

## Cosmos Projects - Standard Terms and Conditions of Sub-Contract

These standard terms and conditions shall apply to any Sub Contract between Cosmos Projects Limited ("CPL") and any Sub-Contractor following the issue of a Sub-Contract Order by CPL which attaches or refers to these standard terms and conditions.

<b>1. The Subcontract</b>	<p>(1) The Sub-Contract Order constitutes an offer by CPL and is strictly not an acceptance of any tender by the Sub-Contractor.</p> <p>(2) Any commencement of the Sub-Contract Works by the Sub-Contractor, will be deemed to be an acceptance by the Sub-Contractor of the whole terms and conditions comprised in the Sub-Contract Order including these standard terms and conditions.</p> <p>(3) The Sub-Contract Order together with acceptance by the Sub-Contractor of the Sub-Contract Order either in writing or by commencement of the Sub-Contract Works shall constitute the Sub Contract for the Sub-Contract Works.</p>
<b>2. Interpretation</b>	<p>(1) The sidenotes/headings set out in these terms and conditions are for guidance only and should in no way be construed as forming any part of the Sub-Contract.</p> <p>(2) The terms Application for Payment Date, CPL Manager, Date for Commencement, Date for Completion, Daywork Percentages, Defects Liability Period, Employer, Insurance Requirements, Main Contract, Main Contract Works, Main Contractor Discount, Retention, Site, Sub-Contract Period, Sub-Contract Works, Sub-Contract Sum shall have the meanings ascribed to them in the Sub-Contract Order.</p> <p>(3) Insofar as the Sub-Contractor provides any design as part of the Sub-Contractor's Works, the Sub-Contractor shall in respect of any inadequacy in such design whether or not approved have the like liability to the Contractor, whether under statute or otherwise, as would an architect or, as the case may be, other appropriate professional designer holding himself out as competent to take on work for such design who, acting independently under a separate contract with the Contractor, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the supplier of the design.</p>
<b>3. Payment</b>	<p>(1) CPL shall pay to the Sub-Contractor interim instalments of the Sub-Contract Sum calculated at monthly intervals (unless (i) specified elsewhere in the Sub-Contract, or (ii) otherwise agreed between the parties or (iii) where the duration of the Sub-Contract Works is to be less than forty-five days).</p> <p>(2) Each interim instalment of the Sub-Contract Sum shall be calculated as the sum of:</p> <ul style="list-style-type: none"> <li>(i) the value of all works properly executed;</li> <li>(ii) the value of goods and materials brought timeously, but not prematurely, onto the Site for incorporation into the Sub-Contract Works, provided that such is provided for in the Main Contract and the Sub-Contractor has demonstrated ownership of the said goods and materials; and</li> <li>(iii) any other amount or sum properly due under the Sub-Contract;</li> </ul> <p>less the following:</p> <ul style="list-style-type: none"> <li>(iv) all previous payments;</li> <li>(v) deductions in respect of any breach by the Sub-Contractor of any provision of the Sub-Contract;</li> <li>(vi) any other amount payable or allowable by the Sub-Contractor to CPL;</li> <li>(vii) any applicable Main Contractor Discount; and</li> <li>(viii) Retention.</li> </ul> <p>(3) The Sub-Contractor shall submit to CPL for the attention of the CPL Manager on each Application for Payment Date until the relevant date following completion of the Sub-Contract Works, a written statement showing the sum that the Sub-Contractor considers to be the instalment of the Sub-Contract Sum due to the Sub-Contractor calculated as above at the relevant Due Date ("the Application for Payment").</p> <p>(4) The Application for Payment must specify the basis on which the Sub-Contractor has calculated the sum due and include such details as CPL may reasonably require to facilitate the calculation and checking by CPL of the value of Sub-Contract Works executed and of the sum which the Sub-Contractor considers to be so due.</p>

(5) Each instalment of the Sub-Contract Sum shall become due to the Sub-Contractor fourteen days following the relevant Application for Payment Date (the "Due Date").

(6) If the Sub-Contractor fails to submit an Application for Payment on any Application for Payment Date then no interim payment shall be due to the Sub-Contractor until the following month (subject always to the Sub-Contractor's submission of an Application for Payment by the subsequent Application for Payment Date).

(7) CPL shall no later than five days after the Due Date issue a notice (a "Payment Notice") to the Sub-Contractor specifying the amount CPL considers to be or have been due at the Due Date to the Sub-Contractor in respect of the relevant payment and the basis on which that amount is calculated ("the Notified Sum"). The sum to be paid by CPL to the Sub-Contractor by the Final Date shall, subject to any Pay Less Notice, be the Notified Sum.

(8) In relation to the requirement for the issue of Payment Notices it is immaterial that the amount then considered to be due by CPL may be zero.

(9) If in relation to any instalment of the Sub-Contract Sum a Payment Notice is not issued by CPL but the Sub-Contractor has submitted an Application for Payment, such Application for Payment shall for the purposes of the Sub-Contract constitute a Payment Notice and the sum stated therein shall be the Notified Sum.

(10) Subject to any Pay Less Notice given by CPL to the Sub-Contractor, any Notified Sum shall be paid not later than the final date for payment which shall be thirty eight days after the Due Date (the "Final Date").

(11) If for any instalment of the Sub-Contract Sum CPL intend to pay less than the Notified Sum (including where CPL intend to pay zero), CPL shall not later than five days before the Final Date issue to the Sub-Contractor written notice of that intention specifying both the sum that CPL consider to be due to the Sub-Contractor at the date the notice is given, and the basis on which that sum has been calculated (a "Pay Less Notice"). CPL may not serve a Pay Less Notice unless either CPL or the Sub-Contractor has served a Payment Notice. Where a Pay Less Notice is given, the payment to be made on or before the Final Date shall not be less than the amount stated as due in the Pay Less Notice.

(12) No later than (i) the date on which Sub-Contractor has finally performed his obligations in respect of the making good of defects which appear or occur during the Defects Liability Period or, (ii) if no such defects appeared or occurred, the date falling eighteen months after the completion of the Sub-Contract Works, CPL shall issue a Payment Notice for the Retention stating the sum that CPL considers to be the balance of the Retention properly due to the Sub-Contractor and the basis upon which such sum has been calculated.

(13) The due date for payment of the balance of the Retention shall be the date of issue of the Payment Notice issued by CPL in accordance with paragraph (12), or if such Payment Notice is not issued by CPL the Sub-Contractor shall be entitled to make an Application for Payment of the balance of the Retention and the due date shall be the date of any such application. The Final Date for payment of the balance of the Retention shall be seventy five days from its due date.

(14) If CPL intend to pay less than the balance of Retention specified in the relevant Payment Notice or Application for Payment, then it shall require no later than five days before the Final Date for payment serve a Pay Less Notice specifying both the sum that CPL considers to be due to the Subcontractor at the date the notice is given, and the basis on which that sum has been calculated. Where a Pay Less Notice is given, the payment to be made on or before the Final Date for payment of the balance of the Retention shall not be less than the amount stated as due in the Pay Less Notice.

(15) The Sub-Contractor shall not be entitled to payment from CPL in the event that the Employer under the Main Contract is or becomes insolvent.

(16) In the event that the Sub-Contractor becomes insolvent, CPL shall have no obligation to pay any part of any Notified Sum, any balance of Retention or any other payment that would otherwise be due and payable to the Sub-Contractor under the Sub-Contract.

(17) For the avoidance of doubt, the term "insolvent" shall have the meaning ascribed to it by section 113 of the Housing Grants, Construction and Regeneration Act 1996 (as amended). In the event of such insolvency, any payment made subsequently to the Sub-Contractor by CPL will be at the

	absolute discretion of CPL.
<b>4. Progress &amp; Completion</b>	<p>(1) The Sub-Contract Works are to be commenced on the Date for Commencement or such other date as instructed by CPL.</p> <p>(2) The Sub-Contract Works are to be carried out diligently in accordance with the programme for the Main Contract Works under the Main Contract and/or in such order, manner, and time as CPL may reasonably direct so as to ensure completion of the Main Contract Works or any portion thereof under the Main Contract by the completion date or dates or such extended date or dates as may be allowed under the Main Contract.</p> <p>(3) The Sub-Contract Works are to be completed within the Sub-Contract Period subject only to fair and reasonable extension of time as CPL shall allow where the Sub-Contract Works are delayed by either (i) causes which result in an extension of time under the Main Contract or (ii) where the Sub-Contractor is prevented or delayed by any breach or act of prevention by CPL subject always to the Sub-Contractor using all reasonable endeavours to mitigate against any delay to the carrying out of the Sub-Contract Works.</p>
<b>5. Attendances</b>	Unless expressly agreed to the contrary, all attendances, including scaffolding, and builders work shall be provided by the Sub-Contractor and he shall be deemed to have included for same in the Sub-Contract Sum.
<b>6. Co-ordination</b>	The Sub-Contract Sum shall be deemed to include for the integration and co-ordination of the Sub-Contract Works with the works of all other contractors on site. The Sub-Contractor shall satisfy himself as to the suitability of preceding works prior to carrying out the Sub-Contract Works.
<b>7. Indemnities</b>	The Sub-Contractor shall at all times indemnify CPL against all liabilities to other persons (including the servants and agents of CPL or its subcontractors) for death, bodily injury, damage to property, or other loss which may arise out of or in consequence of the execution, completion, or maintenance of the Sub-Contract Works and against all costs, charges, and expenses that may be occasioned to CPL by the claims of such persons.
<b>8. Insurance</b>	The Sub-Contractor shall maintain and effect insurances at the same levels and on the same basis as set out for CPL as the Insurance Requirements in the Main Contract.
<b>9. Variations</b>	<p>(1) CPL shall be entitled to instruct variations of the Sub-Contract Works and no variation shall vitiate the Sub-Contract.</p> <p>(2) The Sub-Contractor must not undertake work involving a variation or additional work without the prior written authority of CPL.</p> <p>(3) The valuation of variations shall be based on the rates and prices contained within the Sub-Contract bill of quantities or other documents forming part of the Sub-Contract and valued in accordance with the rules as set out in the Main Contract.</p> <p>(4) Dayworks, where appropriate, shall be valued in accordance with the Main Contract applying the Daywork Percentages stated in the Sub-Contract Order.</p>
<b>10. Protection</b>	The Sub-Contractor shall take all necessary precautions to avoid damage by its workmen, employees, and agents to any other works and shall clean and remove all stains or blemishes caused by them as directed. The Sub-Contractor shall carefully and efficiently cover up and protect all work carried out by it, together with its materials, to minimise the risk of damage during the progress of the Sub-Contract Works including the provision of temporary covers, barriers, chutes and the like.
<b>11. Alienation</b>	The Sub-Contractor shall not sub let or assign its obligations under the Sub-Contract or any part thereof nor shall it assign its right to any monies becoming due under the Sub-Contract without first obtaining the written consent of CPL.
<b>12. Adjudication</b>	<p>(1) Either Party shall be entitled to give notice at any time of its intention to refer any dispute arising under the Sub-Contract for adjudication. .</p> <p>(2) The Adjudicator shall be nominated by the Chairman for the time being of the Royal Institution of Chartered Surveyors (Scotland).</p>
<b>13. Set-Off</b>	(1) If, by reason of any breach or failure to observe the provisions of the Sub-Contract by the Sub-Contractor, CPL suffers, or is likely to suffer, loss or damage as a consequence thereof, the Sub-Contractor shall, without prejudice to and pending final determination or agreement between the parties forthwith

	<p>pay or allow to CPL such sum as CPL shall bona fide estimate as the amount of such loss until final determination or agreement.</p> <p>(2) It shall be deemed to be within the contemplation of the parties that if the Sub-Contractor is in breach, or fails to observe the provisions of the Sub-Contract, that such breach is likely to result in CPL breaching the terms of the Main Contract and that this may result in damages naturally flowing from the breach together with any special damages being recovered by the Employer from CPL.</p>
<p><b>14. Main Contract</b></p>	<p>(1) The Sub-Contractor is deemed to have full knowledge of and, so far as they are applicable to the Sub-Contract Works, agrees to comply with the whole provisions of the Main Contract as though the same were incorporated herein and shall carry out the Sub-Contract Works so as not to cause by any of its acts or omissions CPL to be in breach of the Main Contract.</p> <p>(2) Should there be any discrepancy or ambiguity between the terms of the Main Contract and the Sub-Contract, the terms of the Sub-Contract shall prevail.</p>
<p><b>15. Subcontractor's Default</b></p>	<p>(1) If:</p> <p>(a) the Sub-Contractor fails to proceed with the Sub-Contract Works with due diligence after being required in writing so to do by CPL; or</p> <p>(b) the Sub-Contractor fails to execute the Sub-Contract Works or to perform its other obligations in accordance with the Sub-Contract after being required in writing so to do by CPL; or</p> <p>(c) the Sub-Contractor refuses or neglects to remove defective work after being directed in writing so to do by CPL; or</p> <p>(d) the Sub-Contractor becomes bankrupt or presents a petition in bankruptcy or any step is taken by the Sub-Contractor or by any other person to appoint an administrator in respect of the Sub-Contractor, or to wind up or dissolve the Sub-Contractor or to appoint a trustee, receiver, administrative receiver or similar officer to the Sub-Contractor or any part of its undertakings or assets, or if the Sub-Contractor suspends or threatens to suspend payment of its debts or is unable or is deemed to be unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986, or if a proposal is made or a nominee or supervisor is appointed for the Sub-Contractor for a composition in satisfaction of its debt, or for a scheme of arrangement of its affairs or other arrangement or any proceedings for the benefit of its creditors are commenced under any law, regulation or procedure relating to the reconstruction or readjustment of a debt or if the Sub-Contractor makes an arrangement or assignment in favour of its creditors or agrees to carry out the Sub-Contract under a committee of inspection of its creditors or (being a corporation) goes into liquidation (other than voluntary liquidation for the purposes of amalgamation or reconstruction)); or</p> <p>(e) CPL is required by the Employer or Architect (or equivalent) to remove the Sub-Contractor from the Site after due notice in writing from the Employer or Architect (or equivalent) in accordance with the Main Contract.</p> <p>then in any such event and without prejudice to any other rights or remedies, CPL may by written notice to the Sub-Contractor forthwith determine the Sub-Contractor's employment under the Sub-Contract and thereupon CPL may take possession of all materials, equipment, and other things whatsoever brought onto the Site by the Sub-Contractor and may use them for the purpose of executing, completing, and maintaining the Sub-Contract Works, and may, if it thinks fit, sell all or any of them and apply the proceeds in or towards the satisfaction of monies otherwise due to it from the Sub-Contractor.</p> <p>(2) Upon such a determination, by CPL, the rights and liabilities of CPL and the Sub-Contractor shall, subject to the preceding sub clause, be the same as if the Sub-Contractor had repudiated the Sub-Contract and CPL had by its notice of the termination under the preceding sub clause elected to accept such repudiation.</p> <p>(3) CPL may in lieu of giving a notice of determination under this Clause take part only of the Sub-Contract Works out of the hands of the Sub-Contractor and may itself or through others arrange for such works to be carried out and completed and in such event CPL may recover its reasonable costs of so doing from the Sub-Contractor, or deduct such costs from monies otherwise due to the Sub-Contractor.</p>

<b>16. Notices and Claims</b>	<p>(1) Whenever CPL is required by the terms of the Main Contract to give any return, account or notice or other such information, the Sub-Contractor shall in relation to the Sub-Contract Works give a similar return, account or notice or other such information as may be required in writing to CPL as will enable CPL to comply with such terms of the Main Contract and shall do so in sufficient time to enable CPL to comply with such terms punctually.</p> <p>(2) If, by reason of any breach by the Sub-Contractor of the provisions of this clause, CPL is prevented from recovering any sum due under the Main Contract, then without prejudice to any other remedy of CPL for such breach, CPL may deduct such sums from monies otherwise due to the Sub-Contractor.</p>
<b>17. Materials on Site</b>	<p>Any materials brought onto the Site by the Sub-Contractor for incorporation into the Sub-Contract Works shall become the property of CPL.</p>
<b>18. Collateral Warranties</b>	<p>(1) The Sub-Contractor shall, when called upon to do so by CPL, provide collateral warranties in favour of third parties, in such form as may be required by the Employer under the Main Contract.</p> <p>(2) The Sub-Contractor will also be required to provide the collateral warranties in such form from any and each of its subcontractors, including, where the Sub-Contract Works are contractor designed, a collateral warranty from any designer employed by the Sub-Contractor.</p>
<b>19. CDM Regulations</b>	<p>(1) The Sub-Contractor shall comply with all relevant safety legislation and the Construction Design and Management Regulations 2015.</p> <p>(2) Without prejudice to that generality, the following documentation is required prior to commencement of the Sub-Contract Works:</p> <ul style="list-style-type: none"> <li>• A copy of the Sub-Contractor’s Health and Safety Policy;</li> <li>• Risk Assessments for all site operations pertaining to the Sub-Contract Works;</li> <li>• Method Statements for all site operations pertaining to the Sub-Contract Works; and</li> <li>• A resourced programme for the Sub-Contractor’s activities on site, incorporating the key dates within the Sub-Contract Period.</li> <li>•</li> </ul> <p>(3) During the progress of the Sub-Contract Works the Sub-Contractor is obliged to provide:</p> <ul style="list-style-type: none"> <li>• Information to the Main Contractor of any injury or dangerous occurrence;</li> <li>• Method Statements and Risk Assessments for works not entirely foreseen at the commencement of the Sub-Contract Works.</li> </ul> <p>(4) Where appropriate, the Sub-Contractor is required to provide the following information prior to practical completion;</p> <ul style="list-style-type: none"> <li>• “As Fitted” drawings and details; and</li> <li>• Operation and Maintenance information for inclusion in the Health and Safety File</li> </ul> <p>which failing CPL shall be entitled to withhold the last interim payment of the Sub-Contract Sum prior to a final payment which becomes due or such other reasonable amount until all documentation has been provided to allow compliance with the Main Contract.</p>
<b>20. Law</b>	<p>The Sub-Contract shall be governed by and construed in all respects in accordance with Scots Law.</p>