

**LOWE AND OLIVER LIMITED**  
**STANDARD TERMS OF SUB-CONTRACT 2012**

**1. THE SUB-CONTRACT**

- 1.1. The sub-contractor ("the Sub-Contractor") agrees to carry out certain work ("the Sub-Contract Works") for Lowe and Oliver Limited ("L&O") (the Sub-Contractor and L&O together "the Parties") for the sum set out in L&O's order ("the Sub-Contract Sum") or such other sum as may become payable under these Standard Terms of Sub-Contract.
- 1.2. The Sub-Contract is comprised of the following documents (together "the Sub-Contract Documents"):
  - 1.2.1. These Standard Terms of Sub-Contract;
  - 1.2.2. L&O's order;
  - 1.2.3. L&O's invitation to tender (if any); and
  - 1.2.4. Such other documents (if any) as are referred to in L&O's order and L&O's invitation to tender.
- 1.3. The Sub-Contract Works are as set out in the Sub-Contract Documents. The Sub-Contract Documents set out the entire relationship between L&O and the Sub-Contractor and this supersedes any previous agreements and/or representations, which shall be of no continuing effect.
- 1.4. The Sub-Contractor shall carry out and complete the Sub-Contract Works and L&O shall make payment both in accordance with the Sub-Contract.
- 1.5. The documents comprising the Sub-Contract Documents are to be read together and as a whole. In the case of any inconsistency, contradiction or ambiguity as between the documents comprising the Sub-Contract Documents, the inconsistency, contradiction or ambiguity shall be resolved at L&O's discretion.
- 1.6. A copy of L&O's contract with the Employer or Main Contractor as the case may be ("the Head Contract") (if any) is save for detailed pricing information available for the Sub-Contractor's inspection. The Sub-Contractor is deemed to be aware of the content of the Head Contract save for detailed pricing information. The Sub-Contractor will not do anything (whether by act or by omission) to cause L&O to be in breach of the Head Contract.
- 1.7. The Sub-Contract sets out all of the Sub-Contractor's rights and remedies in relation to the Sub-Contract and the carrying out of the Sub-Contract Works and to the maximum extent permissible by law the Sub-Contractor shall not have any other rights or remedies against L&O.
- 1.8. References to days in this Sub-Contract are references to calendar days.

**2. INSTRUCTIONS**

- 2.1. L&O may issue instructions to the Sub-Contractor in relation to the Sub-Contract Works. Instructions may be issued in writing or otherwise than in writing. The Sub-Contractor shall within 3 days of receiving an instruction issued otherwise than in writing confirm in writing to L&O the content of the instruction, who issued it, to whom, when, where, and how.
- 2.2. An instruction takes effect when it is issued and the Sub-Contractor shall forthwith begin to comply with an instruction upon receipt.
- 2.3. Instructions may be issued to the Sub-Contractor only by a person whose authority to do so has previously been confirmed by L&O in writing.
- 2.4. If the Sub-Contractor acts upon any purported instruction issued by a person whose authority to issue instructions has not previously been confirmed by L&O in writing, L&O may at their discretion confirm it retrospectively but L&O are not obliged to do so. Unless and until confirmed by L&O, a purported instruction shall have no contractual or other effect.
- 2.5. If the Sub-Contractor within 5 days of receipt of an instruction fails to begin complying with it, or if having begun to comply with it the Sub-Contractor fails to proceed with the work regularly and diligently, L&O may employ others to carry out the instructed work and the Sub-Contractor shall be liable for L&O's costs of so doing.

**3. VARIATIONS TO THE SUB-CONTRACT WORKS**

- 3.1. Variations to the Sub-Contract Works are defined as additions to, omissions from, or changes to Sub-Contract Works (but for the avoidance of doubt not including changes to the timing, method, or conditions of the Sub-Contractor carrying out the Sub-Contract Works).
  - 3.2. Variations shall be valued on the following bases:
    - 3.2.1. If the variation is for work similar in character, quantity and conditions of execution to work set out in the Sub-Contract Documents, the rates and/or prices for the similar work set out in the Sub-Contract Documents shall be used as the basis of the valuation;
    - 3.2.2. If the variation is for work similar in character but dissimilar in quantity to work set out in the Sub-Contract Documents, the rates and/or prices for the work of similar character set out in the Sub-Contract Documents shall be used as the basis of the valuation and a fair allowance shall be made for the dissimilarity of quantity; and
    - 3.2.3. If the variation is for work dissimilar in character to work set out in the Sub-Contract Documents or the variation cannot properly be valued by measurement, fair rates and/or prices shall be used as the basis of the valuation.

**4. THE SUB-CONTRACT PERIOD**

- 4.1. The Sub-Contractor shall carry out and complete the Sub-Contract Works within the period detailed in the Sub-Contract Documents ("the Sub-Contract Period"). If the Sub-Contract Documents do not detail a Sub-Contract Period, the Sub-Contractor shall:
  - 4.1.1. Commence carrying out the Sub-Contract Works within not less than 5 days' written notice to do so from L&O;
  - 4.1.2. Carry out and complete the Sub-Contract Works within a reasonable period; and
  - 4.1.3. Time shall be of the essence in relation to the Sub-Contractor carrying out and completing the Sub-Contract Works and all parts thereof.
- 4.2. If the Sub-Contract Documents detail a Sub-Contract Period and at any time the Sub-Contractor has been or is likely to be delayed in carrying out the Sub-Contract Works for reasons which are outside the Sub-Contractor's control, which are not stated in or implied by the Sub-Contract Documents to be at the Sub-Contractor's risk, and which are not concurrent with any causes of delay to the Sub-Contractor which do not entitle the Sub-Contractor to an extension of the Sub-Contract Period,

the Sub-Contractor shall forthwith apply to L&O in writing for an extension of the Sub-Contract Period. L&O shall within 42 days of receipt of the Sub-Contractor's application grant such extension of the Sub-Contract Period as is fair and reasonable provided always that the Sub-Contractor shall strictly have complied with the following conditions precedent (failing which strict compliance L&O shall not be under any obligation to extend the Sub-Contract Period):

- 4.2.1. The Sub-Contractor must make its application within 14 days of the occurrence of the event(s) giving rise to the delay in respect of which application is made for an extension of the Sub-Contract Period;
- 4.2.2. The application must give details of the event(s) giving rise to the delay in respect of which application is made for an extension of the Sub-Contract Period, be accompanied by evidence, and detail the delay to the Sub-Contract Works all with sufficient particularity for L&O to be able to assess the fair and reasonable extension of the Sub-Contract Period that should be granted (if any); and
- 4.2.3. The application must state that it is an application for an extension of the Sub-Contract Period pursuant to clause 4.2 of L&O's Standard Terms of Sub-Contract.

**5. DIRECT LOSS AND/OR EXPENSE**

- 5.1. If the Sub-Contractor incurs any direct loss and/or expense owing to the regular progress of the Sub-Contract Works materially being affected by any impediment or prevention by L&O (whether by act or by omission) the Sub-Contractor may apply in writing for compensation for that direct loss and/or expense. L&O shall within 42 days of receipt of the Sub-Contractor's application consider what direct loss and/or expense should fairly and reasonably be compensated (if any) provided always that the Sub-Contractor shall strictly have complied with the following conditions precedent (failing which strict compliance L&O shall not be under any obligation to compensate any loss and/or expense incurred by the Sub-Contractor):
  - 5.1.1. The Sub-Contractor must make its application within 14 days of the occurrence of the event(s) giving rise to the loss and/or expense in respect of which application is made for compensation;
  - 5.1.2. The application must give details of the event(s) giving rise to the direct loss and/or expense in respect of which application is made for compensation and be accompanied by such evidence as would be sufficient to prove the like claim if it were made in litigation; and
  - 5.1.3. The application must state that it is an application for compensation for direct loss and/or expense pursuant to clause 5.1 of L&O's Standard Terms of Sub-Contract.

**6. PAYMENT**

- 6.1. The Sub-Contractor will apply to L&O for payment and L&O will make payment to the Sub-Contractor as follows:
  - 6.1.1. The Sub-Contractor will submit to L&O a written application for payment on or before the penultimate day of each calendar month. The written application for payment shall specify the amount that the Sub-Contractor considers to be due and the basis of the calculation of that amount;
  - 6.1.2. The due date for L&O's payment of any sum due to the Sub-Contractor shall be the last day of the calendar month in which the application for payment was received by L&O;
  - 6.1.3. The final date for L&O's payment of any sum due to the Sub-Contractor shall be 60 days from the due date;
  - 6.1.4. L&O shall give the Sub-Contractor a payment notice specifying the amount considered by L&O to have been due at the due date and the basis of the calculation of that amount not later than 5 days after the due date; and
  - 6.1.5. If L&O intend to pay less than the amount specified in their payment notice issued pursuant to clause 6.1.4 of these Standard Terms of Sub-Contract, L&O shall give the Sub-Contractor a pay less notice specifying the sum that L&O considers to be due at the date of service of the pay less notice and the basis on which that sum is calculated not later than 10 days before the final date for payment.
- 6.2. The Sub-Contractor's applications for payment, and L&O's liability to make payment, shall be in respect of the aggregate of the following sums:
  - 6.2.1. The value of those parts of the Sub-Contract Works carried out to the due date relevant to the application for payment; plus
  - 6.2.2. The value of any materials properly stored at the site of the Sub-Contract Works by the Sub-Contractor for use or incorporation in the Sub-Contract Works; plus
  - 6.2.3. Any loss and/or expense to which the Sub-Contractor is entitled under the Sub-Contract; less
  - 6.2.4. Any discount that it has been agreed shall be allowed to L&O; less
  - 6.2.5. All previous payments made by L&O; less
  - 6.2.6. Any retention that it has been agreed shall be held by L&O.
- 6.3. In respect of any retention held by L&O and subject always to L&O's right to set off any liability of the Sub-Contractor to L&O against any monies otherwise due from L&O to the Sub-Contractor, the final dates for payment of the retention to the Sub-Contractor shall be 42 days from the following due dates:
  - 6.3.1. In respect of the first moiety of the retention held by L&O, the due date is the date of substantial completion of the Sub-Contract Works; and
  - 6.3.2. In respect of the second moiety of the retention held by L&O, the due date is the date 18 months after substantial completion of the Sub-Contract Works.
- 6.4. Notwithstanding any other provision of this Sub-Contract:
  - 6.4.1. If the Sub-Contractor is or becomes insolvent, L&O are not obliged to make any further payment to the Sub-Contractor and no further amount shall become due to the Sub-Contractor; and
  - 6.4.2. If a party to the Head Contract other than L&O is or becomes insolvent, L&O are not obliged to make any further payment to the Sub-Contractor and no further amount shall become due to the Sub-Contractor save if (and then only to the extent) that L&O receive further payment under the Head Contract in respect of work carried out under the Sub-Contract.
- 6.5. Unless stated to the contrary, all monetary amounts stated in the Sub-Contract Documents are exclusive of VAT. In relation to all payments made to the Sub-Contractor under the Sub-Contract, L&O shall also pay such VAT as is properly chargeable.
- 6.6. If any sum payable to the Sub-Contractor by L&O under the Sub-Contract is not paid, in whole or in part, by its final date for payment, interest shall thereafter accrue upon the sum not paid at the simple rate of 3% per annum. The Parties agree that this is a substantial remedy for, and a sufficient deterrent to, late payment of

sums due.

## 7. ACCESS TO AND CONDITIONS OF THE SITE

- 7.1. L&O shall throughout the Sub-Contract Period (save for any period of suspension) and any extensions thereof:
- 7.1.1. Give the Sub-Contractor non-exclusive access to the site of the Sub-Contract Works;
- 7.1.2. Provide to the Sub-Contractor free of charge all attendances (if any) and storage facilities (if any) detailed in the Sub-Contract Documents.
- 7.1.3. The Sub-Contractor is deemed fully to have satisfied itself as to all matters of access and site conditions and the Sub-Contractor shall have no claim against L&O in relation to any such matters.

## 8. DEFECTS

- 8.1. The Sub-Contractor shall promptly make good any defects or faults in the Sub-Contract Works which L&O notifies to the Sub-Contractor at any time up to 366 days after the date on which L&O's works under the Head Contract are substantially completed ("the Defects Liability Period").
- 8.2. If the Sub-Contractor fails within 5 days of receipt of notification from L&O to begin making good any defects or faults notified, or if having begun to do so the Sub-Contractor fails to proceed with the making good regularly and diligently, L&O may employ others to carry out the making good and any associated work and the Sub-Contractor shall be liable for L&O's costs of so doing. Those costs may be deducted by L&O from any retention held or, if no retention is held, they may be recovered by L&O from the Sub-Contractor as a debt.

## 9. SUSPENSION OF THE SUB-CONTRACT WORKS

- 9.1. If L&O fails by a final date for payment to pay any sum due to be paid to the Sub-Contractor, the Sub-Contractor has the right to suspend carrying out all or part of the Sub-Contract Works subject to the Sub-Contractor first giving L&O 14 days' written notice of the Sub-Contractor's intention to suspend.

## 10. TERMINATION OF THE SUB-CONTRACT

- 10.1. The provisions of clauses 10.2 and 10.3 apply in the event that:
- 10.1.1. The Sub-Contractor or any associated company of the Sub-Contractor becomes insolvent or L&O have reasonable cause to believe that this has occurred;
- 10.1.2. The Sub-Contractor or any associated company of the Sub-Contractor enters into a voluntary arrangement with its creditors;
- 10.1.3. The Sub-Contractor fails to proceed regularly and diligently with the Sub-Contract Works; and/or
- 10.1.4. The Sub-Contractor without lawful and reasonable cause suspends (whether in whole or in part) the carrying out of the Sub-Contract Works.
- 10.2. L&O may terminate the Sub-Contract by issuing a written notice to the Sub-Contractor and the Sub-Contract shall be terminated immediately upon the Sub-Contractor's receipt of L&O's notice of termination of the Sub-Contract.
- 10.3. If L&O terminates the Sub-Contract, the aggregate of the following sums shall be payable by L&O to the Sub-Contractor:
- 10.3.1. The sum for which the Sub-Contractor is entitled to apply for payment at the date of the termination of the Sub-Contract, calculated in accordance with clause 6 of these Standard Terms of Sub-Contract and deeming the date of the termination of the Sub-Contract to be a monthly valuation date; less
- 10.3.2. Any damages, losses and/or expenses (or L&O's best estimation thereof) to which L&O are entitled having regard to any breach of contract by the Sub-Contractor and L&O's additional costs arising as a result of the termination whether directly or indirectly.

## 11. DISPUTE RESOLUTION

- 11.1. Either of L&O and the Sub-Contractor may at any time (subject to the time-bar of limitation) refer to adjudication any dispute or difference of any kind whatsoever arising under or in connection with the Sub-Contract and/or the Sub-Contract Works, regardless of whether the Sub-Contract Works are yet to commence, are being carried out, have been completed, or have been abandoned. If any dispute or difference is referred to adjudication:
- 11.1.1. If the Parties do not agree upon the appointment of a particular individual as the adjudicator, the President or a Vice-President of the Chartered Institute of Arbitrators shall be requested to nominate an individual to be the adjudicator;
- 11.1.2. The adjudication shall be conducted in accordance with Part 1, the Scheme for Construction Contracts; and
- 11.1.3. All information and documents provided to the adjudicator for the purposes of the adjudication are to be treated as confidential within the meaning of paragraph 18, the Scheme for Construction Contracts.
- 11.2. Any dispute or difference of any kind whatsoever arising under or in connection with the Sub-Contract and/or the Sub-Contract Works, shall:
- 11.2.1. Regardless of whether the Sub-Contract Works are yet to commence, are being carried out, have been completed, or have been abandoned;
- 11.2.2. Subject to the Parties' rights to refer disputes and/or differences to adjudication;
- 11.2.3. Except in the case of disputes or differences in connection with the enforcement of any decision of an adjudicator; and
- 11.2.4. Except in the case of disputes or differences in connection with VAT or the Construction Industry Scheme, be referred to the arbitration of a single arbitrator. If any dispute or difference is referred to arbitration:
- 11.2.5. If the Parties do not agree upon the appointment of a particular individual as the arbitrator, the President or a Vice-President of the Chartered Institute of Arbitrators shall be requested to appoint an individual to be the arbitrator;
- 11.2.6. The seat of the arbitration shall be deemed to be London, England irrespective of the actual location of the Sub-Contract Works and/or the conduct of the arbitration; and
- 11.2.7. The JCT 2011 edition of the Construction Industry Model Arbitration Rules shall apply.

## 12. MISCELLANEOUS

- 12.1. Title to any materials and/or goods brought onto the Site by the Sub-Contractor and/or included in any payment application by the Sub-Contractor shall, regardless of whether or not the materials and/or goods have been incorporated into the Sub-

Contract Works, pass to L&O when the materials and/or goods are brought onto the Site or included in the payment application (as appropriate).

- 12.2. Section headings in these Standard Terms of Sub-Contract are for convenience only and do not affect the interpretation of the Sub-Contract.
- 12.3. Should any part of these Standard Terms of Sub-Contract be found to be illegal, unenforceable and/or otherwise invalid, that part of these Standard Terms of Sub-Contract shall be severed and deleted from the remaining part of these Standard Terms of Sub-Contract, and treated as if it had never been incorporated into the Sub-Contract, and the remaining parts of these Standard Terms of Sub-Contract shall remain enforceable and of full force and effect.
- 12.4. These Standard Terms of Sub-Contract do not confer, or purport to confer, any rights on any parties other than the Parties, and the Parties acknowledge that it is not their intention to confer rights on any other parties.
- 12.5. Any delay by L&O in exercising any of their rights under the Sub-Contract shall not be and shall not be treated as being any waiver of those rights by L&O, and failure by L&O to exercise any of their rights on any given occasion shall not prevent L&O from exercising those or any other rights on any future occasion.
- 12.6. Unless it is made or recorded in writing and in either case signed by a company director of L&O:
- 12.6.1. No agreement to vary these Standard Terms of Sub-Contract; and
- 12.6.2. No agreement to disapply or not to rely on any of the provisions of these Standard Terms of Sub-Contract, shall be of any effect whatsoever.
- 12.7. The Sub-Contract shall be governed by and construed in accordance with the laws of England. The parties agree, to the extent permitted under clause 11 of these Standard Terms of Sub-Contract, to submit to the exclusive jurisdiction of the English Courts.

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