



**ON-POWER ELECTRICAL & MECHANICAL SERVICES LTD**

**GENERAL TERMS AND CONDITIONS OF SUBCONTRACT Version  
1-1 GC - April 2018**

1. The Subcontract Sum is inclusive of all supervision, co-ordination, materials, labour, PPE, tools, lighting, consumables, documentation, drawings, testing both on and off site, demonstrations, samples, spares, plant, access equipment, unloading and distributing materials, protecting works until practical completion, a 12 month warranty for all equipment from the date of practical completion, removal of rubbish to a central point, sundries and the like to enable the Subcontract works to be properly carried out. It also includes for testing and client demonstrations, out of sequence working, breaks in continuity and phasing of works.
2. No other conditions included for in any tender, quotations, letters and the like shall apply to this agreement unless agreed in writing separately by both parties.

Unless specifically agreed in writing between ON-POWER Electrical & Mechanical Ltd (the Contractor) and the sub-contractor, no works can be further sub-contracted.

3. All work carried out shall be to the Complete satisfaction of the Contractor, Main Contractor, Employer and his authorised representatives and in any event in full compliance with the current British Standards, Codes of Practise, local bylaws and the like.
4. The Subcontractor confirms he has inspected the conditions of the Contract to which the Contractor is bound. The Subcontractor hereby agrees to be bound by such provisions so far as they are applicable to the Sub-contract and are not varied hereunder, as if they had been severally set out herein. The Subcontractor shall observe, comply perform and save from harm all matters relating to the obligations of the Contract to enable the Contractor to comply with his obligations at all times. Should there be any conflict between the Contract and Subcontract, the Subcontract shall take precedence.
5. All weeks stated in the order are Calendar weeks inclusive of any associated Public holidays.
6. The Subcontractor shall ensure that all personnel engaged on the works are suitably competent, qualified and authorised to carry out the works. The Contractor shall have the right at its absolute discretion to exclude any persons employed by the Subcontractor from the works either where in his opinion the above criteria has not been complied with or where in the Contractor's opinion their presence is not beneficial.
7. The Subcontractor shall fully indemnify the Contractor against any claim made from any person(s) for Loss, damage, expense or liability arising from or in connection with the Subcontract works. This shall include but not be limited to Personal injury or the death of any person(s) and/or damage to property, real or personal including the Subcontract works.
8. The Subcontractor shall also indemnify the Contractor for any loss, liability or damage incurred as a result of theft, damage or failure of the Subcontractors materials on site, plant , tools .equipment and the like, except where directly caused by any of the Insurance perils which are covered for under a Project joint names insurance policy take out and maintained by the Employer/Contractor as stated in the Contract, providing that any of the Insurance perils are not directly caused by the negligence of the Subcontractor.
9. The Subcontractor shall be required to take out and maintain insurance cover with a suitable Insurer for the period of the Subcontract works including the Defects liability period. The level of cover shall be not less than £10 Million Employers Liability, £2m Public & Product Liability and £2m Professional Indemnity for any one occurrence unless otherwise stated on order. The insurance shall provide for his liability in regard to items 7 and 8, but in any event not as to limit his indemnity required, directly arising out of any matters giving rise to claim as stated in items 7 and 8.

For the avoidance of doubt the cover shall include Professional Indemnity insurance for any work(s) which include design work(s) of any nature and Product liability is required where materials are provided as part of the work(s).

The Subcontractor shall be required to furnish the contractor with a copy of the said policy upon request.

10. On the date stated on the order subject to notice being given, the Subcontractor shall proceed with the works with due diligence and in accordance with the progress of the Contract works and the Contractor's programmes of works which shall be varied from time to time. The Subcontractor is deemed to have allowed for any out of sequence working, overtime working and disruption which was generally foreseeable at date of order.
11. Where the completion of the Subcontract works is likely to be or has been delayed by any act, omission or default of the Contractor, his servants or agents, The Subcontractor shall be required to give immediate written notice to the Contractor of the particulars associated therewith. The Contractor may at his sole discretion either grant an extension of time(s) or instruct special measures to be employed to avoid/minimise the delay (s). All decisions made by the Contractor in this regard shall be treated as Final and Binding upon the Sub-contractor.
12. Provided always that the extent of the Contractor's obligations to award an extension of time for relevant events which have affected the Subcontractor and Contractor's works under the contract shall not exceed that which the Contractor receives from the employer/main contractor.
13. The Subcontractor agrees to comply forthwith with any written instructions made by the Contractor which may include but not be limited to variations, modifications, opening up for inspections, remedying of defects and the timing of the completion of the Sub-contract works. Should the Subcontractor fail to begin compliance therewith within seven days, the Contractor shall be entitled to employ other persons to carry out such works and any costs incurred shall be recoverable as a debt or deducted from monies due or to become due to the Subcontractor. The Subcontractor further agrees that any instructions issued to ourselves pursuant to this clause shall not vitiate the Subcontract.
14. Any variations shall only be considered if issued in writing by the Contractor and shall be valued in accordance with the provisions of the Contract using the rates and/or prices incorporated into the Subcontract where applicable, which shall be provided by the Sub-contractor within 14 Days of receipt of order. The Subcontractor shall provide all such supporting detail as the Contractor may request in substantiation of his claim for variation costs.

Any dayworks are only to be carried out when authorised by the Contractor's representatives prior to the work being carried out and a written instruction issued. Rates for daywork to be as stated in this order or otherwise as agreed by the Contractor. Sheets must be submitted for authorisation by the Contractor no later than the Monday following the week when the works were carried out.

All costs and effects in respect of the co-ordination of the Subcontractor's works with other trades and the structure or the like, are deemed included in this order.

15. The Subcontractor will be required to submit his detailed final account for the works no later than 14 Days following practical completion of the works.
16. The Subcontractor shall be required to protect and maintain his works until the date for Practical completion.
17. The Subcontractor shall be entitled to payments as follows:
  - a) The Subcontractor shall provide a detailed written application in the form prescribed to the Contractor no later than seven days before the last date of each calendar month or the schedule of application dates enclosed with this order (hereafter called the specified date).
  - b) Subject to information being provided as clause 17a and ascertainment being able to be carried out by the Contractor the Subcontractor shall provide a VAT invoice in the sum ascertained by the Contractor and Payment shall become due on the receipt of such invoice by the Contractor or within 15 days of the Specified Date whichever is the later.
  - c) The Contractor shall no later than 5 days following the date when payment becomes due give written notice to the Subcontractor specifying the amount due and the basis on which this has been calculated. This amount shall be subject to clause 17 (f) & 18 and also retention sums being deducted at the rate indicated in the order until Practical completion of the Contract works is achieved, whereby this sum shall reduce by half until the issue of a certificate of making good defects is received under the Contract.

- d) The final date for payment shall be made no later than 45 days following the due date subject to the provisions of condition 17e).
  - e) It shall be a condition precedent to any payments that all Current, Tax, Insurance, VAT, Company Registration, Parent Company Guarantees/Performance Bonds/ Warranties (if required) are provided and accepted by the Contractor.
  - f) The Contractor shall be entitled to deduct from monies due to the Subcontractor any sum or sums which the Contractor has or is likely to incur as a result of any conditions of the Subcontract or any other Subcontracts with ourselves or for breach of it. This is subject to the Contractor providing written notice of his intention to do so no later than 5 days before the final date for payment together with a statement of the amount to be deducted.
  - g) Should the Employer or any assignees or the Main Contractor become insolvent as defined under the Housing, Grants, Construction and Regeneration Act 1996, the Contractor shall not be required to make any further payment to the Subcontractor until such time as the Contractor receives payment from such persons.
  - h) The Subcontractor shall be entitled to suspend the works where payment is made paid in full by the final payment for payment provided no withholding notice has been given in accordance with condition 17f). This is subject to the Subcontractor providing at least 7 days written notice of his intention to do so whilst also specifying his grounds on which he intends to suspend.
  - i) Acceptance of an interim payment application by the Contractor shall not constitute acceptance that the Subcontract works have been carried out in accordance with the Subcontract.
- 18.
- a) Where specified in the order, a retention shall be held by the Contractor on monies due to the Subcontractor during the course of the Contract.
  - b) The first portion of any retention monies held shall be released upon Practical Completion of the Contract works.
  - c) The final portion of any retention monies held shall be released 12 months following Practical Completion of the Contract works or upon the Subcontractor satisfactorily making good any defects to the Subcontract works whichever is the later.
  - d) The defects liability period shall be the period stated in the order or through referenced correspondence.
- 19.
- a) If for any reason the Contractors employment under the Contract is determined then the employment of the Subcontractor shall thereupon also determine.
  - b) The Subcontract shall be determined by the Contractor on the following grounds if in the opinion of the Contractor, the Subcontractor:
    - i) Fails to proceed with the Subcontract works with due diligence.
    - ii) Fails to carry out the Subcontract works or to perform his obligations in accordance with the Subcontract.
    - iii) Fails to make good defective work or remove defective materials after being requested to do so by the Contractor in writing.
    - iv) Becomes insolvent or appoints administrators, commits an act of bankruptcy, resolution for compulsory or voluntary winding up petition.
  - c) The Contractor shall first give notice of the Subcontractors failure(s) under the above conditions, whereupon on the expiry of 7 days thereafter if the Subcontractor has failed to begin to comply therewith, then his Subcontract will become so determined.
  - d) The Subcontractor shall pay or allow the Contractor the amount of any loss and/or damage caused by such determination and the Contractor shall not be bound or required to make any further payments to the Subcontractor until completion of the Contract works.

- e) The Contractor at his sole discretion, may in lieu of giving notice of determination under these provisions, take over any portion(s) of the Subcontract works and complete work(s) himself. All costs so incurred by the Contractor in this regard shall be recovered from the Subcontractor as a debt.
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- a) Any disputes arising from this Subcontract shall in the first instance be referred to adjudication in accordance with the "Tesca" Adjudication rules. The nominated person shall be any person so stated under the "Tesca" Nomination procedures.
  - b) The Subcontractor hereby agrees that the costs of the adjudication including fees etc. shall be borne by the referring party.
  - c) The decision of the adjudicator shall be binding on the parties.
  - d) Should any party be dissatisfied with the decision of the adjudicator for whatever reason, then the matter shall be finally determined by legal proceedings which shall be governed, interpreted and construed in all respect according to the Law of England and Wales.
  - e) In regard to any legal proceedings, it is agreed that the court will be vested with the power to open up, review and revise any decisions made by the Architect, Employer, and Engineer etc.
21. For the purposes of the limitation Act 1980, we agree that the period of limitation applicable to this Subcontract shall be the same as that applicable to the Contractor under the terms of the Contract.
22. For the avoidance of doubt, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to any of this Subcontract and is associated conditions and nothing herein contained shall confer any benefit on any third party or the right to enforce any term or condition hereof.