

**AMTEC LTD**  
(HEREINAFTER CALLED THE COMPANY)  
**Terms and Conditions of Sub-Contract Agreement**

**This agreement represents the whole of the Terms and Conditions of the Sub-Contract Agreement between the parties and any alterations must be agreed by all parties and witnessed in writing.**

**In this agreement the following definitions will apply:-**

The Employer is the Employer of the Main Contractor.

The Main Contractor is the employer of Amtec Ltd.

The Contractor is Amtec Ltd.

The Sub-contractor is the company, firm, partnership or sole trader undertaking the works for Amtec Ltd.

The Main Contract is the Agreement between the Employer and the Main Contractor.

The Contract is the Agreement between the Main Contractors and the Contractor Amtec Ltd.

The Sub-contract is the Agreement between the Contractor Amtec Ltd. and the Sub-contractor.

The Sub-contract Works is the work agreed to be carried out by the Sub-contractor for the Contractor

**1. The Contract**

- 1.1 The Sub-contractor shall have the reasonable opportunity to inspect the Contract upon request and thereafter is deemed to have notice of the terms and conditions of Contract together with such information relating thereto as is made available to the Contractor with the exception of the detailed prices of the Main Contractor and the Contractor. No Claims will be entertained through lack of knowledge.
- 1.2 In respect of the parts of the Works listed in the Sub-contract agreement that is the 'Sub-contract works', the Sub-contractor shall, unless it is expressly stated otherwise in the Agreement, be bound by the same obligations as the Main Contractor and the Contractor.

**2. The Sub-Contract**

- 2.1 The Sub-contractor shall attend the site at the times stated in the Sub-contract agreement or on the instructions of the Contractor at such times as the progress of works require and shall commence and proceed regularly and diligently with the Sub-contract works and in such a manner as to avoid hindrance to the progress of others.
- 2.2 The Sub-contract works shall be carried out and completed subject to and in accordance with the terms of the Agreement and in all respects to the reasonable satisfaction of the Contractor. The Contractor hereby enters in to the Sub-contract in reliance on the Sub-contractor's specialist knowledge, skill and expertise in the Sub-contract works to be provided as part of the Contract. No tender qualification or omission by the Sub-contractor shall be accepted where such is deemed by the Contractor to be at variance with the Contractor's obligations, in respect of the Sub-contract works, under the Contract.
- 2.3 The Sub-contractor shall provide all notices and other particulars in respect of the Sub-contract works within a reasonable time so as to allow the contractor to provide the same in accordance with the Main Contract.
- 2.4 The Sub-Contractor may, with the prior written approval of the Contractor, sub-let part of the sub-contract works, or if that work is labour only provide substitute labour. The Sub-contractor shall remain responsible to the Contractor for the work and due performance of its sub-sub-contractors and/or substitute labour. Sub-sub-contractors and/or substitute labour shall comply in all respects with the contractual obligations and statutory provisions applicable to their status as sub-sub-contractors and/or labour only sub-contractors.
- 2.5 The Sub-Contractor shall be responsible for correcting any defective work caused by his or his sub-sub-Contractors actions in his own time and at his own expense.

**3. Variations and Instructions**

- 3.1 The term of a Variation means the alteration or modification of the design, quality or quantity of the work executed for the installation, and includes the addition, omission or substitution of any work and the alteration of the kind or standard of any of the materials or goods to be used in the installation.
- 3.2 The Contractor may order variations to the installation and the sub-contractor shall comply with such orders but not until:-
  - i) the same have been ordered in writing by the Contractor or, where ordered orally, confirmed in writing by the Contractor; and
  - ii) the value of the variation has been agreed where it is reasonably possible to estimate such value.
- 3.3 In the event of the Contractor issuing any instruction for a variation of the Sub-contract works, the Sub-contractor shall comply with the instructions in accordance with section 2 of this Agreement.
- 3.4 Such compliance shall not invalidate this Agreement and any amount due for variation, may be calculated on a measured work basis if so deemed by the Contractor.
- 3.5 The expression 'variation' as used in the Agreement, shall have the same meaning as that used in the Contract.

3.6 No daywork charges will be accepted unless prior notification of the Sub-contractor's intention to carry out such work has been received by the Contractor in writing, and agreed, in writing by the Contractors Project Engineer. If daywork is agreed record sheets must be submitted to the Contractors Project Engineer within 7 calendar days of the execution of the work. Where an item can be valued within the constraints of any Pricing Schedule/Bill of Quantities then this will deem to apply. Note: only hours actually worked will be paid for.

#### 4. Payment

4.1 The sub-contract sum specified in Part B6 of the Schedule is a fixed price lump sum for the Sub contract works that are shown or described or that can be inferred from the documents contained within or referred to by this Sub-contract. Such documents include but are not limited to, drawings and/or specifications and/or other tender documents and or other information available.

4.2 The Sub-contractor shall be entitled to payment by instalments.

4.3 The first payment shall be due one month after the last day of the month of the commencement of the Sub-contract works as specified in the Sub-contract agreement.

4.4 Interim payments shall be due at one monthly intervals calculated from the date when the first payment was due.

4.5 The Sub-contractor shall make monthly applications for payment to the Contractor. Such applications shall state:

4.5.1 the total value of the work properly executed.

4.5.2 Variations, if any, carried out in accordance with Section 3 of this Agreement.

4.6 The final date for payment shall be fourteen days after the due date.

4.7 The Contractor shall, not later than five days after the due date, issue a written Notice of Payment to the Sub-contractor, specifying:

4.7.1 the amount of payment to be made in respect of the amount stated in the application for payment less a retention of five percent (or such other amount as shall be set out in Part D of the Schedule) and less any money previously paid; and

4.7.2 the basis for the calculation of such amounts.

4.8 The Contractor may, not later than five days before the final date for payment of any amount due under clause 7.7 of this Agreement, give a written notice to the Sub-contractor specifying:

4.8.1 The amount or amounts proposed to be withheld and/or deducted from the amount due under clause 7.7 of the Agreement; and

4.8.2 Each ground or grounds for withholding and/or deduction.

4.8.3 The Contractor shall be entitled to withhold payment otherwise due and shall have no liability to make payment to the Sub-contractor to the extent that the value of work properly executed by the Sub-contractor has been certified under the main Contract but where Main Contractor and or the Employer there-under is insolvent and has failed to make payment to the Contractor in respect of such work properly executed by the Sub-contractor.

4.9 One half of the retention money shall fall due one month following practical completion of the Main Contract works and the receipt of retentions by the Contractor from the Main Contractor and shall be paid to the Sub-contractor within fourteen days. The Sub-contractor shall issue a notice of payment within five days of due date. The remaining half of the retention shall fall due on receipt of the final retention payment by the Contractor from the Main Contractor, and shall be paid to the Sub-contractor within fourteen days. The Sub-contractor shall issue a notice of payment within five days of the due date.

4.10 The Sub-contractor shall, without prejudice to any of the rights and remedies which the Sub-contractor may otherwise possess, have the right to suspend the Sub-contract works until payment of the amount due under Clause 7.7, subject to any notice issued pursuant to clause 7.8, provided that:

4.10.1 The Contractor has failed to pay the Sub-contractor the full amount stated on the Notice of Payment pursuant to clause 7.7 of this Agreement, subject to any notice issued pursuant to clause 7.8; and

4.10.2 Such failure has continued for seven days after the Sub-contractor has given the Contractor written notice of the Sub-contractor's intention to suspend the performance of his obligations under the contract and given the grounds upon which it is intended to suspend performance.

#### 4.11 Employers Insolvency

Where the employer makes a composition or arrangement with his creditors, or becomes bankrupt, or, being a company makes a proposal for voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 as the case may be or has a provisional liquidator appointed, or has a winding-up order made or passes a resolution for voluntary winding-up or under an administrative receiver appointed then:

The Contractor may by notice to the Sub-contractor inform him in writing the Employer is subject to such an arrangement stated above and that all payments to the Sub-contractor will be suspended to them from that date onwards until such matters have been clarified by the appointed administrators or the like. The Contractor will pay the Sub-contractor an amount equal to the sum or sums received from the administrators or the like attributable to the sub-contract works which will be regarded as the Final payment to the Sub-contractor and will

be conclusive of all final balances due them provided that the Contractor shall have complied with all the terms and conditions of its contract with the Employer insofar as they may affect the Sub-contract. This clause acknowledges that the Contractor owes the Sub-contractor a duty of care in respect to timely rectification of defects, the performance of Contractor's obligations at the end of defects liability, and in the timely achievement of obtaining the certificate of making good defects, so far as they are able; all with the strict intention of facilitating the release and payment of any outstanding monies.

- 4.12 The Sub-Contractor acknowledges that where the Contractor is required to make deductions from any payments due as a result of changes in regulations by the Inland Revenue, National Insurance or any other Government or regulatory body then this agreement shall be amended accordingly from the date of the relevant legislation coming into force

## **5. Adjudication**

- 5.1 Either party may refer any dispute or difference arising under this Agreement to an Adjudicator at any time.
- 5.2 The referring party shall notify his intention to refer a dispute or difference arising under the contract to an Adjudicator by written notice to the other party. Such notice shall include particulars of the dispute or difference, together with relevant documentation in support thereof. The Adjudicator shall be notified in the same way, at the same time or as soon as the Adjudicator has been appointed (unless the reference to the Adjudicator is made by the parties jointly).
- 5.3 The other party must, within 7 working days of receipt of the documentation issued under clause 8.2 of this Agreement, submit to the Adjudicator and to the referring party, any written response, including supporting arguments and documentation.
- 5.4 The parties agree to secure the appointment of an Adjudicator within seven days of a written notice issued under clause 8.2 of this Agreement.
- 5.5 The Adjudicator shall be the person named in Section E14 of the Schedule. If no name is entered there, the Adjudicator shall be such a person as the parties agree, or if there is no agreement, a person appointed by an Adjudicator Nominating Body (ANB).
- 5.6 If the Adjudicator is unwilling or unable, due to reasons of illness, death or absence, to adjudicate on a dispute or difference referred to him, the parties may, subject to clause 8.3 of the Agreement, agree on a replacement Adjudicator, or, failing such agreement, the Adjudicator shall be the person appointed by the ANB, selected by the Contractor.
- 5.7 The Adjudicator shall decide upon the dispute or difference within 28 days from the date of referral and shall notify his decision to each party at any time within that period. The 28 day period may be extended upon the agreement of both parties, but such extension may only be up to 14 days if consent is obtained only from the referring party.
- 5.8 Unless otherwise ordered by the Adjudicator (as part of his decision):
1. the Sub-contractor shall be liable for the Adjudicator's fees and expenses; and
  2. the Sub-contractor shall bear the cost of the reference to the Adjudicator.
- 5.9 The Adjudicator shall act impartially, set his own procedures and take the initiative in ascertaining the facts and the laws as he considered necessary in respect of the referral.
- 5.10 The Adjudicator shall not be obliged to give reasons for his decision. The decision shall be binding upon the parties until the dispute or difference is finally determined by legal proceedings, or by the written agreement of the parties entered into pursuant to the Adjudicator's decision.
- 5.11 The parties shall without prejudice to their own rights under the contract, comply with the decision of the Adjudicator.
- 5.12 Any payment required by the Adjudicator's decision shall be enforced as a debt without set-off or counterclaim and shall be due on the date of the Adjudicator's decision.
- 5.13 Any payment required by the Adjudicator shall be discharged within seven days of the date of his decision.
- 5.14 The parties agree that the Adjudicator shall have no liability whatsoever for anything done in the discharge of his function as an Adjudicator, nor for any consequences arising out of or in connection with his decision, unless such act or omission is in bad faith.

## **6. Rubbish/Waste/Site Tidiness**

Failure to comply with Site rules and the instructions of the Main Contractors/Contractors site manager/foreman in respect of rubbish/waste removal will result in the Contractor carrying out the Sub-contractors work and all costs associated with the above will be deducted from the Sub-Contractors account. The site must be kept tidy and all designated access areas free from obstructions at all times. Particular attention must be paid to the running of cables or other tripping hazards. In this connection the directions of the Site Manager/Foreman are to be paramount.

## **7. Building Manual Specification/O & M Manuals**

The Sub-Contractors price includes for providing the Contractor with the Contractors required number of copies of all necessary information in respect of the Sub-Contract works to enable the Contractor to produce the Building Manual Specification/O & M Manuals. All information/technical data is to be supplied by the Sub-Contractor in the format required by the Contractor e.g. CD, floppy disk, video etc.

**8. Suitability of other Work**

Where any part of the Sub-Contract Works is to be applied to work carried out by others, or may be affected by atmospheric conditions, the Sub-Contractor is to satisfy himself by visual inspection that the work carried out by others and that the atmospheric conditions are such that the Sub-Contract Works will not be adversely affected and if he is not satisfied he is to immediately notify the Contractor in writing to that effect stating his reasons before proceeding in the affected area.

**9. Right to Set Off**

It is agreed between the parties that the Contractor has the right to set off from this Sub-Contract any liabilities accrued by the Sub-Contractor in any other Sub-Contract between the Sub-Contractor and the Contractor.

**10. Insurance**

The Sub-Contractor shall, for the benefit of himself and the Contractor, insure and keep insured the full value of the Installation, the materials and goods on site for incorporation into the Installation and the cost of any professional fees or services against loss or damage by fire, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes (whether or not such loss or damage is caused or contributed to by the negligence of the Contractor or those for whose actions the Contractor is responsible) lightning, earthquake, aircraft or anything dropped there from, aerial objects, riots and civil commotion, and such loss or damage which may occur shall be at the sole risk of the Sub-contractor.

**11. Third Party / Public Liability**

The Sub-contractor shall indemnify the Contractor and his employees against all claims (including the cost of any legal proceedings) in respect of the death of or injury to any person or for any damage to or loss of property made by any person against the Contractor whether under Statute or common law which may arise out of or be in any way connected with the execution of the Installation by the Sub-contractor except where the same is due to the negligence, omission or default of the Contractor.

**12. Health & Safety Requirements for Sub-Contractors**

it is a condition of this Sub-contract that the Sub-contract will adhere to the requirements of the Health & Safety at Work etc. Act 1974 and all Regulations, Codes of Practice applicable to the Act and in accordance with the Health & Safety policy, of the Main Contractor and the Contractor.

Without prejudice to the foregoing the Sub-contractor shall:-

**12.1 Organisation & Arrangements**

Provide the following immediately on request:

- a) Name, qualifications and contact details of the person/organisation providing Health & Safety advice to the Sub-contractor.
- b) Name and contact details of their Director/Manager directly responsible for Health & Safety matters covered by the sub-contract.
- c) Name of their Manager/Supervisor on site responsible for Health & Safety
- d) A copy of the sub-contractor's Health & Safety Policy

**12.2 Risk Assessments, Safe Systems of Work & Method Statements**

- a) Identify the hazards associated with their work, assess the risks arising from these hazards and advise how significant risks are to be controlled
- b) Establish safe systems of work and document them as appropriate as identified by the sub-contractor or the Contractor
- c) Where temporary works either below or above ground form part of the sub-contract, provide the company with a copy of the Temporary Works proposals and design calculations where necessary.
- d) Provide risk assessments under the COSHH Regulations. These assessments must detail the risk to any persons who may come into contact with any hazardous substances the sub-contractor may be using and the measures to be taken by the sub-contractor to control these risks.

**12.3 Competence & Training**

Provide evidence of competence and training for all managers, supervisors, tradesmen and operatives under their control. This shall be in accordance with the relevant registration schemes. These are CSCS, CITB (CTA) plant operators, CORGI, CISRS, NRSIA JIB CSCS (Electro technical), PTS and SCORE or Skillcard or similar unless otherwise approved, by the Contractor, in writing. Where project specific training and competencies are required, the Sub-contractor shall be provide appropriate evidence.

**12.4 Plant & Equipment**

Ensure compliance with the following:

- a) The Sub-contractor is to provide at the Sub-contractor's sole cost all plant and equipment necessary to undertake the Sub-contract works.
- b) All sub-contractor's plant/equipment (whether owned or hired) is to be thoroughly inspected by the Sub-contractor before being put to work on site and relevant certification provided to the Contractor.
- c) All electrically operated portable tools will be restricted to a maximum of 110volts, unless written approval is obtained from the Contractor. 110volt portable equipment (including leads) shall be tested every 3 months and evidence of testing made available on site.
- d) Sub-contractors shall take full note of their responsibility under the PUWER Regulations in respect of all plant and equipment brought on to site for their use.

- e) Scaffolding shall only be erected, altered or dismantled by competent CISRS scaffolders. All scaffolding shall be provided with a formal handover certificate. All sheeted scaffolds, scaffolds above 50metres, suspended scaffolds and load bearing scaffolds shall be designed and checked as Temporary Works. Sheeting includes debris netting.
- f) Proprietary access systems shall only be erected, altered or dismantled by competent, trained personnel.

#### 12.5 Cooperation, Coordination & Communication

- a) Comply with directions given by the Contractor with regard to coordination and communication.
- b) Ensure that operatives under their control are aware of all matters likely to cause danger to themselves or others through induction training and toolbox talks.
- c) Ensure that everyone under their control receives a site specific safety induction.
- d) Ensure that they are aware of numbers of personnel under their control who are on site at any time.
- e) Provide adequate and appropriate information to those under their control in respect of health and safety.
- f) Ensure that all those under their control comply with the 'Site Rules'.
- g) Cooperate with the company to ensure appropriate consultation with the workforce at all levels of the project, workgang and the individual.
- h)
  - i) Immediately inform the Company of any death, injury, ill health, dangerous occurrence or incident affecting health and safety, including any near miss or risk.
  - ii) Provide the Contractor with relevant information for inclusion in the Health and Safety File
  - iii) Take the necessary disciplinary action against any employee who fails to comply with safety requirements. This includes removal from site if directed by the Contractor

#### 12.6 Health & Welfare

Ensure competence with the following: -

- a) That adequate and suitable welfare facilities are provided for all those under their control. This includes (but is not limited to) toilets, drying, changing and messing facilities and first aid. Where the Sub-contractor is expecting the Contractor/Main Contractor to provide these facilities and the Contractor so agrees, the Sub-contractor shall provide details of resource levels in adequate time for their provision.
- b) That any person under their control on site found to be consuming, or under the influence of drugs or alcohol is not permitted to remain on site.
- c) That any person under their control carrying out, promoting, encouraging or threatening an act of violence to be subject to immediate removal from site. This includes both physical and verbal violence.
- d) Take full account of the Statutory Requirements given in the Working Time Regulations.
- e) Adequate PPE for any given site is provided. Any failure to do so will result in PPE being provided by the Contractor and a charge levied for it. The levels of PPE required will vary from site to site and it is the sub-contractors responsibility to ensure the correct levels are met prior to work commencing.

#### 12.7 Young Persons

Obtain permission from the Contractor before allowing any 'young person' onto site. The Sub-contractor shall carry out a specific Risk Assessment for each 'young person' and ensure suitable and sufficient instruction and training has taken place. The sub-contractor shall provide adequate supervision to ensure the Health & Safety of those individuals whilst at work.

Ensure no person under 18 years of age is allowed on site without the written permission of the Contractor.

#### 12.8 Notifications

- a) Obtain written permission from the Contractor for any work to be undertaken **outside normal working hours**, including weekends.
- b) Obtain written permission from the Contractor if they intend to **sublet** any part of their work packages.
- c) Provide prior notice to the Contractor of any individual(s) that they intend to bring to the site with communication difficulties. Permission to proceed will require evidence that the sub-contractor has adequately addressed all management issues regarding the health and safety of these individuals.

### 13. Employment Protection

The relationship between the Contractor and the Sub Contractor, as evidenced by this agreement, shall not be regarded as being a relationship which will give rise to any rights or responsibilities WHATSOEVER under employment protection legislation or under the statutory sick pay scheme or any other employment legislation.

### 14. Applicable Law

The Sub-Contract shall be construed in accordance with English Law and in so far as any other matter arising out of this Sub-Contract is required to be referred to a court of Law the Courts of England and Wales shall have exclusive jurisdiction. If any part of this agreement is deemed to be unenforceable, for any reason, then the remainder of these terms and conditions shall continue.