment to the date of actual payment in full. Interest under this clause shall be a debt due from the Client to the Subcontractor.

8 Suspension

8.1 Without affecting the Subcontractor's other rights and remedies, in the event of a breach of this Subcontract by the Client, the Subcontractor reserves the right to suspend performance of any or all of its obligations under this Subcontract and to demobilise any plant and machinery, upon giving 7 days prior written notice.

8.2 Where the Subcontractor exercises his right of suspension under clause 8.1, the Client shall indemnify and keep indemnified the Subcontractor from and against any actions, proceedings, costs, claims, demands and expenses arising out of or in connection with the suspension of the Subcontract Works.

9 Confidentiality

9.1 Neither party will disclose to any third party details of this Subcontract without the prior written consent of the other unless required to do so by law or necessary in the proper performance of its duties in relation to the Subcontract Works, or in order to make full, frank and proper disclosure to its insurers or intended insurers, or to obtain legal or accounting advice.

10 Delay

10.1 The Subcontractor will comply with any reasonable timescale agreed for completion of the Subcontract Works unless delayed or prevented by circumstances beyond its reasonable control, and in the event of any such circumstances arising the Sub Contractor undertakes to complete the Subcontract Works within a reasonable period, but the Subcontractor will not be liable to the Client for any losses, expenses, costs, and/or damages arising therefrom.

11 Variations

11.1 Any variation to the Subcontract Works or to the agreed programme must be agreed in writing between the Parties. Should such a variation involve the Subcontractor in additional costs, these together with an allowance for overhead recovery and profit will be charged to, and payable by, the Client.

12 Title and Risk in Materials and Goods

12.1 Title in materials or goods to be used in connection with the Subcontract Works shall not pass to the Client until the Subcontractor has been fully paid for the materials or goods. The risk in the materials and goods shall be borne by the Client from the date of delivery by the Subcontractor, its servants or agents.

13 Force Majeure

13.1 The Subcontractor shall be under no liability for any failure or delay in performance or contemplated performance of this Subcontract caused by circumstances beyond the reasonable control of the Subcontractor.

14 Termination

14.1 This Subcontract may be determined by either party in the event of the other making a composition or arrangement with its creditors, becoming bankrupt, or (being a company) making a proposal for a voluntary arrangement for a composition of debts, or has a provisional liquidator appointed, or has a winding-up order made, or passes a resolution for voluntary winding-up (except for the purposes of a bona fide scheme of amalgamation or reconstruction), or has an administrator or an administrative receiver appointed to the whole or any part of its assets. Notice of determination must be given to the insolvent party by the other party.

14.2 If for any reason the Subcontract Works are suspended for a period in excess of three calendar months then the Subcontractor shall be entitled to determine its employment under this Subcontract by seven days prior written notice to the Client.

14.3 If the Client shall fail to pay in full any sum due by the final date for payment and no effective notice under clause 7.3 has been issued, the Subcontractor may serve a written notice on the Client demanding payment within 7 days of the date of such notice. If the Client fails to comply with such notice, the Subcontractor shall be entitled to terminate its employment under this Subcontract forthwith.

14.4 Any determination of the appointment of the Subcontractor howsoever caused shall be without prejudice to the right of the Subcontractor to demand payment for all works performed up to the date of such determination.

15 Notices

15.1 Any notice provided for in this Subcontract shall be in writing and shall be deemed to be properly given if delivered by hand or sent by first class post to the address

of the relevant party as may have been notified in writing by each party to the other or, in the absence of notification, to the respective registered office address of either the Sub Contractor or the Client as applicable.

15.2 Such notice shall be deemed to have been received on the day of delivery if delivered by hand or on the second Business Day after the day of posting if sent by first class post.

16 Entire Agreement

This Subcontract contains the whole agreement between the Parties in respect of the Subcontract Works and supersedes any prior oral and/or written agreement between them and the Parties confirm that they have not entered into this Subcontract on the basis of any representations that are not expressly incorporated into this Subcontract. Nothing in this Subcontract shall limit or exclude any liability for fraud.

17 Disputes and Governing Law

17.1 This Subcontract shall be governed by and construed in accordance with English law and the Parties irrevocably and unconditionally submit to the jurisdiction of the English courts.

17.2 Where the Housing Grants, Construction and Regeneration Act 1996 applies, any dispute between the Parties may be referred to adjudication in accordance with Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998, and the nominating body shall be the President or Vice President for the time being of the Royal Institute of Chartered Surveyors.