

BGEN LTD
STANDARD CONDITIONS OF SUB-CONTRACT

GENERAL

1. The Contractor is BGEN Ltd whose registered office is at Firecrest Court, Warrington, WA1 1RG ("the Contractor") and the Sub- Contractor is the company stated on the purchase order that is issued by the Contractor ("the Sub-Contractor").
2. Any part of the Standard Conditions of Sub-Contract that is underlined and highlighted in bold indicates that it has a relevant entry against it in the Schedule of Particulars and it must be read in conjunction with this entry.
3. The Sub-Contractor is prohibited from assigning any rights under the Sub-Contract, including, but not limited to, the assignment of debts and/or amounts due under the Sub-Contract to other third parties.
4. The Sub-Contractor shall not sub-let the Sub-Contract Works, or part thereof, to any other company unless the Sub-Contractor obtains prior written consent from the Contractor.
5. If the Sub-Contractor's own terms and conditions are incorporated into the Sub-Contract, whether incorporated into the Subcontractor's quotation or otherwise, it is agreed that the Sub-Contractor's terms and conditions shall have no effect under the Subcontract unless the parties agree otherwise in writing.
6. All notices required under the Conditions shall be sent to the specified **address for notices** and must be communicated in writing and issued separately from all other communications.
7. It is agreed that the Sub-Contract shall not purport to confer on any third party any right to enforce any term of the Sub-Contract for the purposes of Contracts (Rights of Third Parties) Act 1999.
8. The applicable law is the law of England and Wales.

OBSERVANCE AND COMPLIANCE WITH THE MAIN CONTRACT

9. Insofar as the Sub-Contractor's obligations relate to the Main Contract the Sub-Contractor shall perform and comply with those obligations so as not to cause the Contractor to be in breach of the Main Contract, and the Sub-Contractor shall indemnify and save harmless the Contractor from any costs, claims, expenses, or losses that the Contractor reasonably incurs as a direct result of the Sub-Contractor not complying with such obligations
10. The Sub-Contractor agrees that he has had the opportunity to inspect the Main Contract, and the Sub-Contractor accepts that he has knowledge of the content of the Main Contract (except any rates and prices contained therein), including, but not limited to all the documents incorporated into the Main Contract.

THE SUB-CONTRACTOR'S OBLIGATIONS

11. The Sub-Contractor shall carry out the **Sub-Contract Works** in accordance with the **Sub-Contract Documents** and the applicable law, and shall comply with all statutory requirements.
12. The Sub-Contractor shall transport, unload, store and protect all plant and materials for incorporation into the Sub-Contract Works.
13. If the Sub-Contractor discovers any discrepancy, inconsistency, or ambiguity within, or between, the Sub-Contract Documents, the Sub-Contractor shall immediately notify the Contractor in writing of such discrepancy, inconsistency, or ambiguity, along with proposals to resolve the matter so notified. On receipt of such notice the Contractor shall instruct the Sub-Contractor on how to resolve the notified discrepancy, inconsistency or ambiguity. The Sub-Contractor agrees that there shall be no adjustment to the Sub-Contract Sum, or the Sub-Contract Period or Milestone Date as a result of complying with this instruction unless the discrepancy, ambiguity or inconsistency was found within or between Sub-Contract Documents for which the Contractor was responsible for producing.
14. If applicable the Sub-Contractor shall be responsible for undertaking the design of the Sub-Contract Works ("**the Sub-Contractor's Design**"). The design undertaken by the Sub-Contractor shall, on completion of the Sub-Contract Works, comply with all the Sub-Contract Documents, and the design shall be undertaken with all reasonable skill, care and diligence.
15. If applicable the Sub-Contractor shall enter into a **Collateral Warranty** with any specified third party that has an interest in the project, such as the Employer, Funder, Purchaser, Tenant, or Developer, and the form of Collateral Warranty shall be that included in the Sub-Contract Documents, or a form that is agreed between the parties.

TIME AND THE PROGRAMME

16. The Sub-Contractor shall commence the Sub-Contract Works on the site on the **Commencement Date**, or any other date that is agreed by the parties in writing, and shall proceed with the providing the Sub-Contract Works regularly and diligently so that the Sub-Contract Works are completed within the specified **Sub-Contract Period**.
17. The Sub-Contractor shall execute the Sub-Contract Works reasonably in accordance with the Main Contract programme and any subsequent revisions issued thereto.
18. If applicable the Sub-Contractor shall submit to the Contractor a **Sub-Contract Programme** not later than one week before the Commencement Date. The Sub-Contract Programme shall illustrate the planned progress of all key operations and the Sub-Contractor's proposed sequence of work. The Sub-Contractor shall submit to the Contractor revised programmes at the **specified intervals** showing the actual progress of works, the effects of any known delays, and the proposed sequence of work for remaining activities.

19. If the Contractor decides that the Sub-Contractor is not proceeding regularly and diligently, and it is likely that the Sub-Contractor will not complete the Sub-Contract Works within the Sub-Contract Period, the Contractor has the right to supplement the Sub-Contractor's resources and/or remove all or part of the remaining works from the Sub-Contract and appoint others to carry out such work. The Sub-Contractor shall pay the Contractor any additional loss and or expense that the Contractor reasonably incurs in exercising this right.
20. The Sub-Contractor shall complete the Sub-Contract Works so that each **Specified Milestone** is completed by the relevant Milestone Date, which may include activities that are undertaken off site. If the Sub-Contractor fails to complete a Specified Milestone by the Milestone Date the Sub-Contractor shall pay or allow to the Contractor any loss and or expense that the Contractor incurs as a direct result of such failure.
21. If the Sub-Contractor fails to complete the Sub-Contract Works within the specified Sub-Contract Period, the Sub-Contractor shall pay or allow to the Contractor any loss and expense that the Contractor reasonably incurs as a direct result of the Sub-Contractor's failure to complete the Sub-Contract Works, which may include damages paid or allowed by the Contractor to the Employer under the Main Contract.

CHANGES TO THE SUB-CONTRACT PERIOD

22. As soon as the Sub-Contractor becomes aware of an event that has, or is likely to cause a delay to the Sub-Contract Period or Milestone Date the Sub-Contractor shall issue written notice of this event to the Contractor. The notice shall describe the event in question and its estimated effect, or likely effect, on the Sub-Contract Period, and shall include all relevant information and particulars in support thereof.
23. If, on receipt of the Sub-Contractor's notice, the Contractor decides that the event notified by the Sub-Contractor is an event, which is either of the following:
 - (a) An event (other than breach of this Sub-Contract by the Sub-Contractor) entitling the Contractor to an extension of time under the terms of the Main Contract; or
 - (b) An instruction by the Contractor ordering a variation under the Sub-Contract; or
 - (c) Any breach of the Sub-Contract by the Contractor

the Contractor shall award a fair and reasonable adjustment to the Sub-Contract period, provided always that the Sub-Contractor gives written notice in accordance with clause 22 not later than 5 working days from the date when the Sub-Contractor become aware, or ought to have become reasonably aware of the event giving rise to the delay to the Sub-Contract Period.

DEFECTS AND TESTING

24. The Sub-Contract Sum includes for all necessary testing, commissioning, performance testing that is described in the Sub-Contract Documents or required by law or standard industry practice. The Sub-Contractor shall submit all associated documentation and certificates to the Contractor immediately when they become available, and in any event, no later than two weeks after completion of the Sub-Contract Works.
25. If the Contractor notifies a defect to the Sub-Contractor, then the Sub-Contractor shall rectify the defect within a reasonable time after the instruction, or if the Contractor reasonably specifies that the defect is urgent in nature, the Sub-Contractor shall take immediate action to correct the defect.
26. If the Sub-Contractor does not correct a defect in accordance with the specified periods the Contractor may appoint others to correct the defect, and the Sub-Contractor shall allow or pay the Contractor the additional cost that the Contractor incurs in appointing others to correct the defect.
27. The Sub-Contractor shall correct all those defects that are notified by the Contractor at his own cost until the expiry of the defect correction period or maintenance period under the Main Contract.

INSTRUCTIONS AND VARIATIONS

28. The Sub-Contractor shall comply with all reasonable written instructions issued by the Contractor in connection with the Sub-Contract Works, which includes instructions for undertaking variations under the Sub-Contract. A variation means any change to the scope of the Sub-Contract Works, including, but not limited to changes in nature and extent of the work, omissions, additions, and substitution of work.
29. The value of any variation that is instructed by the Contractor shall, where possible, be agreed between the Contractor and the Sub-Contractor before the variation is executed. If no agreement can be reached, then the Sub-Contractor must immediately comply with the instruction given by the Contractor and the value of the variation shall be valued by the Contractor and such valuation shall be based, where applicable, on those rates and prices contained in the **Sub contractor's Quotation**.

PAYMENT

30. The Sub-Contractor is entitled to receive interim payments for the value of work executed by the Sub-Contractor at each 'Valuation Date'. Unless agreed otherwise

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in writing the first Valuation Date shall be the last working day of the month and later Valuation Dates shall occur at:

- (a) monthly intervals thereafter until practical completion of the Sub-Contract Works, and
 - (b) one month after the date of practical completion of the Sub-Contract Works.
31. The Sub-Contractor shall make written application for interim payment not later than 5 days before each Valuation Date.
32. Each interim payment shall become due:
- (a) 30 days after each valuation date, or
 - (b) 30 days after the date of receipt by the Contractor of an application for payment submitted by the Sub-Contractor,
- whichever is the latest date (hereafter referred to as the 'due date')
33. The final date for payment is 30 days after the due date.
34. Not later than 5 days after the due date, the Contractor shall calculate the amount due and give notice to the Sub-Contractor specifying the amount due and payable and the basis upon which this sum is calculated ("the Payment Notice"). The gross value of the Sub-Contract Works included in each interim payment shall be reduced by the Retention Percentage, and the Retention Percentage is halved for interim payments that become due after the date of Practical Completion
35. If the Contractor intends to pay less than the sum stated in the Payment Notice the Contractor shall give notice (the Pay Less Notice) to the Sub-Contractor of that intention not later than 1 day before the final date for payment.
36. After the date of practical completion the Sub-Contractor shall submit to the Contractor a 'Final Statement' setting out his calculation of the final balance that is due and payable to the Sub-Contractor under the Sub-Contract. The final payment shall become due 14 months after the date of practical completion of the Sub-Contract Works. The final date for payment of the final payment shall be the later of 45 days after the due date or 28 days after the issue to the Contractor of a certificate of making good defects (or equivalent) under the Main Contract. The notice provisions under clauses 34 and 35 equally apply to the final payment.
37. If the Contractor fails to make pay an amount due under the Sub-Contract then the Sub-Contractor has the right to claim interest on late payment at 4% above the base rate of the Bank of England from the final date for payment of the amount due to the date payment is actually received by the Sub-Contractor
38. If the Employer under the Main Contract becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996, or any amendment thereof, and thereby fails to make payment to the Contractor for any works executed under the Main Contract, then the Contractor shall have no obligation to pay the Sub-Contractor until the Contractor has received payment for the relevant Sub-Contract Works under the Main Contract.
39. The Sub-Contractor shall provide the Contractor with documentary evidence of his entitlement to be paid under the Sub-Contract without deduction of tax.
40. The Contractor has the right to retain payment of any amount due under the Sub-Contract in the event that the Sub-Contractor has not signed and returned a copy of the Sub-Contract Form of Agreement and/or fails in his obligation to provide documentary evidence relating to tax deduction, insurances, testing and matters relating to health and safety.

TITLE

41. The property in any plant, materials or equipment that is purchased by the Sub-Contractor for incorporation into the Sub-Contract Works shall transfer to the Contractor delivery to the site or when the Contractor has paid for such plant, materials, or equipment, whichever is the earlier.

CLAIMS FOR ADDITIONAL COST

42. If the Sub-Contractor incurs additional cost and or expense, which is not recovered by any other provision under the Sub-Contract, and is caused by a breach of the Sub-Contract by the Contractor, the Sub-Contractor shall immediately notify the Contractor as soon as he is aware of the fact that he has incurred, or may incur, additional cost and expense as a result of the breach committed by the Contractor.
43. Provided always that the Sub-Contractor submits his notice in accordance with clause 42, and has submitted all the relevant particulars in justifying his claim, the Contractor shall make a fair and reasonable assessment of the additional cost and expense properly incurred as a direct consequence of the breach notified by the Contractor and shall adjust the Sub-Contractor Sum by the equivalent amount.

SUB-CONTRACTOR RISKS AND INSURANCE

44. The Sub-Contractor shall indemnify the Contractor against any loss, claims, proceedings, costs, or expenses that the Contractor incurs in respect of death or injury to any person; loss and or damage to property other than the Sub-Contract Works (including property belonging to the building end user) and or damage to the Sub-Contract Works, and any equipment, plant or unfixed materials on site. The Sub-Contractor's obligation to indemnify the Contractor shall only apply in the event that such loss or damage is due to the fault of the Sub-Contractor.
45. The Sub-Contractor shall take out and maintain the relevant insurance policies as stated in the Sub-Contract Documents.
46. The Sub-Contractor shall submit to the Contractor copies of all the required insurance policies required under the Sub-Contract for inspection, and if not submitted prior to the Sub-Contract being entered into, such information shall be submitted by the Sub-Contractor not later than 2 working days after a written request to submit such information from the Contractor.

DRUG AND ALCOHOL POLICY

47. The Sub-Contractor shall comply with the Contractor's Drug and Alcohol Policy.
48. The Sub-Contractor acknowledges that its employees or any person acting on behalf of the Sub-Contractor may be subject to testing for alcohol and or illicit drugs as described within the Contractor's policy.
49. A number of BGEN's clients operate their own drug and alcohol testing policies and procedures. Where you are engaged on site work, the sub-contractor must ensure that they familiarise themselves and their employees with the client's site specific drug and alcohol policy and procedures and comply with it.
50. The Sub-Contractor (and any of its operatives and or employees) must familiarise themselves with the BGEN policy and must not:
- report for duty under the influence of alcohol or illicit drugs
 - report for duty in an unfit state due to the use of alcohol and or illicit drugs
 - consume alcohol or illegal drugs, or misuse illicit drugs whilst on duty
51. The Contractor reserves the right to undertake drug and alcohol testing in line with its Drug and Alcohol policy.

TERMINATION OF THE SUB-CONTRACT

52. The Contractor has the right to terminate the Sub-Contract if any of the following 'Sub-Contractor Defaults' occur:-
- (a) The Sub-Contractor becomes insolvent as defined in Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment thereto;
 - (b) The Sub-Contractor fails to proceed regularly and diligently with the Sub-Contract Works;
 - (c) The Sub-Contractor fails to correct defects in accordance with the Sub-Contract or fails to remove defective work following an instruction to do so from the Contractor
 - (d) The Sub-Contractor commits a material breach of the Sub-Contract.
53. Prior to the Contractor exercising his right to terminate the Sub-Contract the Contractor must first issue the Sub-Contractor with a notice specifying the default, and the Sub-Contractor shall make good the default within 3 working days of receiving the notice to do so. If the Sub-Contractor fails to correct the notified default, or does not commence substantive action to correct the default, within 3 working days from the date of the Contractor's notice to do so, the Contractor has the right to terminate the Sub-Contract by further written notice to the Sub-Contractor.
54. If the Contractor terminates the Sub-Contract as a result of a Sub-Contractor default the Contractor has the right to retain payment of all sums that are due under the Sub-Contract until the date when the final payment is due under the Sub-Contract. In calculating the final payment the Contractor shall be entitled to deduct all the additional loss and expense that he incurs as a result terminating the Sub-Contract, and if this ascertains an amount due from the Sub-Contractor to the Contractor, then the Sub-Contractor shall pay the Contractor this sum within 30 days of the due date for the final payment.
55. If the Employer exercises his right to terminate the Main Contract for a reason that is neither a "Sub-Contractor Default" nor a breach of the Main Contract by the Contractor, then the Contractor may terminate the Sub-Contract. If the Contractor exercises this right the final payment shall become due to the Sub-Contractor 45 days after the date on which the Contractor serves the notice of termination and final date for payment of the outstanding balance shall be 21 days after the due date. The Sub-Contractor shall not be entitled to claim any loss of profit, overheads and any indirect losses as a result terminating for this reason.
56. The Contractor shall be entitled by notice to terminate the Sub-Contractor's employment under this or any other contract with the Contractor forthwith if, in relation to this or any other such contract, the Sub-Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010.