

# TERMS & CONDITIONS

## WHEREAS:

**A.** Monodraught Ltd has been retained by the Customer to provide Mechanical & or Electrical Services at the site detailed overleaf.

**B.** Monodraught Ltd now wishes to subcontract the provision of the specified work as detailed overleaf, in the Tender Documents and the Subcontractor's Specification.

**C.** The Subcontractor is an independent contractor willing and able to provide such work as prescribed in the Tender Documents and detailed in the Subcontractor's Specification, for the period stated in this Agreement.

NOW IT IS AGREED as follows:

## 1. DEFINITIONS

The following expressions shall have the following meanings:-

- 1.1 This Agreement means this Agreement, signed by or on behalf of both Monodraught Ltd and the Subcontractor that will form part of The Contract Documents.
- 1.2 The Customer is the party with whom Monodraught Ltd is contracted within the terms of the Main Contract.
- 1.3 The Main Contract is the contract between Monodraught Ltd and the Customer.
- 1.4 The Subcontractor's work is the work to be completed by the Subcontractor as identified in Tender Documents and Subcontractor's Specification as detailed overleaf.
- 1.5 The Site is the place where the Subcontractor's work is to be carried out as detailed overleaf.
- 1.6 The Start Date is the date when the Subcontractor's work is to commence in terms of this Agreement.
- 1.7 The Practical Completion Date is the date the Subcontractor's work must be completed in terms of this Agreement.
- 1.8 The Completion Date is the date stipulated under the programme of work when Monodraught Ltd must be finished in terms of the Main Contract.
- 1.9 A Defect is any part of the Subcontractor's work that is not in accordance with Tender Documents and the Subcontractor's Specification.
- 1.10 The Defect Date is the date by which Monodraught Ltd must have notified the Subcontractor of any Defect.
- 1.11 The Defect Liability Period is 12 months from the Completion Date during which the Subcontractor is required to remedy any notified Defect within 7 days or sooner if otherwise specified in the Tender Documents.
- 1.12 The Defect Certificate is the document issued to the Subcontractor by Monodraught Ltd either prior to or at the end of the Defect Liability Period, subject to the correction of any Defect that

may have been notified to the Subcontractor.

- 1.13 The Contract Sum is the amount payable to the Subcontractor as specified overleaf.
- 1.14 Retention means the amount retained from the Subcontractor by Monodraught Ltd until the date the Subcontractor's work is deemed to be completed and the end of the Defect Liability Period.
- 1.15 Adjudicator is the party nominated to resolve a dispute between Monodraught Ltd and the Subcontractor.
- 1.16 Notice of Intention is the formal notice required to be served by the referring party seeking adjudication.

## 2. DURATION

- 2.1 This Agreement shall commence on the date shown overleaf and shall continue until the end of the Defect liability Period, 12 months from the Completion Date as identified in 1.8 above unless an earlier date is agreed in writing by both parties or this Agreement is terminated by either party in accordance with the terms and the conditions set out in clause 9 of this agreement.

## 3. SUBCONTRACT'S WORK

- 3.1 The Subcontract's Work is as specified in Tender Documents and the Subcontractor's Specification or notified amendments thereto as detailed in 3.2 below.
- 3.2 Monodraught Ltd can alter the Subcontract's Work by notifying any changes to the Subcontractor in writing. The price for any variations must be assessed by Monodraught Ltd to reflect a fair price and any extra costs incurred by the Subcontractor as a direct result of the variation shall be met by Monodraught Ltd.

## 4. THE CONTRACTORS OBLIGATIONS

- 4.1 Monodraught Ltd will permit access to and use of the Site to allow the Subcontractor to carry out the Subcontractor's Work.
- 4.2 Monodraught Ltd will provide any services and any other obligations as agreed in writing between Monodraught Ltd and the Subcontractor.
- 4.3 Monodraught Ltd will ensure that the staff and other suppliers it employs co-operate fully with the Subcontractor and no delay is experienced as a result of their actions or omissions.

# TERMS & CONDITIONS

## 5. THE SUBCONTRACTOR'S OBLIGATIONS

- 5.1 The Subcontractor is deemed to have full knowledge of and agrees to comply with Main Contract as though they were incorporated herein.
- 5.2 The Subcontractor will provide the Subcontractor's Work as specified in Tender Document and Subcontractors Specification and any instruction issued by Monodraught Ltd from time to time.
- 5.3 The Subcontractor will permit Monodraught Ltd access to the Subcontractor's Work and any other party authorised by Monodraught Ltd at any time during the period of this Agreement.
- 5.4 Whilst working on behalf of both Monodraught Ltd the Subcontractor will wear Monodraught branded Hi-Vis & Clothing. No other company branded workwear is to be worn. Vehicles to be plain, with no signwriting.
- 5.5 The Subcontractor will remove any employee, subcontractor and or supplier from the Contract on the instructions of Monodraught Ltd.
- 5.6 The Subcontractor will carry out any instruction given by Monodraught Ltd, which is in accordance with this Agreement and duly notified to the Subcontractor.
- 5.7 The Subcontractor will provide Monodraught Ltd with the following documentation as required; Working Drawings, Co-ordination Drawings, Builders Work Drawings, Record Drawings and Operating and Maintenance Manuals.
- 5.8 The Subcontractor will comply with all relevant health and safety regulations.

## 6. TIMING OF THE SUBCONTRACTOR'S WORK

- 6.1 Monodraught Ltd shall notify the Subcontractor in writing when their work shall commence and this will be the Start Date.
- 6.2 The Subcontractor's work must be finished in accordance with the programme to Practical Completion.
- 6.3 The Subcontractor may apply to Monodraught Ltd for an extension to the Practical Completion Date on giving the appropriate notice to Monodraught Ltd no later than 4 weeks prior to the Practical Completion Date.
- 6.4 Monodraught Ltd has the authority to refuse an extension to the Practical Completion Date should it necessitate an extension to the Main Contract.
- 6.5 If it becomes apparent that the Sub-Contractor will fail to complete the Sub-Contract Works within the programme period, then Monodraught Ltd reserves the right to engage others to complete the works by the Practical Completion Date. Provided Monodraught Ltd gives notice to that effect to the Sub-Contractor within a reasonable time, the Sub-Contractor shall pay or allow to Monodraught Ltd the amount of direct loss and/or expense suffered or incurred by Monodraught Ltd and caused by that failure.
- 6.6 Monodraught Ltd may instruct the Subcontractor to stop, pause or re-start any Subcontract

work by giving appropriate notice.

## 7. PAYMENT

- 7.1 The Contract Sum payable to the Subcontractor is set out overleaf.
- 7.2 The Subcontractor will submit a detailed valuation/invoice of completed work as at the valuation date on a monthly basis, to be received by Monodraught Ltd no later than 25th day of each month (valued up to the end of the month) commencing one month after work starts. The valuation/invoice must be sent by first class post for the attention of: Accounts Department, Monodraught Ltd, Halifax House, Cressex Business Park, High Wycombe, Bucks HP12 3SE. Alternatively, sent by email to [accounts@monodraught.com](mailto:accounts@monodraught.com). If no valuation/invoice is received by the stipulated date no payment will be due to the Subcontractor for work undertaken in the relevant period.
- 7.3 Monodraught Ltd may withhold payment from the Subcontractor for the purpose of querying the amount due by giving appropriate notice not less than five (5) days prior to the payment date. Monodraught Ltd must specify all grounds for any such intention to withhold payment and details of any corrections to the amount due for payment.
- 7.4 Monodraught Ltd must settle the approved monthly valuation within 30 days of the month end to which the valuation relates, up to Practical Completion Date of the Subcontractor's work.
- 7.5 Each month Retention of 5% is retained from the Subcontractor by Monodraught Ltd until the Practical Completion Date.
- 7.6 The final payment shall be due 28 days from the latter of; 3 months from the date the Subcontractor provides Monodraught Ltd with all necessary documentation and Monodraught Ltd certifies that the Subcontractor's work is complete and the 12 months defects liability commences.
- 7.7 After Completion of the Subcontractor's work 50 per cent of the Retention held by Monodraught Ltd will be released to the Subcontractor with the balance paid at the end of the 12 months Defects Liability Period.

## 8. DEFECTS

- 8.1 Monodraught Ltd may notify the Subcontractor of a Defect or request that the Subcontractor investigate a Defect at any point up until the end of the Defects Period which is 12 months from the Practical Completion Date.
- 8.2 The Subcontractor must correct any Defect promptly.
- 8.3 All Defects must be remedied prior to the end of the Defects Liability Period.
- 8.4 Monodraught Ltd may authorise another party to correct any notified Defect that remains uncorrected by the Subcontractor if not corrected by the Subcontractor within 7 days of such written notification and at the end of the Defects Liability period at the Subcontractor's expense.

# TERMS & CONDITIONS

## 9. TERMINATION

- 9.1 This Agreement shall continue until the end of the Defects Liability Period but always subject to all outstanding Defects having been corrected or any other date as mutually agreed in writing by both parties or until terminated by either party in accordance with the terms of this Agreement.
- 9.2 Monodraught Ltd may terminate this Agreement if the Subcontractor fails to comply with any aspect of this Agreement and this failure continues for a period of 7 days after notification of non-compliance is given.
- 9.3 Monodraught Ltd may terminate this Agreement if the Main Contract is terminated.
- 9.4 Either party may terminate this Agreement forthwith by notice in writing to the other if:
  - 9.4.1 The other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or
  - 9.4.2 The other party commits a material breach of this Agreement which cannot be remedied under any circumstances; or
  - 9.4.3 The other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or
  - 9.4.4 The other party ceases to carry on its business or substantially the whole of its business; or
  - 9.4.5 The other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, trustee or an officer is appointed over any of its assets.
- 9.5 Any rights to terminate this Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of this Agreement as at the date of termination.
- 9.6 In the event of termination the Subcontractor must leave the Site immediately and remove all equipment, plant and materials belonging to the Subcontractor.
- 9.7 In the event of termination Monodraught Ltd must make over to the Subcontractor any payment for work done and expenses incurred up to the date of termination along with any sum held as Retention less any costs properly incurred by Monodraught Ltd arising out of such termination.

## 10. DISPUTE RESOLUTION

Any dispute arising under this Agreement will be referred to and decided by Adjudication unless the Main Contract provides otherwise. The appointment will be by application from either party to The Royal Institute of British Architects. The decision of the said person shall be binding on both parties.

## 11. SUBCONTRACTOR WARRANTIES

The Subcontractor warrants that the Subcontract works to be carried out under this Agreement will be carried out strictly in accordance with the equipment manufacturer's instructions and with reasonable skill and care by suitably qualified personnel.

## 12. INDEMNITY

- 12.1 Monodraught Ltd agrees to indemnify and hold the Subcontractor and its employees and agents harmless from and against all liabilities, legal fees, damages, losses, costs and other expenses in relation to any claims or actions brought against the Subcontractor arising out of any breach by Monodraught Ltd and its employees of the terms of this Agreement.
- 12.2 The Subcontractor agrees to indemnify and hold Monodraught Ltd and its employees and agents harmless from and against all liabilities, legal fees, damages, losses, costs and other expenses in relation to any claims or actions brought against Monodraught Ltd arising out of any breach by the Subcontractor and its employees of the terms of this Agreement.

## 13. INSURANCE

During the term of this Agreement the Subcontractor shall, at its own expense, maintain such insurances as required by any applicable law and as appropriate in respect of its obligations under this Agreement with an insurance company of repute. Such insurances shall include but not be limited to loss or damage to the Subcontract works, loss or damage to equipment or plant and materials and third party liability. Where Monodraught Ltd is required under the main contract to provide Collateral Warranties to the Customer the Subcontractor will provide such Collateral Warranties in respect of the Subcontractor's work in favour of Monodraught Ltd.

## 14. FORCE MAJEURE

Neither party shall be liable to the other party for any delay or failure to perform any of its obligations under this Agreement if the delay or failure results from events or circumstances outside its reasonable control, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party in writing of the nature and extent of such events. If such circumstances persist for a continuous period of more than three months, either party may terminate this Agreement by written notice to the other party.

## 15. ASSIGNMENT

This Agreement is personal to the parties and neither this Agreement nor any rights, licences or obligations under it may be assigned by either party without the prior written approval of the other party.

# TERMS & CONDITIONS

## 16. WAIVER

This Agreement is personal to the parties and neither this Agreement nor any rights, licences or obligations under it may be assigned by either party without the prior written approval of the other party.

## 17. ASSIGNMENT

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

## 18. NOTICES

Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the most recent address, fax number or address notified to the other party, and if sent by email shall be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served two (3) days following the date of posting.

## 19. ENTIRE AGREEMENT

This Agreement, which forms part of the Contract Documents, supersedes any undertaking or proposals oral or written between the parties. This Agreement may only be varied by a document signed by both parties after the date of this Agreement.

## 20. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.