

COMAMAR BUILDING SERVICES LIMITED

**CONDITIONS OF SUB-CONTRACT
("the Conditions")**

NOVEMBER 2022

1. Parties and definitions.

The following definitions are used in this Sub-Contract: -

Defects Liability Period means the period of 24 months from Practical Completion of the Sub-Contract Works; and

Final Date for Payment means the date when any payment to be made under this Sub-Contract becomes final not being the Payment Due Date and is as identified in the Payment Application Schedule or otherwise; and

Main Contract means the contract between Conamar and the Employer named in the Main Contract a copy of which is available for inspection at Conamar's offices as are identified below; and

Order means the order placed by Conamar for the carrying out of the Sub-Contract Works and which incorporates all the matters referred to therein and these Conditions; and

Parties means Conamar Building Services Limited a company incorporated in England and Wales under company number 02898417 and having its registered office at 29-31 Orchard Road, Stevenage, Hertfordshire, England, SG1 3HE("Conamar") and the Sub-Contractor specified in this Order; and

Payment Application is an application for payment to be submitted by the Sub-Contractor that identifies and calculates the sum that the Sub-Contractor considers is due to it on the Payment Application Date and which is supported with such documentation to demonstrate the valuation of the Payment Application as Conamar may reasonably require; and

Payment Application Date is the date identified in the Payment Application Schedule by which the Sub-Contractor is required to submit the Payment Application or otherwise; and

Payment Due Date means that date that any payment to be made under this Sub-Contract is due (but not finally due) as is identified in the Payment Application Schedule or otherwise; and

Payment Application Schedule means the dates set out in the Order for the making of applications for payment and payment by Conamar; and

Payment Valuation Date means the dates set out in the Payment Application Schedule by which Conamar is required to issue its assessment of the value of the Sub-Contract Works that are contained within the Payment Application; and

Practical Completion means when the Sub-Contract Works can be considered to be finished and complete so that there are no defects in the same and the same can be considered fit for use as part of the works to be completed under the Main Contract and all obligations of the Sub-Contractor arising under this Sub-Contract Agreement have been completed to the satisfaction of Conamar PROVIDED THAT Practical Completion shall not occur until such time as the Works are complete; and

Retention means a sum of 5% of all payments otherwise due under this Sub-Contract.

Schedule means the Schedule on the front pages of this Order; and

Site means the Site address is identified on the front cover of this Order; and

Sub-Contract Agreement means this agreement and the Sub-Contract Documents that are listed in the Schedule; and

Sub-Contract Documents means the document (s) listed in the Schedule; and

Sub-Contract Works means the works described in the Sub-Contract Agreement, as varied (where applicable) under Clause 7; and

Working Day means any day when Bank are generally open for business in the United Kingdom other than Saturday, Sunday or any public holiday; and

Works means the works to be undertaken under the Main Contract.

2. The Sub-Contract Works.

2.1 The Sub-Contractor shall execute the Sub-Contract Works for the Sub-Contract Price (as defined in the Order) upon and subject to the terms of the Order and these Conditions and to the reasonable satisfaction of Conamar so that the Sub-Contract Works are reasonably fit for purpose; and shall complete the same either in whole or in sections as the case may be by the dates set out in the Order.

2.2 The Sub-Contractor acknowledges that it has examined the Site (including the condition of the same), the access to the Site and the nature amount and location of the Sub-Contract Works and has satisfied itself generally as to all matters affecting the execution of the same and has allowed for all such matters in the Sub-Contract Price.

2.3 The Sub-Contractor shall provide all information reasonably required by Conamar to comply with the Construction (Design and Management) Regulations 2015, including supplying information required for the safety file, prior to work commencing on Site.

3. Commencement.

3.1 The Sub-Contractor shall immediately commence the Sub-Contract Works upon receipt of a request/direction to do so from Conamar and shall unless as otherwise provided in the Sub-Contract continue with the Sub-Contract Works in accordance with the progress of the Works or in such other order as Conamar acting reasonably may direct.

3.2 The Sub-Contractor shall comply with all instructions and directions (including any instruction to suspend the carrying out of the Sub-Contractor Works) given by Conamar in connection with the Sub-Contract Works.

3.3 The Sub-Contractor warrants and declares that this Sub-Contract does not constitute a contract of employment and nothing herein shall construe or shall be deemed to construe that the Sub-Contractor's employees, workers, sub-contractors or agents are an employee or partner of Conamar and Conamar shall have no employer's liability in respect of any damage or injury suffered by any of the Sub-Contractors, employees, workers, sub-contractors or agents hereunder or in connection with the Sub-Contract Works.

4. Materials, goods & workmanship to conform to description testing and inspection.

- 4.1 All materials goods and workmanship shall be of the respective kinds and standards described in the Order and any specifications that are contained or referred to within the Order copies of which the Sub-Contractor hereby acknowledges it has received copies of. In the event that there are no such documents that the Sub-Contract Works will be carried out using all the reasonable skill and care to be expected of a competent sub-contractor experienced in carrying out works of a similar nature to the Sub-Contract Works and so that the Sub-Contract Works when they are completed are reasonably fit for their purpose.
- 4.2 Conamar may issue instructions requiring the Sub-Contractor to open up for inspection any part of the Sub-Contract Works covered up or to arrange for or carry out any test of materials or goods (whether or not already incorporated in the Sub-Contract Works) or of any executed work and the cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be deducted from the Sub-Contract Price.
- 4.5 Conamar may issue instructions in regard to the removal from the Site of any work materials or goods which are not in accordance with this Sub-Contract.
- 4.6 Conamar reserves the right to substitute materials and forms of construction for any reason whatsoever and there shall be no addition to the Sub-Contract Price as a consequence of such instruction.
- 4.7 The Sub-Contractor is to allow in the Sub-Contract Price for any delay or disruption to the regular progress of the Sub-Contract Works due to possible delay by Conamar in supply of materials, goods or plant to be supplied by them and for any late payment made under this Sub-Contract.

5. Plant and Materials.

- 5.1 The Sub-Contractor shall at its own expense provide all necessary plant tools equipment and materials required to carry out the Sub-Contract Works and shall provide and erect all necessary workshops sheds and other buildings for its personnel at such places on the Site as Conamar shall appoint and the Sub-Contractor shall pay all outgoings in respect of the same.
- 5.2 The plant tools equipment buildings and other property of the Sub-Contractor, its personnel or agents, shall be at the sole risk of the Sub-Contractor.
- 5.3 Title in all materials and goods intended to form part of the Sub-Contract Works shall pass to Conamar upon delivery to Site, or payment by Conamar if earlier. All materials for the Sub-Contract Works shall be at the sole risk of the Sub-Contractor until fully and finally fixed to the Sub-Contract Works. Any loss or damage to the same shall be the Sub-Contractor's sole liability and the Sub-Contractor hereby agrees to indemnify Conamar against any such loss or damage or any claims, costs or proceedings in respect of thereof.

6. Protection of Works.

- 6.1 The Sub-Contractor will at its own expense provide erect and (after completion of the Sub-Contract Works) remove all protection necessary for the safe execution of the Sub-Contract Works and shall repair and make good any damage to the Site and to other trades. The Sub-Contractor will remove from the Site all rubbish that is created by the Sub-Contractor in the course of carrying out the Sub-Contract Works.
- 6.2 If the Sub-Contractor shall fail to carry out its obligations under this clause 6 Conamar may execute any works required in fulfilment thereof or may employ and pay other persons to do so and all costs and expenses consequent thereon and incidental thereto shall be recoverable by Conamar from the Sub-Contractor and may be deducted from any monies due to or to become due to the Sub-Contractor.

7. Use of Scaffolding.

The Sub-Contractor its personnel and agents shall for the purposes of the Sub-Contract Works (but not further or otherwise) be entitled at their own risk to use any scaffolding provided at the Site provided that (a) the Sub-Contractor shall first satisfy itself as to the fitness and condition of the scaffolding and its suitability for the purpose for which it is required and the rights granted by this clause shall not be deemed to imply any warranty on Conamar's part of the fitness condition sufficiency or suitability of any scaffolding; and (b) Conamar shall not (unless expressly otherwise agreed in writing) be under any duty to provide scaffolding at any given location or time or at all or to leave it in place for any particular period and Conamar may at any time give the Sub-Contractor notice of its intention to remove all or any scaffolding.

8. Other Sub-Contractors.

8.1 The Sub-Contractor shall not delay or disrupt the work of other contractors or operatives on the Site. The Sub-Contractor shall be deemed to have included in the Sub-Contract Price for the likely changes in sequence and need to work around other sub-contractors on the site.

8.2 The Sub-Contractor shall not be entitled to receive any additional remuneration compensation or damages in respect of any delay to or disruption of the Sub-Contractor's work under this Sub-Contract caused by delays on the part of other Sub-Contractors or operatives employed on the Site.

9. Insurance and Warranties.

9.1 The Sub-Contractor shall take out and keep in force during all material time policies of insurance in such sums that will in all respects cover adequately the Sub-Contractor's liabilities hereunder or at common law or under any statute or regulation in respect of injury to or death of any person (including but not limited to personnel) or loss of or damage to any property real or personal arising out of or in connection with the execution completion or maintenance of the Contract Works.

9.2 The limit of the indemnity granted under the insurance effected in respect of claims for injury to persons or loss of damage to property shall not be less than the sum of £5,000,000 for each and every claim arising out of one clause.

9.3 Where the Sub-Contractor has a responsibility to design any part of the Sub-Contract Works to the Sun-Contractor will upon first written demand from Conamar execute and deliver to Conamar such collateral warranties as are required by the Main Contract, the form of such warranties having been previously provided or made available to the Sub-Contractor.

10. Extent of Works.

10.1 The Sub-Contractor shall be deemed to have made proper allowance in submitting its estimate or tender to Conamar for any defects extra works or other considerations arising from the nature of the Site and the setting out of the Sub-Contract Works and no payment shall be made for any extra work unless the same is carried out upon the written instructions of Conamar.

11. Variation Orders/instructions.

11.1 Conamar shall be entitled to issue any instruction to the Sub-Contractor relating to this Sub-Contract or the Sub-Contract Works as Conamar may deem necessary and no such instruction will vitiate this Sub-Contract. If the Sub-Contractor considers that any instruction from Conamar constitutes a variation which would increase the Sub-Contract Price the Sub-Contractor must notify Conamar before carrying out or complying with the instruction.

- 11.2 All variations authorised by Conamar in accordance with Clause 11.1 shall be measured by Conamar and valued on the basis of similar work in the Sub-Contract and such value shall be added to or deducted from the Sub-Contract Price as the case may be. No work shall be valued on a day work basis.
- 11.3 Conamar may request the Sub-Contractor to provide a quotation in respect of any variation in which case, the Sub-Contractor shall provide the quotation as soon as possible. If Conamar accepts the quotations, the sum quoted shall be the amount paid in respect of the variation. If Conamar does not accept the quotation, the variation will be valued by Conamar in accordance with Clause 11.2.
- 11.4 Conamar reserves the right to omit the whole of or part of the Sub-Contract Works for any reason whatsoever and to have such whole or part carried out by Conamar's other sub-contractors or representatives. In the event of Conamar exercising this right the Sub-Contract Price shall be reduced by the amount which represents the value of the Sub-Contract Works omitted. If Conamar does make such an omission from the Sub-Contract works the Sub-Contractor shall not be entitled to make any claim for loss of profits arising as a result of that omission.
- 11.5 Any alteration in the extent of the Sub-Contract Works shall be subject to final adjustment only as provided for in this Clause 11.0 and the Sub-Contractor shall have no claim against Conamar for any other payment or compensation in any respect.

12. Payment.

- 12.1 Payment to the Sub-Contractor shall be made monthly payments to the Sub-Contractor as identified in the Payment Application Schedule. The Sub-contractor shall submit each Payment Application by the Payment Application Date. No payment shall be made to the Sub-Contractor until such time as it has signed the Order and provided copies of all insurance and health and safety documents to Conamar, and where a collateral warranty is to be provided under Clause 9.3 such warranty has been provided.
- 12.2. Upon receipt of the Payment Application Conamar shall send to the Sub-Contractor by the Payment Valuation Date an assessment of the value of the Sub-Contract Works as are contained in the relevant Payment Application ("**the Payment Notice**"). The Payment Notice shall identify the amount that Conamar considers due to the Sub-Contractor and the basis of calculation of the same, sums that have already been paid, any applicable discounts, retention to be deducted, any other matters that are relevant, the Payment Due Date and the Final Date for Payment.
- 12.3. if there is no Payment Application Schedule then at the end of each calendar month after the commencement of the Sub-Contract Works the Sub-Contractor shall make an application to Conamar in writing stating the value of the Sub-Contract Works that the Sub-Contractor has completed and thereafter and before the end of the next calendar month Conamar shall prepare a valuation set out in a Payment Notice of the Sub-Contract Works that it considers the Sub-Contractor has properly completed. Conamar shall send a copy of that Payment Notice to the Sub-Contractor as is required of it under Clause 12.3. The Payment Due Date shall be 28 days thereafter and the Final Date for Payment shall be 28 days thereafter.
- 12.4. A 5% retention from each payment shall be retained by Conamar.
- 12.5. If Conamar intends to pay less than the amount stated in the Payment Notice then it shall not less than 2 days before the Final Date for Payment of the same serve a "**Payless Notice**" that sets out the amount that it intends to pay and the basis of any calculation. Any Payless Notice shall be entitled to rely or refer to any other document forming part of the Sub-Contract, including without prejudice to the generality of the foregoing the Payment Notice or any previous one.
- 12.6. At the end of the defects liability period the Sub-Contractor shall submit an application for payment for the final adjustment of the Sub-Contract Sum and upon receipt of the same Conamar shall within 28 days issue its assessment

of the same to the Sub-Contractor ("**the Final Payment Notice**"). The sum identified in the Final Payment Notice shall be paid to the Sub-Contractor within 28 days of the issue of the Final Payment Notice or the actual issue of the Final Certificate to be issued under the Main Contract (or equivalent event) whichever is the later. If the Sub-Contractor does not dispute (by the issue of either a Notice of Adjudication or High Court proceedings) the sum identified in the Final Payment Notice within 28 days of the issue of the same the Final Payment Notice shall be binding upon the Sub-Contractor and shall not be capable of challenge in either Adjudication or High Court proceedings.

- 12.7. The balance of the retention monies due to the Sub-Contractor shall be certified and paid to it upon expiry of the defect's liability period stated in the Order once any rectification of defects within the Works and the Sub-Contract Works have been completed. That date shall be the payment due date and the final date for payment of the same shall be 28 days later.
- 12.8. Where the Sub-Contract Works are ultimately paid for by a client of Conamar and such client becomes insolvent as defined in the JCT Design and Build Contract 2016 edition Section 8.1 or enters into some agreement with its creditors as regards paying its debts and as a result of which Conamar does not receive monies in respect of the Sub-Contract Works, Conamar shall not be obliged to make further payment to the Sub-Contractor unless and until payment is received by Conamar in respect of the Sub-Contract Works.
- 12.9. If either Party fails to pay a sum or any part of it by the Final Date for payment of the same under these conditions then in addition to that unpaid amount that should have been properly paid then that Party shall pay interest at the rate of 2.75% per annum above the base rate of the Bank of England from the Final Date for Payment until the date when the Payment is made. The Parties agree that this is an adequate rate for the purposes of any late payment legislation.

13. Contra Amounts and Set Off.

- 13.1 Conamar shall notwithstanding anything contained in this Sub-Contract and without prejudice to any other remedy vested in it be entitled to deduct from, withhold or set off against any monies due from it to the Sub-Contractor (including any retention moneys) any sum or sums: -
- (a) which the Sub-Contractor is liable to pay to Conamar under this Sub-Contract, or
 - (b) to which the Sub-Contractor is not entitled under the Contract Documents; or
 - (c) which Conamar has paid to a third party, pursuant to Clause 20.2, for carrying out remedial work due to defective workmanship or materials supplied by the Sub-Contractor; or
 - (d) in respect of any breach by the Sub-Contractor of its obligations under the Sub-Contract or otherwise.
- 13.2 Conamar shall be entitled to exercise cross rights of set-off and deduction between this Sub-Contract and all other contracts subsisting or existing between Conamar and the Sub-Contractor.

14. Value Added Tax.

- 14.1 The Sub-Contractor shall be entitled to claim from Conamar as an addition to the Sub-Contract Price the amount of value added tax properly chargeable on the goods and services supplied by the Sub-Contractor in executing the Sub-Contract Works. The Sub-Contractor shall co-operate with Conamar and do all that Conamar may reasonably request in respect of the provision of documents and information relating to the payment of value added tax in order to comply with the provisions of the Value Added Tax Regulations 1995 as amended.

15. Taxation of Sub-Contractor.

- 15.1 Within this clause the Regulations shall mean the Income Tax (Sub-Contractors in the Construction Industry) (Amendment) Regulations 1998 number 2622.

- 15.2 Within 5 working days of the date of this Contract the Sub-Contractor shall provide Conamar with a Relevant Tax document. A Relevant Tax document is one of the following: - (a) CIS 4 (P) OR (T), (b) CIS 5 (or a certifying document), or (c) CIS 6.
- 15.3 If Conamar is not satisfied with the Relevant Tax document provided by the Sub-Contractor in accordance with clause 15.2 above, it shall notify the Sub-Contractor to this effect and explain to the Sub-Contractor why it is not satisfied with the Relevant Tax document.
- 15.4 In the event that a Sub-Contractor does not produce a Relevant Tax document in accordance with clause 15.2 or if Conamar is not satisfied with the Relevant Tax document in accordance with clause 15.3 and notwithstanding clause 12, Conamar will be entitled to withhold payment to the Sub-Contractor until such time as either the Sub-Contractor provides Conamar with the Relevant Tax document or satisfies Conamar as to the Relevant Tax document.
- 15.5 The Sub-Contractor shall immediately inform Conamar in writing if its current tax certificate is cancelled and give the date of such cancellation.
- 15.6 Conamar shall in accordance with all the relevant Regulations send any vouchers promptly to the Inland Revenue in compliance with its obligations under such Regulations.
- 15.7 A Sub-Contractor who is a CIS 6 Certificate holder shall send Conamar vouchers promptly after each payment and prior to any subsequent payment and in accordance with the Regulations. Conamar shall issue vouchers to Sub-Contractors who are holders of CIS 4 (P) or (T) and CIS 5 Certificates with each payment and in accordance with the Regulations.

16. Indemnities.

The Sub-Contractor shall effectively indemnify Conamar and its personnel and agents against: -

- 16.1 any act or omission of the Sub-Contractor its personnel or agents which exposes Conamar or its personnel or agents to any liability or alleged liability; and
- 16.2 any claim demand proceedings damage cost charge or expense due to or resulting from any breach of contract or negligence or breach of duty on the part of the Sub-Contractor its personnel or agents caused by or arising out of or in connection with the Sub-Contract or the execution of the Sub-Contract Works; and
- 16.3 any loss or damage resulting from any claim under any statute in force for the time being or at common law or otherwise by any personnel of the Sub-Contractor in respect of personal injury arising out of or in the course of his employment in connection with the execution of the Sub-Contract Works.

17. Safety Laws and Policy.

The Sub-Contractor shall ensure that all welfare and safety measures required under or by virtue of provisions of Healthy and Safety at Work Act 1974, the Construction (Health, Safety & Welfare) Regulations 1996, the Construction (Design & Management) Regulations 1994 or any other relevant enactment or regulation and the working rules of any industry for the time bring in force are complied with so far as they relate to the Sub-Contract Works and it shall be the Sub-Contractor's responsibility to ensure compliance by its personnel and agents with all such enactments and regulations.

18. Assignment & Sub-Letting.

The Sub-Contractor shall not assign this Sub-Contract nor sub-let any part of the Sub-Contract Works or the right to receive payment of monies due under the Sub-Contract without Conamar's written consent.

19. Failure to Complete in Specified Time.

19.1 If the Sub-Contractor fails to complete the Sub-Contract Works or any section thereof within the period specified in the Order or agreed in writing between the Parties or any extended period agreed by Conamar taking into account matters beyond the Sub-Contractor's control which have delayed the Sub-Contract Works, the Sub-Contractor shall pay Conamar any loss or damage suffered or incurred by Conamar and caused by the failure of the Sub-Contractor as aforesaid.

19.2 The liability of the Sub-Contractor for loss or damage arising from any such delay shall include liability for any liquidated damages for which Conamar itself may be liable together with any costs that Conamar shall suffer as a result of such delay. These costs include additional site preliminaries, management time, labour and other costs, costs payable to other sub-contractors who are engaged on or about the Works.

20. Defects.

20.1 The Sub-Contractor shall return to Site when requested by Conamar at any time to remedy any defects in the Sub-Contract Works which are due to defective materials or workmanship.

20.2 Where the Sub-Contractor delays in attending to defects or refuses to do so then Conamar may, at its sole discretion, use a third party to remedy any defects instead of requesting the Sub-Contractor to remedy them, in which case, Conamar shall deduct the cost of the third party from any monies due to the Sub-Contractor under this Sub-Contract or be entitled to recover the cost from the Sub-Contractor as a debt.

21. Determination of Contract by Conamar.

21.1 Conamar may if it considers that the Sub-Contractor is in material default of its obligations arising hereunder give 7 days written notice to the Sub-Contractor determine this Sub-Contract and may expel the Sub-Contractor from the Sub-Contract Works and the Site with the following consequences: -

(a) Conamar may take over the materials and plant provided by or on half of the Sub-Contractor which are upon the Contract Works or otherwise on the Site or are being used in connection therewith and Conamar may use the same to complete the Contract Works; and

(b) the Sub-Contractor shall provide Conamar with 2 copies of, and Conamar may retain, all such drawings, details or descriptions as the Sub-Contractor has prepared or previously provided & drawings & information relating to the Sub-Contract Works completed before the determination of the Sub-Contractor's employment, and

(c) the Sub-Contractor shall allow or pay Conamar the amount of any loss or damage caused to Conamar by reasons of the determination of the Sub-Contract; and

(d) until after Completion of the Sub-Contract Works Conamar shall not be bound to make any further payments to the Sub-Contractor. Within a reasonable time after the Sub-Contract Works are completed Conamar shall prepare an account setting out the following:

(i) the amount of expenses incurred by Conamar in completing the Sub-Contract Works and the amount of any loss & damage caused to Conamar by reason of the determination, and

(ii) the amount of any payment made to the Sub-Contractor, and

(iii) the total amount which would have been payable for the Sub-Contract Works on due completion in accordance with the Sub-Contract.

21.2 If the sum of the amount stated under clauses 21.1(d) exceeds the amount previously paid to the Sub-Contractor the difference shall be a debt payable by the Sub-Contractor to Conamar; or

21.3 If the sum of the amount stated under clauses 21.1(d) is less than the amount previously paid to the Sub-Contractor the difference shall be a debt payable by Conamar to the Sub-Contractor.

21.4. If the Sub-Contractor becomes Insolvent as defined in the JCT Design and Build Contract 2016 Edition Section 8.1 or is unable to pay its debts as they fall due or enters into some arrangement with its creditors then Conamar shall not be obliged to make any further payment to the Sub-Contractor and the Sub-Contractor shall not be entitled to any further payment under this Sub-Contract including any payment which has already become due and or passed its Final Date for Payment. Upon any occurrence of these events then any and all payments on account made by Conamar under this Sub-Contract shall be repaid to Conamar upon first written demand.

22. Adjudication.

22.1 Either party may refer any dispute or difference arising under this Sub-Contract to the decision of an Adjudicator, providing that the dispute or difference, or substantially the same dispute or difference has not previously been referred to adjudication or arbitration or the Courts.

22.2 The Adjudication shall be conducted in accordance with the Scheme for Construction Contracts.

22.5 The Adjudicator shall be appointed by the RICS.

23. Exclusion of Terms.

Any terms or conditions which may be endorsed or annexed to or otherwise contained in or embodied in the Sub-Contractor's quotation or other offer document shall not form part of this Sub-Contract nor otherwise apply to the Sub-Contract Works unless specifically identified in the Order or other written order or acceptance document from Conamar. No addition or amendment to the Order shall be valid unless in writing and signed by a Director of Conamar.

24. The Contracts (Rights of Third Parties) Act 1999.

Notwithstanding any other provision of this Sub-Contract nothing in this Sub-Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

25. The law of this Sub-Contract shall be the law of England and Wales and the Parties hereby agree that any disputes or matters arising hereunder to the jurisdiction of the English Courts

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