

# Mulberry Property Developments Non-Framework Terms and Conditions (June 2015)

## 1. SCOPE OF WORKS

- 1.1. The Supplier will commence, undertake and complete the works and/or services and (if applicable) supply good ("the Works") as specified in the attached purchase order (the Purchase Order) and any variations or addition authorised by the Employer in a good and workman like through manner to the satisfaction of the employer
- 1.2. The Supplier will undertake the Works with due care and diligence and in compliance with all laws, regulations, orders and bylaws of any local and/or national authority
- 1.3. The Supplier will exercise all the reasonable skill and care as is to be expected of a properly qualified and competent member of its profession and experienced in carrying out the Works in relation to works of similar scope, size, nature, timescale and complexity and on a similar site or at a similar location to the Works in relation to the following:
  - 1.3.1. The design of the works (in so far as the Purchase Order sets out the supplier is responsible for it);
  - 1.3.2. The selection and/or provision of goods, materials, equipment or plant for the works; and
  - 1.3.3. The satisfaction of any performance requirement or specification for the works
- 1.4. In providing the Works the Supplier shall not disrupt any other activities carried out by the Employer and/or by others employed, engaged or authorised by the Employer.
- 1.5. The Employer shall make available on site where the Works are being carried out ("the Site") for use by the Supplier such supplies of electricity, water and gas as required for the purposes of providing the works
- 1.6. The Supplier will constantly engage in connection with the Works a competent person-in-charge and any instructions given to him or any other employee of the Supplier by the Employer will be deemed to have been issued to the Supplier
- 1.7. The Supplier grants to the Employer a royalty-free, irrevocable, perpetual and non-exclusive licence to use and reproduce any and all drawings, reports or other documentation produced by the Supplier or on the Supplier's behalf in relation to the Works and any designs contained therein for any purpose whatsoever connected with the Works. Such licence shall include the right to grant sub-licences and shall be freely assignable by the Employer
- 1.8. Title to any goods included in the Works shall pass to the Employer on payment for the Works (or the relevant part of the Works) or on their delivery (whichever is the earlier).
- 1.9. The Supplier Shall:
  - 1.9.1. Comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("the Relevant Requirements");
  - 1.9.2. Comply with the Employer's antic, anti-bribery and anti-corruption policies and those of any relevant body, in each case as the Employer or the relevant industry body may update from time to time ("the Relevant Policies")
  - 1.9.3. have and maintain in place its own policies and procedures including (but not limited to) adequate procedures under the Bribery Act to ensure compliance with the Relevant Requirements and the Relevant Policies and shall enforce them where appropriate;
  - 1.9.4. Immediately notify the Employer if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no

foreign public officials as officers, employees or direct or indirect owners as at the date of this Agreement:

- 1.9.5. Ensure that all persons associated with the Supplier or other persons who are performing works, services or providing goods in connection with this agreement comply with this clause 1.9; and
  - 1.9.6. Supply such supporting evidence of compliance with this clause 1.9 as the Employer may reasonably request
- 1.10. For the purposes of clause 1.9 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the act), sections 6(5) and 6(6) of that Act and section B of that Act respectively. For the purposes of clause 1.9 a person associated with the Supplier includes but is not limited to any subcontractor of the supplier

## 2.0 PRICE AND VARIATION

- 2.1 The Price is to be paid by the Employer to the Supplier is the sum or the schedule of rates set out and/or referred to in the Purchase Order
- 2.2 The completion date specified in the Purchase order (if any) can be carried by mutual agreement between the Employer and the Supplier as a result of the Employer's default or by any variation, additions or omissions to the Works issued by the Employer

## 3.0 LABOUR AND PLANT

- 3.1 The Supplier will provide labour and supply all items including tools, plant and equipment necessary for the complete and satisfactory performance of the Works. Heavy Plant and/or other equipment (specifically personal protection equipment to comply with Health and Safety obligations or identification requirements on sites where other builders or contractors are present) may be supplied by the Employer from time to time under its Health and Safety procedures.

## 4.0 COMMENCEMENT AND COMPLETION

- 4.1 The Supplier will commence the Works by the date specified in the Purchase Order (if any) in accordance with the requirements of the Employer and will proceed regularly and diligently to execute and complete the Works together with such variations additions or omissions as the Employer may require in a thorough and workmanlike manner to the satisfaction of the Employer by the completion date specified in the Purchase Order (if any) or any revised completion date as agreed with the Employer under clause 2.2 above
- 4.2 If reasonable progress in the performance of the Works is not being maintained the Employer can give written notice to the Supplier to accelerate the progress of the Works by the employment of its own labour and any addition expense incurred by the Employer will be paid to it by the Supplier or by otherwise recoverable from the Supplier

## 5.0 PAYMENT

- 5.1 At the end of each month (or such other period as may be agreed in the Purchase Order) the Supplier must submit an invoice for work completed in the previous month. The invoice must specify the site and the Purchase Order number to which the Works relates. The invoice must specify any applicable VAT properly chargeable

on the works, services or goods supplied by the Supplier. The Supplier must provide evidence that the work has been completed.

- 5.2 Not later than 5 days after the receipt of the invoice (the due date) the Employer will give written notice to the Supplier specifying
  - 5.2.1 The amount of payment proposed to be made
  - 5.2.2 The Works or part thereof to which the payment relates; and
  - 5.2.3 The basis on which the payment is calculated
- 5.3 The final date for payment will be 30 days from the due date. If the notice is not given in accordance with clause 5.2 the amount of the payment to be made by the Employer shall, subject to any notice given under clause 5.4, be the sum stated in the Supplier's invoice
- 5.4 Not later than 1 day prior to the final date for payment the Employer may give a pay-less notice to the Supplier specifying a lesser amount proposed to be made to the Supplier specifying the amount the Employer considers to be due to the Supplier as to the date of such notice and the basis upon which that amount has been calculated
- 5.5 Without prejudice to any other rights which the Supplier may possess, and subject to any valid notice issues under clause 5.4 of this agreement, if the Employer fails to pay the Supplier the amount due by the final date for payment and the Supplier has given 7 days notice of his intention to suspend performance of his obligation until payment is made in full
- 5.6 Payment will not signify approval by the Employer of the whole or any part of the Works executed nor will any final payment prejudice any claim which the Employer may have against the Supplier
- 5.7 The Employer reserves the right to withhold or set off from any payment due to the Supplier from the Employer (whether under this Purchase Order) an amount equal to the value of the Employer's reasonable assessment of the value of any liabilities of the Supplier to the Employer (whether under this Purchase order or any other agreement or Purchase Order)
- 5.8 If the Employer fails properly to pay the amount or any part, thereof due to the Supplier by the final date for its payment the Employer shall pay to the Supplier in addition to the amount not properly paid simple interest thereon for the period until such payment is made. The Employer shall treat payment of such simple interest as a debt due to the Supplier. The rate of interest payable shall be 5% over the Base Rate of the Bank of England which is current at the date of payment by the Employer became due. The parties agree that this clause 5.8 is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

## 6.0 RETENTION

- 6.1 There Indicated on the face of the Purchase Order retention from each payment will be deducted at the rate of 5%. 50% of the retention monies will be released on satisfactory completion of the Works with the remaining monies becoming payable by the Employer at the end of the maintenance period specified in the Purchase Order ("the Maintenance Period") (or 6 months from the date of completion of the Works if no maintenance period is specified in the Purchase Order)

## 7.0 DEFECTS

- 7.1 The Supplier will allow the Employer or any representative, employee and/or agent of the Employer to regularly inspect the works. The Supplier will notify the Employer

when the Works are in his opinion completed and will provide access to the Works for the Employer or any representative, employee and/or agent of the Employer to inspect the Works

- 7.2 The Works will be considered completed when the Employer or any representative, employee and/or agent of the Employer issues a statement of completion to the effect.
- 7.3 After the statement of completion is issued by the Employer or any representative employee and/or agent of the Employer the Supplier will be liable to make good all defects and other faults in the Works which appear within the Maintenance period (or 6 months from the date of completion of the Works if no maintenance period is specified in the Purchase Order) including replacement materials or goods where necessary.
- 7.4 All defects which the Supplier is liable to make good under this clause will be made good by him at his own cost and in accordance with the instructions of the Employer. Should the Supplier fail to make good any defects within a reasonable time after notice from the Employer the Employer may make other arrangement for the execution of such Works and the cost thereof will be paid by way of a debt to the Employer by or be otherwise recoverable from the Supplier.

## 8.0 REMOVAL OF DEBRIS AND WASTE MATERIAL

- 8.1 During the performance of the Works and on termination or completion thereof the Supplier must safely clean up and lawfully remove all debris and waste material for which he is responsible and must keep and leave the Site of the Works in a condition satisfactory to the Employer.
- 8.2 The Supplier must obtain any necessary licences in order to remove any such debris and waste

## 9.0 INDEMNITIES

- 9.1 The Supplier hereby indemnified and holds the Employer harmless against and from:
  - 9.1.1 Any claim demand proceeding damage cost charge or expense due to or resulting from any negligence or breach of duty on the part of the Supplier cause by or arising out of or in connection with the execution of the Works (including but not limited to any breach of the Employer's Health and Safety procedures); and
  - 9.1.2 Any loss or damage resulting from any claim under any statute in force for the time being or at common law or otherwise by a servant or agent of the Supplier in respect of personal injury or death or in respect of loss or theft of or damage to any property arising out of or in the course of his employment in connection with the execution of the Works unless caused solely by the negligent act or omission of the Employer and its servants or agents

## 10.0 INSURANCE

- 10.1 The Supplier must have appropriate and adequate public liability, employee liability insurance over and maintain this cover for the duration of the Works and the Maintenance period (or 6 months from the date of completion of the Works if no maintenance period is specified in the Purchase Order) at the levels required in the Purchase Order.
- 10.2 If the Supplier is responsible for the design of all or any part of the

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Works, the Supplier must maintain professional indemnity insurance for the level of cover and for the period specified in the Purchase Order. A copy of the insurance certificate must be produced by the Supplier to the Employer before the first payment is made under this Agreement.

## 11.0 TERMINATION

11.1 The Provisions of this Agreement may be terminated forthwith at any time by notice in writing to the Supplier in any of the following events:

11.1.1 If the Supplier fails to start the Works by the commencement date in the Purchase Order (if any)

11.1.2 If the Supplier fails to complete the Works by the completion date in the Purchase Order (if any):

11.1.3 If the Supplier will for any reason become unable to perform the terms of this Agreement;

11.1.4 If the Supplier has appointed to him an administrator, administrative receiver or has a winding up order or bankruptcy order made against him or enters into an agreement, compromise or composition in satisfaction of his debater (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction) or without declaration that he would be up or (in the case of partnership) each partner is the subject of an individual arrangement or any other event or proceedings set out in this clause or;

11.1.5 If the Supplier has committed any other breach of his obligations under this Agreement

11.2 Notwithstanding the provisions of clause 11.1 above the Employer will be entitled to terminate this Agreement at any time by serving 30 days written notice on the Employer.

## 12.0 ASSIGNMENT AND PERMISSION TO SUE CONTRACT

12.1 The Supplier is not permitted to assign or sub-contract the benefit the whole or any part of the Works under this Agreement unless previously agreed by the Employer

12.2 The Employer may at any time assign the benefit of this Agreement

## 13.0 ADJUDICATION

13.1 Where Part II of the Housing Grants Construction and Regeneration Act 1996 (or any amendment or re-enactment thereof) applies to the Works, if at any time a dispute or difference arises under this Agreement between the Employer and the Supplier either party may refer it to adjudication by giving notice of its intention to do so. The adjudicator procedures and the agreement for the appointment of an adjudicator shall be as set out in the Model Adjudication Procedures published by the construction Industry Council current at the date of reference. The nominating body shall be the Royal Institute of Chartered Surveyors or any successor organisation

## 14.0 THIRD PARTY RIGHTS

14.1 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1990 by any person not a party to it.

## 15.0 JURISDICTION AND LIMITATION

15.1 Notwithstanding the right to adjudication contained in clause 13 hereof, this Agreement will be construed in accordance with English Law and be in all respects subject to the non-exclusive jurisdiction of the English Courts. The Purchase Order however signed take effect as a deed. For the avoidance of doubt the time for bringing proceedings in respect of the Purchase Order is extended to 12 years from the date of completion or abandonment of the Works.