

MULBERRY HOMES

GENERAL TERMS AND CONDITIONS OF PURCHASE & SUB-CONTRACT TERMS AND CONDITIONS

These terms and conditions (the “**Conditions**”) apply if a Mulberry group company (“**Mulberry**”) requests for the provision of and/or acquires Goods and/or Services from you (“**Supplier**”) in accordance with a request from Mulberry (the “**Contract**”). “Mulberry” and “Mulberry Homes” are trading names of Mulberry Property Developments Ltd (company no 07253372).

These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

All these Conditions apply to the supply of both Goods and Services except where the application to one or the other is specified. If the Supplier is engaged by Mulberry as a Sub-Contractor the Sub-Contractor Terms and Conditions shall apply. If a provision of the Sub-Contractor Terms and Conditions conflicts with the General Terms and Conditions, the Sub-Contractor Terms and Conditions shall prevail.

If any of these Conditions conflict with the terms of the Contract, the terms of the Contract shall prevail.

Unless otherwise defined, all capitalised and defined terms in these Conditions shall have the meaning given in Part 4 of the Conditions.

PART 1: GENERAL TERMS AND CONDITIONS

1. Basis of contract

1.1 The Order constitutes an Mulberry’s order for the supply of Goods and/or Services, as set out in Mulberry’s purchase order form, its acceptance of the Supplier’s quotation or as otherwise expressly set out in writing from Mulberry to the Supplier (the “**Order**”) constitutes an offer by Mulberry to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

1.2 The Order constitutes an offer by Mulberry to purchase Goods and/or Services from the Supplier.

1.3 The Order shall be deemed to be accepted on the earlier of:
1.3.1 the Supplier issuing writing acceptance of the Order; or
1.3.2 any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract will come into existence (“**Commencement Date**”).

2. No Exclusivity or Minimum Order

2.1 Mulberry shall not be bound by any type of exclusivity with regard to the purchase of any Good or Services from the Supplier by virtue of entering into the Contract and will not be obliged to purchase a minimum volume or value of Goods and/or Services from the Supplier.

2.2 Nothing in these Conditions shall impose any obligation on Mulberry to provide the Supplier with any follow up orders.

3. Anti-Bribery

3.1 The Supplier shall:

- 3.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (“**Relevant Requirements**”);
- 3.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 3.1.3 have and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
- 3.1.4 promptly report to Mulberry any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract; and
- 3.1.5 immediately notify Mulberry (in writing) 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 direct or indirect owners, officers or employees at the Commencement Date).

- 3.2 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 3 (“**Relevant Terms**”).
- 3.3 The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Mulberry for any breach by such persons of any of the Relevant Terms.

4. Modern Slavery

- 4.1 In performing its obligations under these Conditions and the Contract, the Supplier shall:
- 4.1.1 comply with all applicable anti-slavery and human trafficking laws from time to time in force including (but not limited to) the Modern Slavery Act 2015;
- 4.1.2 comply with Mulberry’s anti-slavery policies as notified to the Supplier or otherwise published on Mulberry’s website (<https://mpdl.co.uk/>) as amended from time to time;
- 4.1.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1,2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- 4.1.4 include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 4.

5. Data Protection

- 5.1 In performing its obligations under these Conditions and the Contract, the Supplier shall at all times comply with;
- 5.1.1 all applicable laws and regulations with respect to the use and processing of personal data, including (but not limited to) the Data Protection Act 2018; and
- 5.1.2 any requirements may notify the Supplier of from time to time, including (but not limited to) entering into a data processing agreement with respect to its provision of the Services.

6. Indemnity

- 6.1 The Supplier shall indemnify Mulberry against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Mulberry arising out of or in connection with:
- 6.1.1 any claim made against Mulberry for actual or alleged infringement of a third party’s intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services;
- 6.1.2 any claim made against Mulberry by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and
- 6.1.3 any claim made against Mulberry by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.
- 6.2 This clause 6 shall survive termination of the Contract.

7. Insurance

During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on Mulberry’s request, produce both the insurance certificate giving details of cover and the receipt for the current year’s premium in respect of each insurance.

8. Confidentiality

- 8.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 8.2.
- 8.2 Each party may disclose the other party’s confidential information:
- 8.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party’s obligations under the Contract. Each party shall

ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 8; and
8.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

8.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

9. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

10. Assignment and other dealings

10.1 Mulberry may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.

10.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Mulberry.

11. Notices

11.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

11.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting, or, if this time falls outside business hours in the place of receipt, when business hours resume.

11.3 In this clause business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

11.4 This clause 11 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

12. General

12.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

12.2 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

12.3 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

12.4 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.5 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts

(Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 12.6 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 12.7 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 12.8 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

PART 2: SUPPLY OF GOODS AND/OR SERVICES TERMS AND CONDITIONS

13. Supply of Goods

- 13.1 The Supplier shall ensure that the Goods shall:
 - 13.1.1 correspond with their description and any applicable Goods Specification;
 - 13.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Mulberry, expressly or by implication, and in this respect Mulberry relies on the Supplier's skill and judgement;
 - 13.1.3 where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
 - 13.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 13.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 13.3 Mulberry may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 13.4 If following such inspection or testing Mulberry considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 13.1, Mulberry shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 13.5 Mulberry may conduct further inspections and tests after the Supplier has carried out its remedial actions.

14. Delivery of Goods

- 14.1 The Supplier shall ensure that:
 - 14.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 14.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 14.1.3 it states clearly on the delivery note any requirement for Mulberry to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 14.2 The Supplier shall deliver the Goods:
 - 14.2.1 on the date specified in the Order or, if no such date is specified, then within 7 days of the date of the Order;
 - 14.2.2 to such location as is set out in the Order or as instructed by Mulberry before delivery (Delivery Location); and
 - 14.2.3 during Mulberry's normal hours of business or as instructed by Mulberry.

- 14.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 14.4 If the Supplier:
- 14.4.1 delivers less than 95% of the quantity of Goods ordered, Mulberry may reject the Goods; or
- 14.4.2 delivers more than 105% of the quantity of Goods ordered, Mulberry may at its sole discretion reject the Goods or the excess Goods,
- 14.4.3 and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and Mulberry accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 14.5 The Supplier shall not deliver the Goods in instalments without Mulberry's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Mulberry to the remedies set out in clause 16.1.
- 14.6 Title and risk in the Goods shall pass to Mulberry on completion of delivery.

15. Supply of Services

- 15.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to Mulberry in accordance with the terms of the Contract.
- 15.2 The Supplier shall meet any performance dates for the Services specified in the Order or that Mulberry notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 15.3 In providing the Services, the Supplier shall:
- 15.3.1 co-operate with Mulberry in all matters relating to the Services, and comply with all instructions of Mulberry;
- 15.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 15.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- 15.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that Mulberry expressly or impliedly makes known to the Supplier;
- 15.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 15.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Mulberry, will be free from defects in workmanship, installation and design;
- 15.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 15.3.8 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Mandatory Policies;
- 15.3.9 observe all health and safety rules and regulations and any other security requirements that apply at any of Mulberry's premises;
- 15.3.10 hold all materials, equipment and tools, drawings, specifications and data supplied by Mulberry to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to Mulberry, and not dispose or use the Customer Materials other than in accordance with Mulberry's written instructions or authorisation;
- 15.3.11 not do or omit to do anything which may cause Mulberry to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Mulberry may rely or act on the Services; and
- 15.3.12 comply with any additional obligations as set out in the Service Specification.

16. Customer remedies

- 16.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, Mulberry shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
- 16.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

- 16.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - 16.1.3 to recover from the Supplier any costs incurred by Mulberry in obtaining substitute goods and/or services from a third party;
 - 16.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
 - 16.1.5 to claim damages for any additional costs, loss or expenses incurred by Mulberry which are in any way attributable to the Supplier's failure to meet such dates.
- 16.2 If the Goods are not delivered by the applicable date, Mulberry may, at its option, claim or deduct 1% of the price of the Goods for each day's delay in delivery by way of liquidated damages, up to a maximum of 5% of the total price of the Goods. If Mulberry exercises its rights under this clause 16.2 it shall not be entitled to any of the remedies set out in clause 16.1 in respect of the Goods' late delivery.
- 16.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 13.1, then, without limiting or affecting other rights or remedies available to it, Mulberry shall have one or more of the following rights, whether or not it has accepted the Goods:
- 16.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 16.3.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - 16.3.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 16.3.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 16.3.5 to recover from the Supplier any expenditure incurred by Mulberry in obtaining substitute goods from a third party; and
 - 16.3.6 to claim damages for any additional costs, loss or expenses incurred by Mulberry arising from the Supplier's failure to supply Goods in accordance with clause 13.1.
- 16.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 16.5 Mulberry's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

17. Customer's obligations

- 17.1 Mulberry shall:
 - 17.1.1 provide the Supplier with reasonable access at reasonable times to Mulberry's premises for the purpose of providing the Services; and
 - 17.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.

18. Charges and payment

- 18.1 The price for the Goods:
 - 18.1.1 shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
 - 18.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by Mulberry.
- 18.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Mulberry, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 18.3 In respect of the Goods, the Supplier shall invoice Mulberry on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice Mulberry on completion of the Services. Each invoice shall include such supporting information required by Mulberry to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 18.4 In consideration of the supply of Goods and/or Services by the Supplier, Mulberry shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

- 18.5 All amounts payable by Mulberry under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Mulberry, Mulberry shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 18.6 If Mulberry fails to make a payment due to the Supplier under the Contract by the due date, then Mulberry shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 18.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 18.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Mulberry to inspect such records at all reasonable times on request.
- 18.8 Mulberry may at any time, without notice to the Supplier, set off any liability of the Supplier to Mulberry against any liability of Mulberry to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by Mulberry of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

19. Intellectual property rights

- 19.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.
- 19.2 The Supplier grants to Mulberry, or shall procure the direct grant to Mulberry of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.
- 19.3 Mulberry grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy any materials provided by Mulberry to the Supplier for the term of the Contract for the purpose of providing the Services to Mulberry.
- 19.4 All Customer Materials are the exclusive property of Mulberry.

20. Termination

- 20.1 Without affecting any other right or remedy available to it, Mulberry may terminate the Contract:
- 20.1.1 with immediate effect by giving written notice to the Supplier if:
- 20.1.2 there is a change of control of the Supplier; or
- 20.1.3 the Supplier's financial position deteriorates to such an extent that in Mulberry's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 20.1.4 the Supplier commits a breach of clause 15.3.8,
- 20.1.5 for convenience by giving the Supplier 30 days' written notice.
- 20.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 20.2.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so;
- 20.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
- 20.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

21. Consequences of termination

- 21.1 On termination of the Contract, the Supplier shall immediately deliver to Mulberry all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then Mulberry may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 21.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 21.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

PART 3: SUB-CONTRACTOR TERMS AND CONDITIONS

22. Sub-contractor's obligations

- 22.1 The Sub-Contractor shall carry out and complete the Sub-Contract Works in accordance with the Sub-Contract Documents, the Construction Phase Plan and Statutory Requirements with due diligence and in a good and workmanlike manner.
- 22.2 The Sub-Contractor shall provide goods and materials of the standard stated in the Sub-Contract Documents. Subject to the Sub-Contract Documents, all materials and goods shall be new, and all materials, goods and workmanship shall be of satisfactory quality.
- 22.3 The Sub-Contractor shall procure that all the Sub-Contractor's Persons and his sub-sub-contractors employed in the execution of the Sub-Contract Works are registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme.
- 22.4 The Sub-Contractor shall provide everything required to carry out and complete the Sub-Contract Works, except for the items of attendance set out in the Sub-Contract Documents which the Contractor shall provide free of charge to the Sub-Contractor. If the Contractor supplies the Sub-Contractor with any plant, vehicles, handtools, protective clothing or any other matters or attendances, the Contractor shall charge the Sub-Contractor at the rates contained in the Contractor's price list from time to time in use which is available on request or such other reasonable rates as the Contractor shall determine. The Sub-Contractor acknowledges and agrees that the Sub-Contractor shall not be entitled to any extension of time to the Period for Completion; and/or any loss and/or expense arising from any loss of continuity of any items of attendance provided by the Contractor.
- 22.5 The Sub-Contractor shall comply with, and give all notices required by the Statutory Requirements (including the CDM Regulations) and the Sub-Contractor shall pass to the Contractor all approvals received by the Sub-Contractor in connection with the Statutory Requirements. To the extent required by the Sub-Contract Documents, the Sub-Contractor shall pay any fees and charges payable in respect of the Sub-Contract Works to the extent that they are so required to do by the Sub-Contract Documents.

23. Employment Law

- 23.1 The Sub-Contractor shall at all times comply with all local and national laws relating to the employment eligibility of all personnel engaged by the Sub-Contractor, including but not limited to compliance with sections 15 - 25 of the Immigration, Asylum and Nationality Act 2006 (the "**Act**").
- 23.2 The Sub-Contractor shall provide to the Contractor immediately upon request, all necessary employee records to demonstrate that the Sub-Contractor has complied with its obligations under the Act.
- 23.3 If the Sub-Contractor does not comply with clause 23.2 the Contractor shall be permitted to enter upon the Sub-Contractor's premises, upon giving reasonable notice, for the purpose of ascertaining that the Sub-Contractor has maintained all necessary employee records in compliance with the Sub-Contractor's obligations under the Act.

- 23.4 The Sub-Contractor shall ensure that all personnel engaged by the Sub-Contractor in connection with the Sub-Contract Works have not been convicted of any criminal offence that reflects on their ability to perform the work for which they are engaged by the Sub-Contractor. The Sub-Contractor shall procure that the Contractor is kept advised at all times of any number of staff employed in connection with the Sub-Contract Works who is convicted of a criminal offence.
- 23.5 If requested by the Contractor, the Sub-Contractor shall perform a pre-employment reference check (the requirements of which shall be subject to the prior approval of the Contractor) on all personnel proposed to be engaged in connection with the Sub-Contract Works and shall ensure that such personnel meet the requirements of the reference checks.
- 23.6 The Sub-Contractor shall, at the request of the Contractor, cease to employ on the Sub-Contract Works any one or more of his personnel to whom the Contractor may reasonably object or whose presence on the Sub-Contract Works may contravene the requirements of the Sub-Contract and the Sub-Contractor shall replace such personnel immediately, at the Sub-Contractor's expense, with others to whom the Contractor has no objection. Any cost, losses or expense incurred by reason of any delays to completion of the Sub-Contract Works caused by such replacement shall be borne by the Sub-Contractor.

24. Collateral Warranties

Where the Sub-Contract Particulars and/or any other Sub-Contract Document provides for the giving by the Sub-Contractor of collateral warranties to a beneficiary, the Sub-Contractor shall, within 14 days from receipt of a notice from the Contractor that identifies the relevant beneficiary and requires execution of such a collateral warranty, execute and deliver to the Contractor (or as he may instruct) the warranty in the form required by the Sub-Contract Documents or, where no form is prescribed, in a form satisfactory to the Contractor (with only such amendments as the Contractor shall agree, acting reasonably).

25. Contractor's obligations

The Contractor shall comply with the CDM Regulations, shall provide sufficient access to the Site for the Sub-Contractor to perform his obligations under this Sub-Contract and shall not hinder or prevent the Sub-Contractor from performing such obligations.

26. Not used

27. Health & Safety, Quality and Environmental Compliance

- 27.1 In carrying out the Sub-Contract Works, the Sub-Contractor shall comply and shall procure that the Sub-Contractor's Persons shall comply, at no cost to the Contractor, with:
- 27.1.1 all of the Contractor's health and safety, quality assurance and environmental policies and procedures, copies of which are available from the Contractor's site office, and the Sub-Contractor shall immediately inform the Contractor if any of such policies and procedures conflict with the requirements of any legislation which will prevail over such policies and procedures if there is any conflict;
- 27.1.2 all health and safety and environmental legislation relevant to the Sub-Contract Works and to the manner and circumstances in which the Sub-Contract Works are being carried out; and
- 27.1.3 all reasonable instructions of the Contractor to the extent necessary for compliance by the Contractor and the Sub-Contractor with such legislation as it affects the Sub-Contract Works.
- 27.2 Within the time reasonably required in writing by the Contractor, the Sub-Contractor shall provide to the Contractor such information in respect of the Sub-Contract Works as is reasonably necessary to demonstrate compliance by the Sub-Contractor with clauses 27.1.1, 27.1.2 and 27.1.3.
- 27.3 Without prejudice to any other rights and remedies the Contractor may have (whether under, pursuant to or arising out of this Sub-Contract, at common law, tort, under statute or otherwise), if the Sub-Contractor is in breach of its obligations under clause 27.1 the Contractor shall be entitled to suspend the performance of any or all of the Sub-Contract Works for such time or times and in such manner as the Contractor may specify and/or take such action as it reasonably considers is necessary until such breach has been remedied and the Contractor is satisfied that the Sub-Contractor is able to perform its obligations under this Sub-Contract. The Sub-Contractor shall reimburse to the Contractor any costs, losses, damages and/or expenses suffered or incurred by the Contractor as a result of the Contractor exercising its right under this clause 27.3 to suspend the performance of any or all of the Sub-Contract

Works within five (5) Business Days of the Contractor's demand for the same, and the Sub-Contractor shall not be entitled to make a claim for any extension of time to the period(s) for completion of the Sub-Contract Works and/or for any direct loss and/or expense as a result of the Contractor exercising its rights under this clause 27.3.

- 27.4 Each Party undertakes to the other in relation to the Sub-Contract Works and the Site duly to comply with the CDM Regulations. Without limitation, where the Sub-Contract Particulars state that the project that comprises or includes those works is notifiable under the CDM Regulations:
- 27.4.1 the Sub-Contractor shall be informed if there is a new appointee as the Principal Designer and/or as the Principal Contractor;
- 27.4.2 the Contractor shall ensure that the Sub-Contractor is supplied forthwith with a copy of any updates or revisions of the Construction Phase Plan;
- 27.4.3 the Sub-Contractor shall comply at no cost to the Contractor with all reasonable requirements of the Principal Designer or Principal Contractor relating to compliance by the Sub-Contractor with the CDM Regulations, and no extension of time shall be given in respect of such compliance; and
- 27.4.4 within the time reasonably required in writing by the Contractor, the Sub-Contractor shall provide to the Contractor such information in respect of the Sub-Contract Works as is reasonably necessary to enable the Contractor to comply with any obligations relating to the health and safety file required by the CDM Regulations.
- 27.5 The Sub-Contractor shall carry out checks on the training and competency of the Sub-Contractor's Persons in respect of each element of the Sub-Contract Works and provide evidence of such checks as the Contractor may require.
- 27.6 The Sub-Contractor shall supply to the Contractor copies of any communications with the Health & Safety Executive, the Environment Agency (or Scottish Environment Protection Agency) or Local Authorities which relate to any incidents at the Site which from time to time arise.
- 27.7 The Sub-Contractor shall indemnify and hold harmless the Contractor from and in respect of any fees, damages, costs, losses or expenses suffered or incurred by the Contractor arising out of any liability the Contractor has to pay the Health & Safety Executive any fee for intervention (whether pursuant to the Health and Safety (Fees) Regulations 2012 or otherwise), to the extent arising out of or in connection with any act, omission, negligence or default by the Sub-Contractor (or any of the Sub-Contractor's Persons) in performing its obligations under this Sub-Contract.
- 27.8 The Sub-Contractor warrants that it has and shall have sufficient resources to carry out the Sub-Contract Works in accordance with this Sub-Contract and the Sub-Contractor shall carry out the Sub-Contract Works with sufficient resources to enable it to comply with its obligations under this Sub-Contract.

28. The Site

- 28.1 The Sub-Contractor acknowledges and agrees that it is not entitled to exclusive possession of the Site and may be required to work in the same areas as other contractors or sub-contractors (whether employed by the Contractor or any other person), and to share any facilities or attendances made available by the Contractor with them and shall not be entitled to extra payment or time as a result. The Sub-Contractor also acknowledges that it may be required to carry out the Sub-Contract Works in occupied premises and the Sub-Contractor shall comply with all relevant access protocols of the Contractor in carrying out such work.
- 28.2 The Sub-Contractor acknowledges and agrees that the Contractor shall have no responsibility to the Sub-Contractor for the security and safety of any temporary works, plant, tools, vehicles, equipment, clothing or other protective equipment or other property belonging to or provided by the Sub-Contractor or the Sub-Contractor's Persons whilst stored at the Contractor's premises or the Site.
- 28.3 Upon practical completion of the Sub-Contract Works, the Sub-Contractor shall properly clear up and leave the Sub-Contract Works and all areas made available to him for the purpose of carrying out the Sub-Contract Works, so far as used by him for that purpose, clean and tidy to the reasonable satisfaction of the Contractor.

29. Commencement, Progress and Completion

- 29.1 The Sub-Contractor shall commence the Sub-Contract Works on Site within fourteen (14) days of

receipt of the Contractor's written instructions to commence the Sub-Contract Works. Subject to the provisions of clause 33, the Sub-Contractor shall carry out the Sub-Contract Works regularly, diligently and without delay and shall achieve practical completion of the Sub-Contract works within the Period for Completion. The Sub-Contractor shall also carry out the Sub-Contract Works to meet any milestone/stage completion dates contained in the Sub-Contract Particulars.

- 29.2 The Contractor shall determine and notify the Sub-Contractor in writing of the date when the Sub-Contract Works are practically complete.
- 29.3 The Sub-Contractor acknowledges that failure by the Sub-Contractor to comply with the provisions of clause 29.1 may cause delay and/or disruption and/or may cause the Contractor to suffer or incur costs, losses, expenses and/or damages and the Sub-Contractor shall be liable to the Contractor for such costs, losses, expenses and/or damages.
- 29.4 If, in the opinion of the Contractor, the Sub-Contractor is failing to carry out the Sub-Contract Works or any part thereof in accordance with clause 29.1, the Contractor may, upon giving notice to the Sub-Contractor and without prejudice to any of the Contractor's other rights and remedies:
- 29.4.1 perform the Sub-Contract Works or the relevant part thereof, whether by itself or by others, and/or
- 29.4.2 issue instructions to the Sub-Contractor removing the relevant parts of the Sub-Contract Works from the Sub-Contract, and may employ others to carry out these sections; and in such event the price for the Sub-Contract Works shall be reduced by the value of the removed parts,

provided that in the event that the Contractor takes such action under clause 29.4.1 and/or 29.4.2, the Contractor shall not be liable to the Sub-Contractor in respect of any loss of profit (whether directly or indirectly suffered or incurred) and any consequential or indirect losses that may be suffered or incurred by the Sub-Contractor. The Sub-Contractor shall be liable to the Contractor for all additional costs incurred by the Contractor in connection with such action and an appropriate deduction shall either be taken into account in the final calculation of the Sub-Contract Sum or be recoverable by the Contractor from the Sub-Contractor as a debt.

30. Defects

- 30.1 The Contractor shall notify the Sub-Contractor of any defects, shrinkages and other faults that appear in the Sub-Contract Works during the Defects Rectification Period and the Sub-Contractor shall, at the Sub-Contractor's expense, make good such defects in accordance with all reasonable instructions and requirements of the Contractor.
- 30.2 Without prejudice to the generality of clause 30.1, the Sub-Contractor shall carry out and complete at his own cost all works to rectify defects, shrinkages and other faults in the Sub-Contract Works (whether or not such defects arise before or after practical completion of the Sub-Contract Works or are patent defects or are latent defects) and in accordance with all reasonable instructions and requirements of the Contractor.

31. Contractor's Instructions

- 31.1 The Contractor may issue written instructions relating to this Sub-Contract and the carrying out of the Sub-Contract Works which the Sub-Contractor shall forthwith carry out.
- 31.2 If instructions are given orally, they shall be confirmed in writing by the Contractor.
- 31.3 Except as provided in clause 32 (Variations), the Sub-Contractor shall not be entitled to any additional payment in respect of instructions from the Contractor.
- 31.4 If within three (3) days after receipt of a written notice from the Contractor requiring compliance with an instruction, the Sub-Contractor does not comply, then the Contractor may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to that instruction. The Sub-Contractor shall be liable for all additional costs incurred by the Contractor in connection with such employment and an appropriate deduction shall either be taken into account in the final calculation of the Sub-Contract Sum or be recoverable by the Contractor from the Sub-Contractor as a debt.

32. Variations

- 32.1 The Sub-Contractor shall carry out any reasonable variation of the Sub-Contract Works that is

instructed in writing by the Contractor (a "Variation"). The Sub-Contractor shall forthwith carry out any instruction requiring a Variation notwithstanding the fact that the Contractor may not have finalised the valuation of such Variation.

32.2 Variations shall be valued by the Contractor on a fair and reasonable basis, with reference to, where available and relevant, rates and prices in the Pricing Documents.

32.3 The Sub-Contractor shall not make any alteration to the Sub-Contract Works, other than pursuant to clause 32.1.

33. Extensions of Time

33.1 If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Sub-Contract Works is being or is likely to be delayed, the Sub-Contractor shall forthwith give written notice to the Contractor of the material circumstances, including, insofar as the Sub-Contractor is able, the cause or causes of the delay.

33.2 In respect of each circumstance and/or cause identified in any notice given by the Sub-Contractor under clause 33.1, the Sub-Contractor shall, if practicable in such notice or otherwise in writing as soon as possible thereafter, give particulars of its expected effects, including an estimate of any expected delay in the completion of the Sub-Contract Works.

33.3 The Sub-Contractor shall forthwith notify the Contractor in writing of any material change in the estimated delay or in any other particulars and supply such further information as the Contractor may at any time reasonably require.

33.4 Following receipt of the notices and information referred to in clauses 33.1 to 33.3, if the Contractor properly considers that completion of the Sub-Contract Works has been, is being or is likely to be delayed beyond the Period for Completion and/or beyond any other milestone / stage completion dates stated in the Sub-Contract Particulars by the ordering of any Variation of the Sub-Contract Works or for any other reason beyond the control of the Sub-Contractor, the Contractor shall, as soon as he is able to estimate the length of the delay beyond the Period for Completion and/or any other milestone / stage completion dates stated in the Sub-Contract Particulars, by notice to the Sub-Contractor give a fair and reasonable extension to the Period for Completion and/or any other milestone / stage completion dates stated in the Sub-Contract Particulars. For the avoidance of doubt, reasons within the control of the Sub-Contractor include, but are not limited to, any default of the Sub-Contractor or of others employed or engaged by or under him for or in connection with the Sub-Contract Works and of any supplier of goods or materials for the Sub-Contract Works.

33.5 The Sub-Contractor shall constantly use his best endeavours to prevent or minimise any delay in the progress of the whole or any part of the Sub-Contract Works.

34. Insurance and Indemnity

34.1 The Sub-Contractor shall take out and maintain insurances as required in the Sub-Contract Particulars or any other Sub-Contract Documents.

34.2 At the same time as executing this Sub-Contract, the Sub-Contractor shall provide to the Contractor certificates of verification of insurance cover confirming that any/all insurance policies which are, or will be, required to be taken out and/or maintained by the Sub-Contractor under this Sub-Contract are in place, both upon the required terms and also at the required levels set out in the Sub-Contract Particulars, and copies of such insurance policies.

34.3 If the Sub-Contractor defaults in taking out or in maintaining or fails to provide evidence that it has taken out and is maintaining, any insurance which this Sub-Contract requires the Sub-Contractor to take out and/or maintain, the Contractor may himself insure against any liability or expense which he may incur as a result of such default and the amount paid or payable by him in respect of premiums therefore may be deducted from any monies due or to become due to the Sub-Contractor under this Sub-Contract or shall be recoverable from the Sub-Contractor as a debt.

34.4 Without prejudice to any other provisions of this Sub-Contract, the Sub-Contractor shall indemnify and hold the Contractor harmless from all liability of any nature whatsoever caused by the Sub-Contractor's

acts, omissions default or negligence in any way relating to this Sub-Contract or arising out of or in connection with the Sub-Contract Works, except to the extent that any such liability arises as a direct result of any act, omission, negligence or breach of statutory duty by the Contractor. For the avoidance of doubt the above indemnity includes but is not limited to statutory levies or to any liability whatsoever in relation to third parties, property and/or any of the Sub-Contractor's employees, servants or agents.

35. Payments – Due Dates, Applications and Retentions

35.1 In recognition of the overriding risk management importance to the Contractor of receiving each of the following documents it is hereby irrevocably agreed that it is a condition precedent to any payment becoming due under this Sub-Contract to the Sub-Contractor that the Sub-Contractor has procured and delivered to the Contractor each of the following documents:

35.1.1 a copy of the Overarching Sub-Contract Order executed by the Sub-Contractor;

35.1.2 any collateral warranties required under clause 24; and

35.1.3 any other document required to be provided by the Sub-Contractor as a condition precedent to payment under this Sub-Contract,

and the Sub-Contractor acknowledges that, unless and until such documents are provided, no sums shall be due to the Sub-Contractor under this Sub-Contract and in such circumstances the Sub-Contractor acknowledges and agrees that he is working at risk.

35.2 The Sub-Contractor shall make applications for interim payment ("**Payment Application**") as follows:

35.2.1 if the Sub-Contract Particulars state that the duration of the Sub-Contract Works is to be less than 45 days or it is agreed between the Parties that the duration of the Sub-Contract Works is estimated to be less than 45 days, then the Sub-Contractor shall be entitled to make a Payment Application no later than one month after the date of practical completion of the Sub-Contract Works; or

35.2.2 if the Sub-Contract Particulars state that the duration of the Sub-Contract Works is 45 days or greater, then the Sub-Contractor shall be entitled to make a Payment Application at the intervals stated in the Sub-Contract Particulars or, where used, on the dates stated in any Schedule of Application Dates attached to the Sub-Contract Particulars.

35.3 Each Payment Application shall include:

35.3.1 the order number assigned to the Sub-Contract quoted in the Overarching Sub-Contract Order;

35.3.2 a brief, but clear, description of each element of the works carried out and the materials and goods delivered to or adjacent to the Sub-Contract Works for incorporation therein as at the due date;

35.3.3 a statement of the sum that the Sub-Contractor considers to be due to him in accordance with clause 35.5 at the due date and the basis on which that sum is calculated; and

35.3.4 supporting documentation evidencing the carrying out of such works and/or the delivery of such materials.

35.4 The due date for Payment Applications shall be five (5) Business Days after the date of receipt by the Contractor of the Sub-Contractor's Payment Application under clause 35.2.1 or 35.2.2, provided such application complies with the requirements of clause 35.3.

35.5 The amount of each interim payment due prior to practical completion of the Sub-Contract Works shall subject to Part 4 be 95% of the value of work properly carried out by the Sub-Contractor (or such other percentage of that value as is specified in the Sub-Contract Particulars and subject to any Maximum Retained Amount specified in the Sub-Contract Particulars) less the total amount due in previous payments and less any other amounts that the Contractor is entitled to withhold, deduct or set-off pursuant to the terms of this Sub-Contract or otherwise arising out of or in connection with this Sub-Contract. The value of work shall be determined in accordance with the rates and prices specified in the Pricing Documents or where there are no applicable rates or prices, by reference to the Sub-Contract Sum.

35.6 Not used.

35.7 Where practical completion of the Sub-Contract Works has been achieved, in calculating the interim payment due at the next due date after the Final Release Date or, if at the Final Release Date there are any such defects as are referred to in clause 30, the interim payment at the due date next following the making good of any such defects to the Contractor's reasonable satisfaction, the full amount of the Sub-Contract Sum shall be included.

- 35.8 The due date for the final Payment Application shall be 2 months after the due date referred to in clause 35.7 or, if later, shall be the date 3 months after the date of practical completion of the Sub-Contract Works. The amount due as the final payment shall be the Sub-Contract Sum less the total amount due in previous payments and less any other amounts that the Contractor is entitled to withhold, deduct or set-off pursuant to the terms of this Sub-Contract or otherwise arising out of or in connection with this Sub-Contract.
- 35.9 Without prejudice to any other rights and remedies available to the Contractor under this Sub-Contract, the Sub-Contractor acknowledges and agrees that the submission of a valid Payment Application which complies with clause 35.3 on or by the date required under clause 35.2 is and shall be a condition precedent to the Sub-Contractor's entitlement to payment of such interim payment.
- 35.10 If the Sub-Contractor fails to submit or is late in submitting his Payment Application in any given month or the Sub-Contractor's Payment Application is not properly particularised or substantiated in accordance with clause 35.3, the Sub-Contractor acknowledges and agrees that the Sub-Contractor's Payment Application may not be processed in such month and the Sub-Contractor's entitlement to an interim payment in respect of the amount claimed may be deferred until the following month or month following the submission of a properly particularised and substantiated Payment Application.

36. Payments – Final Date and Notices

- 36.1 Subject to clause 36.4, the final date for each payment shall be as stated in the Sub-Contract Particulars.
- 36.2 Not later than 5 days after each due date the Contractor shall give a payment notice ("Payment Notice") to the Sub-Contractor which shall state the sum that he considers to be or have been due to the Sub-Contractor at the due date and the basis on which that sum has been calculated. Subject to any notice given under clause 36.4, the sum to be paid by the Contractor shall be the sum specified in the Payment Notice.
- 36.3 If the Contractor fails to give a Payment Notice in accordance with clause 36.2, the sum to be paid by the Contractor shall be the sum specified in the Sub-Contractor's Payment Application for the relevant interim payment provided that such application complies with the requirements of clause 35.3.
- 36.4 If the Contractor intends to pay less than the sum stated as due from him in his Payment Notice under clause 36.2 or, where applicable, in the Sub-Contractor's Payment Application for the relevant interim payment (provided that such application complies with the requirements of clause 35.3), he shall not later than 2 days before the final date for payment give the Sub-Contractor notice of that intention ("Pay Less Notice") stating the sum that he considers to be due to the Sub-Contractor at the date he gives notice under this clause 36.4 and the basis on which that sum has been calculated. Where such notice has been given, the sum to be paid on or before the final date for payment shall not be less than the amount stated as due in the Pay Less Notice.
- 36.5 In relation to the requirements for the giving of notices under this clause 36, it is immaterial that the amount then considered to be due may be zero.
- 36.6 If the Contractor fails to pay a sum, or any part of it, due to the Sub-Contractor by the final date for payment, the Contractor shall, in addition to any unpaid amount that should properly have been paid, including the amount of any VAT properly chargeable, pay the Sub-Contractor interest on that amount at the rate of 3% per annum above the official dealing rate of the Bank of England for the period from the final date for payment until such payment is made.
- 36.7 If in the case of the final payment a balance is due to the Contractor, it shall be shown as such in the Contractor's Payment Notice under clause 36.2. If the Sub-Contractor intends to pay less than the amount so shown, he shall not later than 5 days before the final date for payment give the Contractor notice of that intention, stating the sum, if any, that he considers due to the Contractor at the date he gives notice and the basis on which that sum has been calculated. If the Sub-Contractor gives such notice, the sum to be paid on or before the final date for payment shall not be less than the amount stated as due in the notice. Failing payment of any amount properly due to the Contractor by the final date for payment, interest shall be payable on that amount at the rate specified in clause 36.6.
- 36.8 No further sum shall become due to the Sub-Contractor and the Contractor need not pay any sum that

has already become due insofar as the Contractor has given or gives a Pay Less Notice under clause 36.4, or if the Sub-Contractor, after the last date upon which such notice under clause 36.4 could have been given by the Contractor in respect of that sum, has become insolvent within the meaning of section 113 of the Housing Grants, Construction and Regeneration Act 1996.

- 36.9 Without prejudice to any other rights or remedies which the Contract may possess (including, but not limited to the Contractor's common law right of set-off), the Contractor may deduct from any payment due to the Sub-Contractor the amount of any bona fide claim and/or counterclaim for damages, losses, demands, expenses (including reasonable legal and other professional expenses), costs, liabilities and/or fines which the Contractor may have against the Sub-Contractor under or arising out of this Sub-Contract or any other sub-contract to which the Contractor and the Sub-Contractor are a party. The foregoing entitlement is in addition to and not in substitution for any other rights of counterclaim, set off or abatement.
- 36.10 No payment by the Contractor shall of itself constitute evidence that any design, works, materials or goods to which it relates are in accordance with this Sub-Contract.
- 36.11 The obligation of the Contractor to make any payment under this Sub-Contract is subject to the provisions of the Construction Industry Scheme.

37. Suspension

- 37.1 As part of exercising his right of suspension under section 112 of the Housing Grants, Construction and Regeneration Act 1996, the Sub-Contractor shall leave the Sub-Contract Works (or the relevant parts thereof) in a safe, tidy and secure condition so as not to present any hazard or danger to persons or property on or adjacent to the site or any impediment which may prejudice the continuation of the Sub-Contract Works or so as to leave the Sub-Contract Works (or relevant parts thereof) exposed to damage or deterioration.
- 37.2 The Sub-Contractor's right to suspend performance shall cease upon the Contractor making payment in full of the relevant amount due to the Sub-Contractor whereupon the Sub-Contractor shall immediately resume performance of his obligations without delay, deferral or allowance for remobilisation.
- 37.3 In respect of any application by the Sub-Contractor to the Contractor for costs and expenses pursuant to section 112 of the Housing Grants, Construction and Regeneration Act 1996, the Sub-Contractor shall with his application or on request submit such details of the costs and expenses as are reasonably necessary to enable his entitlement to be ascertained.
- 37.4 The Sub-Contractor shall indemnify the Contractor and keep the Contractor indemnified against any and all liabilities, losses, damages, costs and/or expenses suffered or incurred by the Contractor as a consequence of the Sub-Contractor suspending the performance of his obligations where it is subsequently conceded by the Sub-Contractor, or agreed by the Parties or determined pursuant to clause 40 of this Sub-Contract that the sums claimed as due to the Sub-Contractor were not due or that the Contractor had served an effective notice pursuant to clause 36.2 and/or clause 36.4 prior to the final date for payment, or otherwise as a consequence of the Sub-Contractor failing to comply with clauses 37.1 and/or 37.2.

38. Termination by Contractor

- 38.1 For the purposes of this Sub-Contract:
- 38.1.1 notice of termination of the Sub-Contractor's employment under this Sub-Contract shall not be given unreasonably or vexatiously;
- 38.1.2 such termination shall take effect on receipt of the relevant notice;
- 38.1.3 each notice referred to in this clause 38 shall be in writing and delivered by hand or sent by special or recorded delivery, and where given by special or recorded delivery it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting;
- 38.1.4 the provisions of this clause 38 are without prejudice to any other rights and remedies at common law, under this Sub-Contract or otherwise, which the Contractor may possess; and
- 38.1.5 irrespective of the grounds of termination, the Sub-Contractor's employment under this Sub-Contract may at any time be reinstated if and on such terms as the Parties may agree.
- 38.2 If, in the opinion of the Contractor, the Sub-Contractor:
- 38.2.1 fails to proceed regularly and diligently with the performance of his obligations under this Sub-Contract;

- 38.2.2 without reasonable cause, wholly or substantially suspends the carrying out of the Sub-Contract Works;
- 38.2.3 fails to comply with its obligations or breaches any of the provisions of clause 27;
- 38.2.4 fails to comply with clause 41.1;
- 38.2.5 refuses or neglects to comply with an instruction from the Contractor requiring him to remove any work, materials or goods not in accordance with this Sub-Contract and by such refusal or negligence the Sub-Contract Works are materially affected;
- 38.2.6 evidences an intention not to commence and/or complete the Sub-Contract Works in accordance with this Sub-Contract; or
- 38.2.7 is otherwise in material breach of his obligations under this Sub-Contract,

then the Contractor may give written notice to the Sub-Contractor which specifies the default and requires it to be remedied within seven (7) days of the date of the notice. If the Sub-Contractor does not so remedy the default within seven (7) days, the Contractor may terminate forthwith the Sub-Contractor's employment under this Sub-Contract in whole or in part by giving a further written notice.

38.3 If:

38.3.1 in respect of the Sub-Contractor, being a company:

- (a) it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
- (b) an administrative receiver or a receiver or manager of its property is appointed under Chapter I or Chapter II (as applicable) of Part III of the Insolvency Act 1986;
- (c) a resolution for voluntary winding-up without a declaration of solvency under section 89 of the Insolvency Act 1986 is passed; or
- (d) a winding-up order under Part IV or V of the Insolvency Act 1986 is made ; or

38.3.2 the Sub-Contractor, being a partnership:

- (a) a winding-up order is made against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of the Insolvency Act 1986; or
- (b) sequestration is awarded on the estate of the partnership under the Bankruptcy (Scotland) Act 2016 or the partnership grants a trust deed for its creditors; or;

38.3.3 the Sub-Contractor, being an individual:

- (a) a bankruptcy order is made against him under part IX of the Insolvency Act 1986; or
- (b) sequestration of his estate is awarded under the Bankruptcy (Scotland) Act 2016 or when he grants a trust deed for his creditors; or;

38.3.4 the Sub-Contractor:

- (a) enters into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction) or
- (b) is a partnership and each partner is the subject of an individual arrangement or any other event or proceedings referred to in this Clause 38.3.4; or

38.3.5 any event or proceedings analogous to those set out in clauses 38.3.1 to 38.3.4 occurs in respect of the Sub-Contractor in any jurisdiction outside England and Wales, the Contractor may at any time terminate the Sub-Contractor's employment under this Sub-Contract by giving a written notice to the Sub-Contractor.

38.4 The Sub-Contractor shall immediately notify the Contractor if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clauses 38.3.1-38.3.5.

- 38.5 As from the date the Sub-Contractor suffers or incurs any of the matters referred to in clauses 38.3.1-38.3.5, whether or not the Contractor has given such notice of termination:
- 38.5.1 the Sub-Contractor's obligations to carry out and complete the Sub-Contract Works shall be suspended; and
- 38.5.2 the Contractor may take reasonable measures to ensure that the Sub-Contract Works and any confirmed materials and goods which are intended for incorporation therein are retained on site, and the Sub-Contractor shall allow and shall not hinder or delay the taking of those measures.
- 38.6 The Contractor shall be entitled by written notice to the Sub-Contractor to terminate the Sub-Contractor's employment, under this Sub-Contract or any other contract with the Contractor if, in relation to this Sub-Contract or any other such contract, the Sub-Contractor shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the obtaining or execution of this Sub-Contract or any other contract with the Contractor, or for showing or forbearing to show favour or disfavour to any person in relation to this Sub-Contract or any other contract with the Contractor, or if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Sub-Contractor) or if, in relation to this Sub-Contract or any other contract with the Contractor, the Sub-Contractor or any person employed by it or acting on its behalf shall have committed an offence under the Bribery Act 2010.
- 38.7 If the Sub-Contractor's employment under this Sub-Contract is terminated under clauses 38.2, 38.3 or 38.6:
- 38.7.1 the Contractor may employ and pay other persons to carry out and complete the Sub-Contract Works and to make good any defects of the kind referred to in clause 30 and he and they may enter upon and take possession of the Sub-Contract Works and (subject to obtaining any necessary third party consents) may use all the Sub-Contractor's temporary buildings, plant, tools, equipment and site materials intended for incorporation in the Sub-Contract Works for those purposes;
- 38.7.2 the Sub-Contractor shall:
- (a) when required in writing by the Contractor to do so (but not before), remove or procure the removal from the site of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Sub-Contractor or the Sub-Contractor's Persons; and
 - (b) if so required by the Contractor within fourteen (14) days of the date of termination, assign (so far as assignable and so far as he may be lawfully required to do so) to the Contractor, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Sub-Contract;
- 38.7.3 no further sum shall become due to the Sub-Contractor and the Contractor need not pay any sum that has already become due either;
- 38.7.4 upon completion of the Sub-Contract Works and the making good of defects of the kind referred to in clause 30 or earlier termination of the Contractor's employment, howsoever arising, an account of the following shall thereafter be set out in a statement prepared by the Contractor:
- (a) the amount of payments made to the Sub-Contractor;
 - (b) the amount of any expenses, any direct loss and/or damage caused to the Contractor as a result of the termination or otherwise; and
 - (c) the total amount which would have been payable for the Sub-Contract Works in accordance with the Sub-Contract
- to the extent that the amounts due to the Contractor exceed the amounts due to the Sub-Contractor, the balance shall be recoverable from the Sub-Contractor as a debt.

39. Not used

40. Settlement of Disputes

- 40.1 If a dispute or difference arises under this Sub-Contract which cannot be resolved by direct negotiations, the Contractor and the Sub-Contractor shall try in good faith to settle any dispute or difference arising under this Sub-Contract by mediation before invoking adjudication or any other dispute resolution procedure.
- 40.2 Any such mediation shall be commenced by the Contractor or the Sub-Contractor (as applicable) giving written notice to the other. The notice shall include a brief statement of the matter or matters which it is desired to settle by mediation and a brief statement of the relief or remedy sought.
- 40.3 The mediation shall be carried out by nominees to be nominated by the relevant party and notified to the other.
- 40.4 Notwithstanding the provisions of clauses 40.1 to 40.3, if a dispute or difference arises under this Sub-Contract which either Party wishes at any time to refer to adjudication, the Scheme shall apply, subject to the following:
- 40.4.1 for the purposes of the Scheme the Adjudicator shall be nominated by The Royal Institution of Chartered Surveyors;
- 40.4.2 the Adjudicator shall give written reasons for his decision;
- 40.4.3 the Adjudicator shall have the power to allocate his fees and expenses as between the Parties; and
- 40.4.4 the Adjudicator shall have the power to determine more than one dispute under this Sub-Contract at the same time, and if requested to do so by either Party shall determine any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to him.
- 40.5 The courts of England and Wales shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Sub-Contract.

41. General

- 41.1 The Parties hereby confirm that, notwithstanding any other provision of this Sub-Contract, this Sub-Contract shall not and shall not purport to confer on any third party any rights to enforce any term of the Sub-Contract for the purposes of Contracts (Rights of Third Parties) Act 1999 and the Parties may by agreement rescind or vary this Sub-Contract without the consent of or need to give notice to any person not party to it.
- 41.2 The Sub-Contractor shall not without the prior written consent of the Contractor:
- 41.2.1 make any assignment of the benefit of the whole or any part of this Sub-Contract nor sub-let the whole or any part of the Sub-Contract Works;
- 41.2.2 assign the right to any payment by the Contractor to the Sub-Contractor to a debt factor or similar agency; or
- 41.2.3 in any way encumber or charge any of the goods, materials or equipment which are to be used or incorporated into the Sub-Contract Works, and the Sub-Contractor warrants that it shall have the capacity to transfer good and unencumbered title to all goods, materials and equipment used in the Sub-Contract Works to the Contractor.
- 41.3 The Sub-Contractor shall not during the period of its employment under this Sub-Contract or at any time after the expiry or termination of this Sub-Contract or of the Sub-Contractor's employment hereunder disclose to any person (other than essential employees in the proper course of their duties, the Sub-Contractor's suppliers and sub-contractors and legal or other advisors, law enforcement or other regulatory bodies) any information not already in the public domain relating to this Sub-Contract, the Sub-Contract Works and the business of the Contractor. The Sub-Contractor shall ensure that any persons having access to such information are aware of these obligations and are similarly bound.
- 41.4 The Sub-Contractor shall not without the prior written approval of the Contractor take or permit to be taken any photographs of the Sub-Contract Works for use in any publicity or advertising or publish alone or in conjunction with any other person, any articles, photographs or other illustrations in any publication journal or newspaper or any radio or television programme or internet site in relation to the Sub-Contract Works or any part thereof.
- 41.5 In the event there is any conflict, ambiguity or discrepancy between or within the Sub-Contract Particulars, these Conditions, the Statutory Requirements or any of the other Sub-Contract Documents,

the Sub-Contractor shall notify the Contractor as soon as reasonably practicable and the conflict, ambiguity or discrepancy shall be dealt with as directed by the Contractor. For the avoidance of doubt, no such direction of the Contractor shall entitle the Sub-Contractor to any additional payment or an extension of time to the Period for Completion.

- 41.6 To be effective, any notices to be served by the Sub-Contractor on the Contractor under this Sub-Contract shall be given in writing and delivered either by hand, special or recorded delivery, first class post or fax to the address for notices of the Contractor given in the Sub-Contract Particulars. To be effective any notices to be served by the Contractor on the Sub-Contractor under this Sub-Contract may be served by any effective means (including electronic or otherwise).
- 41.7 This Sub-Contract contains the entire agreement between the Parties concerning its subject matter. Any previous understanding, agreement (including, but not limited to, any letter of intent between the Parties), representation or warranty relating to that subject matter is superseded and replaced by this Sub-Contract and has no further effect. For the avoidance of doubt, any terms and conditions stated in the Sub-Contractor's estimate or quotation are excluded.
- 41.8 The Parties acknowledge and agree that the terms and conditions of this Sub-Contract shall be deemed to apply to all work undertaken by the Sub-Contractor for the Contractor in connection with the Sub-Contract Works (whether under a letter of intent or otherwise) and applies whether or not the work was undertaken prior to the date of this Sub-Contract. The Sub-Contractor acknowledges that any payment made by the Contractor to the Sub-Contractor prior to the date of this Sub-Contract (whether under a letter of intent or otherwise) relating to the Sub-Contract Works forms part of the Sub-Contract Sum, and such amount shall be deducted from the amount of the first interim payment to the Sub-Contractor under this Sub-Contract.
- 41.9 Notwithstanding the method of execution of this Sub-Contract, the Contractor and the Sub-Contractor acknowledge and agree that:
- 41.9.1 notwithstanding any provisions of the Limitation Act 1980 to the contrary, any action or proceedings arising out of or in connection with any breach of this Sub-Contract may be commenced up and until the date that is twelve (12) years from the date upon which the Sub-Contract Works are certified as being practically complete; and
- 41.9.2 neither the Contractor nor the Sub-Contractor shall be entitled, and the Contractor and the Sub-Contractor hereby waive any right they may have, to rely on, plead or claim any defence of limitation that may otherwise be available to either party by virtue of the operation of the Limitation Act 1980 in respect of any action or proceedings arising out of or in connection with any breach of this Sub-Contract, save in respect of any such action or proceedings that is or are commenced after the date that is twelve (12) years from the date upon which the Sub-Contract Works are certified as being practically complete.
- 41.10 This Sub-Contract shall be governed by and construed in accordance with the laws of England and Wales.

SUPPLEMENTAL CONDITION A (DESIGN)

A1 APPLICATION OF SUPPLEMENTAL CONDITION A

Where the Sub-Contractor is carrying out design of the Sub-Contract Works, then the Sub-Contractor shall, without prejudice to its obligations set out in clauses 22 to 41 above, comply with the obligations set out in this Supplemental Condition A (Design).

A2 DESIGN OBLIGATIONS

- A2.1 In relation to these parts of the Sub-Contract Works that the Sub-Contractor is to design, the Sub-Contractor shall:

- A2.1.1 using reasonable skill, care and diligence carry out and/or complete such design (as applicable), including, so far as not described in the Sub-Contract Documents, the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in such designed works;
- A2.1.2 comply with the Contractor's instructions for the integration of the design of the Sub-Contract Works by the Sub-Contractor, subject to the provisions of clause 32;
- A2.1.3 comply with regulations 8 to 10 of the CDM Regulations;
- A2.1.4 without charge provide the Contractor, as and when necessary and forthwith upon any termination of the Sub-Contractor's employment under the Sub-Contract, with two copies of such drawings or details and specifications of materials, goods and workmanship and (if requested) related calculations and information, as are reasonably necessary to explain the Sub-Contractor's designs of the Sub-Contract Works.
- A2.2 In addition (and without limitation to the above) the Sub-Contractor undertakes and warrants to the Contractor that the Sub-Contractor has exercised and will continue to exercise the standard of skill, care and diligence referred to in Supplemental Condition A2.1 not to specify any products or materials for use in the Sub-Contract Works which at the time of use:-
- A2.2.1 do not conform with British or European Standards or code of practice; or
- A2.2.2 are generally known within the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability or performance of the building or structure.
- A2.3 No approval or inspection or review by the Contractor or by any person acting on behalf of the Contractor nor any omission to inspect or review or to disapprove shall negate or diminish any duty or liability of the Sub-Contractor under or in connection with this Sub-Contract.

A3 COPYRIGHT

- A3.1 The copyright in all drawings, reports, specifications, bills of quantities, calculations and other similar documents provided by the Sub-Contractor in connection with the project shall remain vested in the Sub-Contractor but the Sub-Contractor grants to the Contractor and its nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Sub-Contract Works including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the project comprising the Sub-Contract Works. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.
- A3.2 The Sub-Contractor shall not be liable for any such use by the Contractor or its nominees of any drawings and other documents for any purposes other than those for which they were originally prepared by the Sub-Contractor.

A4 PROFESSIONAL INDEMNITY INSURANCE

- A4.1 The Sub-Contractor shall maintain professional indemnity insurance covering (inter alia) all liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than the amount stated in the Sub-Contract Particulars for a period beginning now and ending 12 years after the date of practical completion of the Sub-Contract Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or any amendment or re-enactment thereof. The Sub-Contractor shall not, without the prior approval in writing of the Contractor, settle or compromise with the insurers any claim which the Sub-Contractor may have against the insurers and which relates to a claim by the Contractor against the Sub-Contractor, or by

any act or omission lose or prejudice the Sub-Contractor's right to make or proceed with such a claim against the insurers.

- A4.2 Any increased or additional premium required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.
- A4.3 The Sub-Contractor shall immediately inform the Contractor if such insurance ceases to be available at commercially reasonable rates in order that the Sub-Contractor and the Contractor can discuss means of best protecting their respective positions in the absence of such insurance.
- A4.4 As and when reasonably requested to do so by the Contractor the Sub-Contractor shall produce for inspection documentary evidence (including, if required by the Contractor, the original of the relevant insurance documents) that his professional indemnity insurance is being maintained.
- A4.5 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Sub-Contract or the Sub-Contractor's employment under it for any reason whatsoever, including (without limitation) breach by the Contractor.

PART 4: DEFINITIONS AND INTERPRETATION

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

(a) **Definitions:**

"Business Day" a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

"CDM Regulations" means the Construction (Design and Management) Regulations 2015.

"Conditions" these terms and conditions as amended from time to time in accordance with clause 12.5 (except where referred to in Part 3).

"Conditions" when referred to in Part 3, means clauses 22 to 41 and Supplemental Condition A (Design) of Part 3 of the General Terms and Conditions of Purchase.

"Construction Industry Scheme" means the current scheme under the Finance Act 2004.

"Construction Phase Plan" the plan prepared by the Principal Contractor where the project is notifiable under the CDM Regulations and in order to comply with the provisions thereof.

"Contractor" means Mulberry or the person named as Contractor in the Overarching Sub-Contract Order.

"Contract" the contract between Mulberry and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

"Control" has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

"Customer" Mulberry Property Developments Limited registered in England and Wales with company number 07253372 or Mulberry Commercial Developments Limited registered in England and Wales with company number 04771583, in accordance with the parties stated on the Order or as otherwise notified to the Supplier at the time of the Order.

"Customer Materials" has the meaning set out in clause 15.3.10.

"Defects Rectification Period" means the period commencing on the date of practical completion of the Sub-Contract Works and expiring on the date of expiry of the defects rectification period (or equivalent).

"Deliverables" all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

"Final Release Date" see clause 35.7 and the Sub-Contract Particulars.

"Goods" the goods (or any part of them) set out in the Order.

"Goods Specification" any specification for the Goods, including any related plans and drawings, that is agreed in writing by Mulberry and the Supplier.

"Intellectual Property Rights" patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Maximum Retained Amount" the amount, if any, set out in the Sub-Contract Particulars in respect of clause 35.5.

"Order" Mulberry's order for the supply of Goods and/or Services, as set out in Mulberry's purchase order form or in the Mulberry's written acceptance of the Supplier's quotation as the case may be.

"Overarching Sub-Contract Order" means the Overarching Sub-Contract Order executed by the Parties to which the Sub-Contract Particulars are attached.

"Parties" means the Contractor and the Sub-Contractor.

"Period for Completion" means the period for completion of the Sub-Contract Works identified in the Sub-Contract Particulars as may be extended in accordance with clause 33 (Extensions of Time).

"Pricing Documents" means any document(s) identified in the Sub-Contract Particulars, showing rates and prices.

"Principal Contractor" the person named as such in the Sub-Contract Particulars or any successor.

"Principal Designer" the person named as such in the Sub-Contract Particulars or any successor.

"Scheme" means Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.

"Services" the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

"Service Specification" the description or specification for Services agreed in writing by Mulberry and the Supplier.

"Site" means the place where the Sub-Contract Works are to be carried out identified in the Sub-Contract Particulars.

"Statutory Requirements" any statute, statutory instrument, rule or order or any regulation or bye-law having the force of law which affects the Sub-Contract Works or performance of any obligation under this Sub-Contract.

"Statutory Undertaker" means any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by it upon or in connection with that work.

"Sub-Contract" means the Overarching Sub-Contract Order, the Sub-Contract Particulars, the Conditions and those Sub-Contract Documents stated in the Sub-Contract Particulars.

"Sub-Contract Documents" means the documents identified in the Sub-Contract Particulars.

"Sub-Contract Particulars" means the Contractor's Sub-Contract Particulars to which these Conditions are attached.

"Sub-Contractor" means the person identified as the Sub-Contractor in the Sub-Contract Particulars.

"Sub-Contractor's Persons" means the Sub-Contractor's employees and agents and all other persons employed or engaged on or in connection with the Sub-Contract Works or any part of them or any other person properly on the Site in connection therewith excluding the Contractor and his persons and any Statutory Undertaker.

"Sub-Contract Sum" means the sum stated as such in the Sub-Contract Particulars.

"Sub-Contract Works" means the works described in the Sub-Contract Particulars, as varied (where applicable) under clause 32 (Variations).

"Supplier" the person or firm from whom Mulberry purchases the Goods and/or Services.

"Variation" has the meaning given to it in clause 32.1.

(b) **Interpretation:**

(i) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(ii) A reference to a party includes its personal representatives, successors and permitted assigns.

(iii) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(iv) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(v) A reference to **writing** or **written** does include email but not fax.