

# MULTI-TEMP (UK) LIMITED - TERMS AND CONDITIONS OF SUB-CONTRACT

## 1. INTERPRETATION

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

Definitions:

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

**"Business Hours"** means the period from 9.00 am to 5.00 pm on any Business Day.

**"Commencement Date"** has the meaning given in clause 2.2.

**"Conditions"** means these terms and conditions as amended from time to time in accordance with clause 16.10.

**"Contract"** means the contract between Multi-Temp and the Supplier for the Supplier's Works in accordance with these Conditions.

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

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

**"Delivery Location"** has the meaning given in clause 4.6.2.

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

**"Goods Specification"** means any specification for the Goods, including any related plans and drawings, that is agreed in writing by Multi-Temp and the Supplier.

**"Insolvent"** shall have the meaning set out in sections 113 (2)-(5) of the Housing Grants Construction and Regeneration Act 1996 (as amended).

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

**"Mandatory Policies"** means Multi-Temp's business or other policies as may be provided to the Supplier by Multi-Temp from time to time.

**"Multi-Temp"** means Multi-Temp (UK) Limited registered in England and Wales with company number 06190274.

**"Multi-Temp Materials"** has the meaning set out in clause 3.7.11.

**"Order"** means Multi-Temp's order for the provision of the Supplier's Works, as set out in Multi-Temp's purchase order form, or in Multi-Temp's written acceptance of the Supplier's quotation, as the case may be.

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

**"Service Specification"** means the description or specification for Services agreed in writing by Multi-Temp and the Supplier.

**"Supplier"** means the person or firm instructed to provide the Supplier's Works and referred to in the Order.

**"Supplier's Works"** means the works more particularly set out and referred to in the Order, including the provision of the Goods and/or Services.

Interpretation:

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

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A reference to a party includes its successors and permitted assigns.

A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** excludes fax but not email.

### 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by Multi-Temp to the Supplier for the provision of the Supplier's Works including the purchase Goods or Services or Goods and Services in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
- 2.2.1 the Supplier issuing written acceptance of the Order; or
  - 2.2.2 any act by the Supplier consistent with fulfilling the Order,
- at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 These Conditions apply to the Contract to the exclusion of any previous or other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.4 All of these Conditions shall apply to the provision of the Supplier's Works generally and the supply of both Goods and Services except where the application to one or the other is specified.
- 2.5 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

### 3. SUPPLIER'S OBLIGATIONS

- 3.1 The Supplier shall from the Commencement Date, or where advised by Multi-Temp otherwise, the date set out in the Order and for the duration of the Contract provide the Supplier's Works to Multi-Temp in accordance with the terms of the Contract.
- 3.2 The Supplier shall carry out and complete the Supplier's Works with due diligence, in a proper and workmanlike manner and in compliance with the Order and any applicable Construction Phase Plan.
- 3.3 The Supplier shall proceed with the Supplier's Works regularly and diligently and where applicable, in accordance with the progress of the main works. The Supplier shall meet any performance dates for the Supplier's Works specified in the Order or that Multi-Temp notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 3.4 If the Supplier is delayed in completing the Supplier's Works by the ordering of a variation or for other reasons beyond its reasonable control, the Supplier shall notify Multi-Temp and Multi-Temp shall give such extension of time (if any) as is reasonable. The Supplier shall constantly use its best endeavours to prevent or minimise any delay to the progress of the whole or any part of the Supplier's Works.
- 3.5 Multi-Temp shall determine the date when the Supplier's Works are practically complete.
- 3.6 Multi-Temp shall notify the Supplier of any defects that appear in the Supplier's Works and the Supplier shall, at its expense, make good such defects within a reasonable time (taking into account the effect and/or severity of defect in question) from notification. Multi-Temp will provide all reasonable access and time to the Supplier to carry out the rectification of the defects. If the Supplier fails to rectify defects notified to it within a reasonable time or where time or expediency dictate the speed of the repair, Multi-Temp may itself rectify or employ others to rectify the defects and the Supplier agrees to reimburse Multi-Temp the costs incurred by it in doing so on demand.
- 3.7 In providing the Supplier's Works, the Supplier shall:
- 3.7.1 co-operate with Multi-Temp in all matters relating to the Supplier's Works, and comply with all instructions of Multi-Temp;
  - 3.7.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

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- 3.7.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
  - 3.7.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that Multi-Temp expressly or impliedly makes known to the Supplier;
  - 3.7.5 provide all equipment, tools and vehicles and such other items as are required to provide the Supplier's Works;
  - 3.7.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Supplier's Works or transferred to Multi-Temp, will be free from defects in workmanship, installation and design;
  - 3.7.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Supplier's Works;
  - 3.7.8 give all notices required by any statute, statutory instrument, rule, order or regulation applicable to the Supplier's Works and to the extent required by the Order, pay any fees and charged payable in respect of the Supplier's Works;
  - 3.7.9 observe at all times all health and safety rules and regulations and any other security requirements that apply, at any premises where the Supplier's Works are to be performed, to the Supplier's Works generally, and/or adopted or maintained by Multi-Temp, and shall implement all prudent codes of conduct or policies relating thereto including maintaining and implementing a health and safety code of conduct of its own. Further, prior to execution of any Supplier's Works, the Supplier shall ensure it is in possession of Multi-Temp's health and safety and CDM documents/method statement and risk assessments (which are readily available from Multi-Temp's contract staff) and shall at all times abide by them, and shall ensure all such provisions are passed in their entirety to the Supplier's own site operatives before any site work commences and also ensure all such provisions are adhered to in their entirety;
  - 3.7.10 ensure the health and safety of everyone affected by the Supplier's acts and/or omissions including the Supplier's Works. The Supplier shall comply with its obligations under the Health and Safety at Work etc Act 1974 and its associated regulations and ensure all employees are given appropriate information, instruction and training, all equipment is supplied and kept in good condition, and all hazards are identified and assessed and where possible, eliminated;
  - 3.7.11 hold all materials, equipment and tools, drawings, specifications and data supplied by Multi-Temp to the Supplier (Multi-Temp Materials) in safe custody at its own risk, maintain Multi-Temp Materials in good condition until returned to Multi-Temp, and not dispose of or use Multi-Temp Materials other than in accordance with Multi-Temp's written instructions or authorisation;
  - 3.7.12 not do or omit to do anything which may cause Multi-Temp to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business or which breaches the rights of any third party, and the Supplier acknowledges that Multi-Temp may rely or act on the Services;
  - 3.7.13 ensure the Supplier's Works comply in all respects with the requirements and recommendations of NICEIC, DW144 and any other applicable and relevant specifications, standards and regulations; and
  - 3.7.14 comply with any additional obligations as set out in the Service Specification or as may otherwise notified to the Supplier by Multi-Temp from time to time.
- 3.8 Multi-Temp may issue reasonable instructions which the Supplier shall forthwith carry out. Such instructions may include changes in the order or manner in which the Supplier's Works are to be carried out.
- 3.9 Multi-Temp may instruct the Supplier to carry out additional works within his scope of works ("variation") and the Supplier agrees to do so. Instruction may be oral or in writing. If oral, the Supplier shall confirm the instruction to Multi-Temp within 3 days of the giving of the instruction. Any such instructions shall be incorporated into and form part of this Contract and all the terms of this Contract shall apply to the additional works accordingly.
- 3.10 Unless an instruction relates to a variation to the Supplier's Works, the Supplier shall not be entitled to any additional payment in respect of such instruction. Where an instruction relates to a variation Multi-Temp and the Supplier shall endeavour to agree a price prior to the Supplier carrying out the instruction. If a price can not be agreed, Multi-Temp may instruct the Supplier to perform the instruction and the Supplier shall be paid a fair and reasonable sum.
- 3.11 If Multi-Temp has indicated in the Order that this Contract forms a sub-contract relating to a main contract, any terms in that main contract (a copy of which relevant terms are available to the Supplier) regarding cancellation rights, price reductions, suspension of delivery of Goods or provision of Services or non-delayed or part payment or liquidated damages shall to the extent that the Supplier's Works supplied hereunder are the cause of or affected by the invoking

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of such provisions be deemed to be incorporated into these terms such that the Supplier's rights and obligations under this Contract shall be affected pro rata and in like manner to those of Multi-Temp in the main contract.

- 3.12 Where the Supplier engages in site works for Multi-Temp which incorporate installation of and fixing of ductwork, plant, fan coils, condensing units or equipment of any nature to a structure including, but not limited to walls, ceilings, joists, cement slabs, then all such fixings shall be the standard as supplied by a reputable supplier of fixings and at all times such fixings shall be capable of withstanding at least 6x (six times) the weight of the equipment being so fixed and the Supplier shall warrant that all such fixings are secure and carried out by a competent operative; and at all times the Supplier warrants that no ductwork, plant or equipment shall be either supported or allowed to rest on any suspended ceiling and that any grille and/or grided box which requires to be fitted into a ceiling grid shall be supported independent of the ceiling where the weight of such combined equipment exceeds 4kg (four kilograms) or where deemed appropriate the Supplier in conjunction with Multi-Temp's representative shall ensure any such grille and/or grille box located in the ceiling shall be appropriately supported by the addition of extra suspended ceiling supports fitted by and in conjunction with the ceiling contractor, which shall create additional support local to the fitted grille but at all times the Supplier warrants that such supports shall be inspected and approved by the Supplier and they meet the intent and requirement of this specific safety requirement.
- 3.13 Where the Supplier engages in the use of any CFC/HFC or refrigerant gases of any type in the Supplier's Works, the Supplier warrants any operatives engaged by it in relation with such use shall be approved and certified in safe handling to at least City and Guilds 2079 F-Gas. The Supplier warrants all CFC or refrigerants decanted from systems shall be removed with a reclaim system purchased from a reputable supplier and all reclaimed contaminated refrigerant will be disposed of via a reputable agent (such as HRP Limited) and the disposal documentation shall be provided to Multi-Temp within 7 days. The Supplier warrants that refrigerant shall not be exposed to the atmosphere.

### 4. **GOODS**

4.1 The Supplier shall ensure that the Goods shall:

- 4.1.1 correspond with their description and any applicable Goods Specification;
- 4.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Multi-Temp, expressly or by implication, and in this respect Multi-Temp relies on the Supplier's skill and judgement;
- 4.1.3 where they are manufactured products, be free from defects in design, materials and workmanship and remain so for the period of the manufacturer's warranty/details after delivery; and
- 4.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

4.2 Multi-Temp may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

4.3 If following such inspection or testing Multi-Temp considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 4.1, Multi-Temp shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

4.4 Multi-Temp may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4.5 The Supplier shall ensure that:

- 4.5.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 4.5.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
- 4.5.3 the Goods are insured for all losses which could reasonably be contemplated with a reputable insurer to a level satisfactory to Multi-Temp; and
- 4.5.4 it states clearly on the delivery note any requirement for Multi-Temp to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.6 The Supplier shall deliver the Goods:

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- 4.6.1 on the date specified in the Order or, if no such date is specified, on such other date as is notified to the Supplier by Multi-Temp;
  - 4.6.2 to such location as is set out in the Order or as instructed by Multi-Temp before delivery (**Delivery Location**); and
  - 4.6.3 during Business Hours or as instructed by Multi-Temp.
- 4.7 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.8 If the Supplier:
- 4.8.1 delivers less than 95% of the quantity of Goods ordered, Multi-Temp may reject the Goods; or
  - 4.8.2 delivers more than 100% of the quantity of Goods ordered, Multi-Temp may at its sole discretion reject the Goods or the excess Goods,
- and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers less than the quantity of Goods ordered, and Multi-Temp accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 4.9 The Supplier shall not deliver the Goods in instalments without Multi-Temp's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Multi-Temp to the remedies set out in clause 5.1.
- 4.10 Title and risk in the Goods shall pass to Multi-Temp once completion of delivery by the Supplier and acceptance by Multi-Temp has taken place, or upon payment to the Supplier for the Goods if this occurs earlier. The Supplier warrants it has good title in the Goods at the time of the delivery and no third party is entitled to exercise a lien in respect of the Goods or part thereof. The Supplier will provide a vesting certificate for any Goods at Multi-Temp's request.
5. **CUSTOMER REMEDIES**
- 5.1 If the Supplier fails to complete the Supplier's Works, deliver the Goods or to perform the Services by an applicable date, Multi-Temp shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:
- 5.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 5.1.2 to refuse to accept any subsequent performance of the Supplier's Works (including the delivery of any Goods) which the Supplier attempts to make;
  - 5.1.3 to instruct the Supplier to accelerate the Supplier's Works and the Supplier shall do so with immediate effect at no cost to Multi-Temp;
  - 5.1.4 supply additional labour (of its own or a third party) for the carrying out of the Services and recover from the Supplier any costs incurred by it in respect of such labour;
  - 5.1.5 to recover from the Supplier any costs incurred by Multi-Temp in obtaining substitute goods or services from a third party;
  - 5.1.6 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided or Goods that it has not delivered; and
  - 5.1.7 to claim damages for any additional costs, loss or expenses incurred by Multi-Temp which are in any way attributable to the Supplier's failure to meet such dates.
- 5.2 Without prejudice to any other remedies it may have, if the Goods are not delivered by the applicable date, Multi-Temp may, at its option, claim or deduct 10% of the price of the Goods for each week's delay in delivery of the Goods, by way of liquidated damages, until the earlier of delivery of the Goods or termination or abandonment of the Contract by Multi-Temp, up to a maximum of the total price of the Goods.
- 5.3 Without prejudice to any other remedies it may have, if the Services are not performed by the applicable date, Multi-Temp may, at its option, claim or deduct 10% of the price of the Services for each week's delay in performance of the Services, by way of liquidated damages, until the earlier of performance of the Services or termination or abandonment of the Contract by Multi-Temp, up to a maximum of the total price of the Services.

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- 5.4 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 4.1, then, without limiting or affecting other rights or remedies available to it, Multi-Temp shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:
- 5.4.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 5.4.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
  - 5.4.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;
  - 5.4.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - 5.4.5 to recover from the Supplier any expenditure incurred by Multi-Temp in obtaining substitute goods from a third party; and
  - 5.4.6 to claim damages for any additional costs, loss or expenses incurred by Multi-Temp arising from the Supplier's failure to supply Goods in accordance with clause 4.13.1.
- 5.5 If the Supplier has supplied Supplier's Works that do not comply with the requirements of clause 3.7 then, without limiting or affecting other rights or remedies available to it, Multi-Temp shall have one or more of the following rights and remedies:
- 5.5.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 5.5.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;
  - 5.5.3 to require the Supplier to rectify any defective Supplier's Works and complete performance of the Supplier's Works, or to provide a full refund of the price paid for the Supplier's Works;
  - 5.5.4 to refuse to accept any subsequent performance of the Supplier's Works which the Supplier attempts to make;
  - 5.5.5 to recover from the Supplier any expenditure incurred by Multi-Temp in obtaining substitute services, works or deliverables from a third party; and
  - 5.5.6 to claim damages for any additional costs, loss or expenses incurred by Multi-Temp arising from the Supplier's failure.
- 5.6 These Conditions shall extend to any substituted or remedial services or repaired or replacement goods supplied by the Supplier.
- 5.7 Multi-Temp's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.
- 6. CUSTOMER'S OBLIGATIONS**
- Multi-Temp shall:
- 6.1.1 provide the Supplier with reasonable access at reasonable times for the purpose of providing the Supplier's Works; and
  - 6.1.2 provide such necessary information for the Supplier's Works as the Supplier may reasonably request.
- 7. CHARGES AND PAYMENT**
- 7.1 The price for the Supplier's Works shall be the price set out in the Order and shall be the full and exclusive remuneration due to the Supplier. No extra charges shall be effective unless agreed in writing and signed by Multi-Temp.
- 7.2 The Supplier shall invoice Multi-Temp on an interim basis, commencing one month after the Commencement Date and monthly thereafter. The Supplier shall submit its invoice to Multi-Temp no later than the last day of the relevant month for Supplier's Works properly carried out and shall include such supporting information required by Multi-Temp to verify the accuracy of the invoice, including the relevant purchase order number. Any invoice not received by the last day of the relevant month shall fall into the next monthly payment cycle and shall be deemed submitted on the last day of the following month.

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- 7.3 Payment terms shall be 90 days or such other period expressly agreed in writing between Multi-Temp and the Supplier in a separate letter and signed by an officer of Multi-Temp.
- 7.4 If Multi-Temp intends to pay less than the sum due to the Supplier, it may not later than 1 day before the final date for payment (the prescribed period) give the Supplier notice of that intention stating the sum that it considers to be due to the Supplier at the date it gives such notice and the basis on which that sum has been calculated. It is immaterial that the amount considered to be due may be zero.
- 7.5 If the Supplier becomes Insolvent after the prescribed period Multi-Temp need not pay any sum due to the Supplier in respect of any payment.
- 7.6 In the event any third party or any other person, by whom payment to Multi-Temp is (directly or indirectly) related to payment under this Contract, becomes Insolvent, Multi-Temp shall have no obligation to make payment under this Contract until such time it receives payment from said third party and then Multi-Temp shall only be required to pay to the Supplier such of the sum due to the Supplier as is proportional to the amount received by it relative to the sum owed to it.
- 7.7 All amounts payable by Multi-Temp under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Multi-Temp, Multi-Temp shall, strictly subject to and only on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 7.8 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 2% a year. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from 30 days after the dispute is resolved until payment.
- 7.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Multi-Temp to inspect such records at all reasonable times on request.
- 7.10 Multi-Temp may at any time, without notice to the Supplier, set off any liability of the Supplier to Multi-Temp against any liability of Multi-Temp to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, Multi-Temp may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Multi-Temp of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

### 8. **INTELLECTUAL PROPERTY RIGHTS**

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Supplier's Works (other than Intellectual Property Rights in any Multi-Temp Materials) shall be owned by the Supplier.
- 8.2 The Supplier grants to Multi-Temp, or shall procure the direct grant to Multi-Temp of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy use and modify the Deliverables (excluding Multi-Temp Materials) for any purpose.
- 8.3 Multi-Temp may sub-license, assign or otherwise transfer the rights granted by clause 8.2.
- 8.4 The Supplier acknowledges that all rights in Multi-Temp Materials are and shall remain the exclusive property of Multi-Temp. Multi-Temp may require the return of any Multi-Temp Materials forthwith together with any copies thereof (which may only be produced with the prior written consent of Multi-Temp).

### 9. **INDEMNITY**

- 9.1 The Supplier shall indemnify Multi-Temp against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Multi-Temp arising out of or in connection with:
- 9.1.1 any claim made against Multi-Temp for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the Supplier's Works (excluding Multi-Temp Materials);
- 9.1.2 any claim made against Multi-Temp by a third party for death, personal injury or damage to property arising out of, or in connection with, the Supplier's Works; and

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9.1.3 any claim made against Multi-Temp by a third party arising out of or in connection with the Supplier's Works, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

9.2 This clause 9 shall survive termination of the Contract.

### 10. **INSURANCE**

10.1 During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, contractor's all risk/contract works insurance, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on Multi-Temp's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

### 11. **CONFIDENTIALITY**

11.1 The Supplier shall keep confidential during the term of this Contract and thereafter the existence of this agreement, its subject matter and any information regarding the business of Multi-Temp and shall not use Multi-Temp's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

### 12. **COMPLIANCE WITH RELEVANT LAWS AND POLICIES**

In performing its obligations under the Contract, the Supplier shall:

12.1.1 comply with all applicable laws, statutes, regulations and codes from time to time in force; and

12.1.2 comply with the Mandatory Policies.

### 13. **TERMINATION**

13.1 Without prejudice to and without affecting any other right or remedy available to it, Multi-Temp may terminate the Contract with immediate effect by giving written notice to the Supplier if:

13.1.1 there is a change of Control of the Supplier; or

13.1.2 for convenience by giving the Supplier 7 days' written notice.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

13.2.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so;

13.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

13.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

13.2.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

### 14. **CONSEQUENCES OF TERMINATION**

14.1 On termination of the Contract, the Supplier shall immediately deliver to Multi-Temp all Deliverables whether or not then complete, and return all Multi-Temp Materials. If the Supplier fails to do so, then Multi-Temp may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

14.2 In the event of termination of the Contract by Multi-Temp for either of the reasons pursuant to clause 13.1 the total sum due to the Supplier as a result of the termination of the Contract shall be limited to the value of the Supplier's



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Works properly completed at the date of termination and the Supplier shall not be entitled to be paid any other costs or losses incurred by it as a result thereof.

14.3 Termination of the Contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

14.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

### 15. **FORCE MAJEURE**

15.1 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for six months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

### 16. **GENERAL**

16.1 **Assignment and other dealings.** Multi-Temp may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract. The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

16.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of Multi-Temp. If Multi-Temp consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

### 16.3 **Notices.**

16.3.1 Save in respect of any notice to be given pursuant to clause 7 of this Contract which for the sake of clarity may be given by email, any notice given to a party under or in connection with the Contract shall be in writing and shall be:

16.3.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

16.3.2 Any notice shall be deemed to have been received:

16.3.2.1 if delivered by hand, at the time the notice is left at the proper address;

16.3.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

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

16.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 16.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

16.5 **Liability.** Multi-Temp's liability under or in connection with this Contract shall be limited to the price for the Supplier's Works. This limit shall apply however that liability arises, including, without limitation, a liability arising by breach of contract, arising by tort (including, without limitation, the tort of negligence) or arising by breach of statutory duty. Provided that this clause 16.5 shall not exclude or limit Multi-Temp's liability for death or personal injury caused by Multi-Temp's negligence; or fraud or fraudulent misrepresentation.

16.6 **Waiver.** Except as set out in clause 2.5, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

16.7 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make

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or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

- 16.8 **Entire agreement.** The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 16.9 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.10 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 16.11 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 16.12 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.