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**Jewel Property Serve**

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The Works Order overleaf constitutes a contract between the Jewel Property Serve and the Sub-Contractor for the supply of the goods/services listed overleaf pursuant to the Order Conditions set out below and/or as on any special terms described or referred to overleaf. The Jewel Property Serve will only contract with the Sub- Contractor on this basis and these terms may only be varied by written agreement.

## **ORDER CONDITIONS**

### **Definitions**

- (a) 'Client' means the client, if any, who has engaged the Jewel Property Serve to carry out the works for which the Goods/Services are required and who is identified in the Order;
- (b) 'Goods/Services' mean the materials, goods, equipment and/or services to be supplied by the Sub-Contractor to the Jewel Property Serve as described in the Order;
- (c) 'Order' means the contract for the supply of the Goods/Services between the Jewel Property Serve and the Sub-Contractor as set out above and incorporating these Order Conditions and any other documents referred to above;
- (d) 'Sub-Contractor' means the person, firm or company identified as such above;
- (e) 'Jewel ' means the Jewel Property Serve and its assignees.

### **Price and VAT**

Unless otherwise stated, the prices in the Order are fixed and not subject to fluctuation or escalation of any kind and are exclusive of Value Added Tax but inclusive of disbursements.

### **Payment**

Unless otherwise stated in the Order, all invoices are to be paid within 30 days of receipt ("the Due Date"), provided that:

- (a) payments for partial shipments shall only be made where so stated in the Order;
- (b) the terms of the Order may make the passing of any tests or inspections or the supply of any ancillary documentation a condition precedent to payment; and
- (c) Evidence of adequate insurance is to be provided to indemnify Jewel against any loss.

### **Early Payment**

Jewel may, at its sole discretion, make early payment of the price of any goods/materials/equipment forming part of the Goods/Services prior to their delivery. Jewel will only exercise such discretion in the event that:

- (a) such items are ready for delivery, set apart at the premises where they are stored and clearly marked so as to identify that they are the property of Jewel; and
- (b) Jewel is satisfied on the basis of documents, supplied by the Sub-Contractor that title in such items vests in the Sub-Contractor,

provided that Jewel shall be entitled to demand immediate return of any such early payment if at any time prior to delivery of such items either of conditions (a) or (b) above ceases to apply and provided further that such items shall remain at the Sub-Contractor's risk until delivery.

### **Time for Delivery/Performance**

- (a) The Sub-Contractor shall deliver/perform the Goods/Services at the time or times stated or referred to in the Order or at such later time or times as may be instructed by Jewel . Time for delivery/performance of the Order is of the essence and the provisions of clause 14 shall apply in the event of any delay in delivery, provided that Jewel shall make a fair and reasonable extension of any such time if the Sub-

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Contractor is delayed by any breach or act of prevention by Jewel, including an instruction to vary design, quality or quantity of the Goods/Services. The Sub-Contractor shall notify Jewel immediately if at any time it becomes apparent that any stipulated time for delivery/performance of any Goods/Services may not be met for any reason.

- (b) Liquidated damages will be applied to the Sub-Contractor as a result of failure to provide goods as per the dates for delivery in any identified programme. A 5% charge on the total Order value is to be paid by the Sub-Contractor to Jewel for each week or part thereof that delivery is late without prior written consent from Jewel.

### **Manner of Delivery**

The Sub-Contractor shall deliver the goods/materials/equipment forming part of the Goods/Services to the destination and in the manner stated or referred to in the Order and shall at his own cost ensure the Goods/Services are securely packed and labelled in such a manner as to reach their destination in a condition acceptable to Jewel. All packaging shall comply with any relevant statutory requirements. Unless otherwise specified in the Order, Jewel shall not be responsible for delivery charges nor the cost of returning any packing cases, skids or other packing material.

### **Variations**

- (a) Jewel shall be entitled to issue instructions to the Sub-Contractor to vary the design, quality or quantity of the Goods/Services and no such instruction shall vitiate the Order. Such instructions shall be valued in accordance with the rates and prices stated in the Order or, if no such rates or prices are appropriate, at rates and prices which are fair and reasonable having regard to all the circumstances.
- (b) All variation instructions must be in writing, alterations in circumstances, losses and/or expenses must be valued in accordance with these conditions namely:
- (i) At rates analogous to the rates used in formulating the price, or
- (ii) By quotation, providing reasonable and sufficient details for the Sub-Contractor to ascertain the revised contract price, or
- (iii) By Daywork, on the declared basis and as recorded by voucher and submitted by weekend on which the work was either commenced or completed.
- (c) Save as is provided in clause 7(b) the Subcontractor shall make no variation to the subcontract works.
- (d) Valuation of prices must be provided in a reasonable period, and in any event not later than three weeks after the works have commenced.

**1. Payment on Insolvency: Section 113(1) of the Housing Grants, Construction and Regeneration Act 1996 as amended by The Local Democracy, Economic Development And Construction Act 2009.**

If on, or before, the final date for payment of any sum due or accruing due to the Subcontractor, the Employer or any interested third party, is insolvent, or notifies his intention to enter into any form of pre-insolvency protection, then Jewel shall not be obliged to pay any sum to the Subcontractor unless, and if so, only to the extent that Jewel receives payment thereof from the Employer, his agents, beneficiaries the main contractor or interested third parties

### **Cancellation of Order**

Jewel shall have the right to cancel the Order at any time by notice in writing to the Sub-Contractor. Jewel shall pay to the Sub-Contractor all such costs and expenses as may have been properly and reasonably incurred by the Sub-Contractor in connection with the Order prior to the date of cancellation, unless cancellation of the Order is due to the Sub-Contractor's default, including failure to comply with the time for delivery/performance, in which case the provisions of clause 14 shall apply.

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**Termination**

- (a) Jewel may terminate the employment of the Sub-Contractor, at any time and for any reason. Jewel must serve written notice of his intention to terminate the Sub-Contractor's employment and such notice must be served using the Royal Mail's special delivery service. Following the serving of a notice to terminate works, the Sub-Contractor, within seven days of his receipt of such notice, must vacate the site leaving the works in a safe, appropriately protected and fit and proper state to enable a third party to conclude the works. Upon termination, the Sub-Contractor shall be entitled to all his reasonable costs, expenses and disbursements, any accrued profit for any work correctly installed or any materials delivered and retained on site that may be used to complete the works. No allowance shall be made for loss of profit or for the reduction in the value of the contracted priced works by virtue of the diminished contract value. Jewel shall not, in a manner that may be considered, vexatious, mischievous or with malice or coercion, invoke the provisions of this clause.
- (b) Either Party may terminate this Agreement immediately by notice in writing to the other Party if:
- (i) The other Party is in material breach of any of its obligations under this Agreement or any other agreement between the Parties which is incapable of remedy; or
  - (ii) The other Party fails to remedy, where capable of remedy, any material breach of any of its obligations under this Agreement or any other agreement between the Parties after having been required in writing to remedy such breach within a period of no less than 30 days; or
  - (iii) The other Party is in persistent breach of any of its obligations under this Agreement or any other agreement between the Parties; or
- (iv) The other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.
- (c) For the purposes of clause 10:
- (i) A breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to time;
  - (ii) A breach of clauses 14, 15, 16 and 17 shall always be deemed to be a material breach of this Agreement.

**Delivery from Overseas**

Where goods/materials/equipment forming part of the Goods/Services are to be supplied from outside the United Kingdom the provisions of Incoterms 2010 shall apply in accordance with the contractual delivery term shown overleaf, provided that if no such term is shown then it shall be "CIF" (cost, insurance and freight) at the Sub-Contractor's expense to the delivery address stated in the Order; provided that where there is a discrepancy, conflict or inconsistency between the provisions of Incoterms 2010 and the terms of this Order, the terms of this Order shall take priority.

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**Sub-Contractor's Documents**

The Sub-Contractor shall prepare at his own expense and submit to Jewel such further drawings and/or other information relating to the design, specification, installation, maintenance and repair of the Goods/Services as may be stated or referred to in the Order or as Jewel may reasonably require. The Sub-Contractor hereby grants Jewel an irrevocable, non-exclusive, royalty-free licence to copy and use such drawings and other information and to sub-licence others to do so, but only in connection with the development to which the Goods/Services relate and not for any other purpose. The Sub-Contractor hereby warrants that the exercise of the copyright licence for such purposes shall not infringe the rights of any third parties.

**Manufacturing Information**

- (a) The Sub-Contractor shall provide all drawings. Full detailed drawings to be provided for sign off by Jewel prior to any works being started.
- (b) The Sub-Contractor is to provide confirmation to Jewel that quantities and measures are correct at the point of receiving the Jewel order and prior to manufacture.
- (c) The Sub-Contractor is to inform Jewel of any additional costs incurred or required upon placement of the order for approval by Jewel. Jewel will not be responsible for any mispricing by the Sub-Contractor once the order has been placed with agreed costs. Any additional cost will be the responsibility of the Sub-Contractor.
- (d) Samples for all products are to be provided for approval by Jewel prior to manufacture. The Sub-Contractor is to ensure the approved samples are installed as no deviation will be accepted without written approval from Jewel.
- (e) The Sub-Contractor shall provide an Operations Manual and As Built Drawings as necessary. Maintenance manuals and guarantees required no later than 2 weeks following the final installation and prior to final invoice payment (not including retention invoices)
- (f) The Sub-Contractor is responsible for all Jewel free issued items from initial delivery (to supplier), to final installation on site and sign off by Jewel.
- (g) Any replacement items as a result of defects and damages will be the Sub-Contractor's cost.

**Right to Inspect**

- (a) Jewel and all persons duly authorised by them shall at all reasonable times have access to any workshops or other places where the Goods/Services are being prepared, assembled or stored for the purpose of inspection of the Goods/Services.
- (b) Jewel may request a detailed programme to establish inspection dates at the factory prior to payments made and to ensure the programme is being followed. The Sub-Contractor is to undertake their own quality inspection and confirm any defects or damages in writing 10 working days prior to delivery shipment/delivery and installation. A final inspection upon installation will be undertaken by Jewel and sign off on all items is required to accept the order ahead of the final payment.

**Sub-letting**

The Sub-Contractor shall not without the prior written consent of Jewel sub-let any work in connection with the supply of the Goods/Services. Where the Sub-Contractor sub-lets such work such sub-letting shall not affect in any way the obligations of the Sub- Contractor in respect of the Order.

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**Sub-Contractor's Warranty**

- (a) Without prejudice to any terms or conditions implied by law, the Sub-Contractor warrants that:
- (i) the Goods/Services will comply with any specifications or performance requirements stated or referred to in the Order and any patterns or samples previously supplied by either party and accepted by the other;
  - (ii) the Goods/Services will comply with any relevant statutory requirements and any relevant regulation or bye-law of any local authority or statutory undertaker or utilities or services Sub-Contractor with those systems the Goods/Services are to be connected;
  - (iii) the Goods/Services will be fit for the purposes for which they are required by Jewel and/or the Client as made known to the Sub-Contractor;
  - (iv) the Goods/Services
    - a. do not contain or specify for incorporation into the development to which the Goods/Services relate (as applicable) any of the materials identified as potentially hazardous in the Ove Arup publication "Good Practice in Selection of Construction Materials"
    - b. comply with relevant British Standard specifications and codes of practice and good building practice current at the time of performance/delivery; and
  - (v) The Sub-Contractor has exercised and will continue to exercise all the reasonable skill, care and diligence which may be expected of a qualified and competent professional experienced in the provision of such similar services, in the performance of any services forming part of the Goods/Services.
  - (vi) The Sub-Contractor warrants and undertakes that it shall not, without the Main Contractor's written consent, make any material change to the designs or specifications for the Project after they have been settled or approved.

**Confidentiality**

Save as required by law, court order or any governmental or regulatory authority and/or as may be reasonably necessary in the proper performance of the Services, the Subcontractor shall not, without the prior written approval of Jewel, disclose to any third party any information of any kind whatsoever relating to the Services and/or the Project.

**Professional Indemnity Insurance**

The Sub-Sub-Contractor warrants that he has in place a policy of professional Indemnity Insurance, for no less a value than £5 Million on an each and every claims basis and that the Sub-Sub-Contractor shall continue to maintain this policy during the currency of this contract. The provisions of this policy and the wording shall be of no lesser extent than the most onerous undertakings of the appropriate JCT 2016 form of Collateral Warranty.

**Sub-Contractor's Liability**

The Sub-Contractor shall be fully liable to Jewel for any damage, expense, liability or other loss whatsoever suffered by Jewel or for which Jewel incurs liability to a third party to the extent that the same arises out of or in connection with any breach of the terms of the Order or any negligence, omission, default or breach of statutory duty on the part of the Sub-Contractor or any sub-contractor or Sub-Contractor of his on any tier. Such liability shall include, but shall not be limited to, any such liability which Jewel may incur to the Client.

**Property in the Goods/Services**

Without prejudice to any right of rejection which Jewel may have, title in the Goods/Services shall pass to Jewel upon delivery of such Goods/Services or upon payment of the price for such Goods/Services, whichever is earlier.

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**Adjudication**

- (a) Either party may give to the other written notice requiring any dispute or difference arising under this contract to be referred to an Adjudicator in accordance with The Scheme for Construction Contracts, set out in the relevant statutory regulations in force at the date of this contract was made.
- (b) Any notice must be sent by recorded delivery mail to the other party's registered office (or, if none, then chief place of business).
- (c) If the name of an Adjudicator has not been stated in the information, or otherwise agreed within seven days of either party giving notice to the other, then the Adjudicator shall be a person nominated by the President of the Royal Institution of Chartered Surveyors on the application of either party.

**The Construction (Design and Management) Regulations**

The Sub-Contractor shall comply with the obligations imposed on him under the Construction (Design and Management) Regulations 2007 (or any subsequent revision of the Regulations), to the extent that they apply to the provision of the Goods/Services by the Sub-Contractor.

**Assignment**

The benefit of this Order may be assigned on a maximum of two occasions without the Sub-Contractor's consent but subject to the assignor giving notice of the assignment to the Sub-Contractor. The Sub-Contractor shall not be entitled to assign, charge or otherwise transfer the benefit of this Order.

**Contracts (Rights of Third Parties) Act 1999**

This Order is not intended to confer any rights on third parties pursuant to the Contracts (Rights of Third Parties Act) 1999.

**Entirety Clause**

The parties freely agree and accept that the terms and provisions of this Agreement contain the entire agreement between the parties and that the values ascertained under this agreement will and do represent the entire extent of and fully describe and quantify the liabilities owed or as may fall due to either party under the contract or at law.

**Governing law**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Law of England and Wales.

**Jurisdiction**

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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