



1. **Definitions:**
- In this sub-contract the following terms shall have the meaning given below:
 - 1.1 The contractor is **Phoenix EV and Electricals Ltd**
 - 1.2 The sub-contractor is the company, firm or individual identified in the contractor's order or letter of instruction.
 - 1.3 The sub-contract consists of these Sub-Contract Conditions, the contractor's order or letter of instruction together with all documents referred to therein. The various documents forming the sub-contract shall be deemed to be mutually explanatory one of another. Any ambiguity or lack of clarity within the subcontract shall be resolved in writing by the contractor. The subcontract shall not be varied except by the written agreement of the contractor. The sub-contract works are the works described by or reasonably to be implied from the sub-contract.
 - 1.4 The sub-contract price is the value of the sub-contract works as determined by this sub-contract.
 - 1.5 The main contract is the contract entered into between the contractor and its employer. The sub-contractor is deemed to have full knowledge of the provisions of the main contract applicable to the sub-contract works or the sub-contractor's obligations. The supervising officer/architect is the individual or firm so defined by the main contract.
 - 1.7 The main contract programme is the programme used, from time to time, by the contractor and its employer or the supervising officer/architect.
 - 1.8
2. **The sub-contractor's obligations:-**
 - 2.1 The sub-contractor shall design (where the contractor's order or letter of instruction requires design), execute, complete and maintain the sub-contract works in such a manner that no act or omission of the sub-contractor shall cause or contribute to any breach by the contractor of the main contract. The subcontractor shall indemnify the contractor against all and any liability that the contractor may incur by reason of any such act or omission of the sub-contractor or any breach of this subcontract or warranty by the sub-contractor.
 - 2.2. The sub-contractor shall comply with the main contract programme together with any other programme provided by the contractor from time to time and shall execute its works regularly, diligently and in accordance with the contractor's reasonable directions such that no delay or disruption is occasioned to the works or any part of the works. The subcontractor shall observe the same hours of working as the contractor unless otherwise agreed in writing with the contractor. The sub-contractor shall co- ordinate its works with the works of the contractor and its others sub-contractors to best facilitate the execution and completion of the works and shall comply with the directions of the contractor in respect thereof.
 - 2.3. The sub-contractor shall from the date of commencement of the sub-contract works determined by the contractor complete the sub-contract works within the period defined by the contractor's order or letter of instruction or such other period agreed by the contractor in writing or otherwise determined in accordance with this sub-contract.
 - 2.4. The sub-contractor warrants that any design undertaken by it or selection of materials made by it shall be undertaken or made such that it is suitable for its purpose and undertaken by a professional designer who is competent to execute such design or selection of materials.
 - 2.5. The sub-contractor undertakes to maintain its works in perfect condition and free from all defects or imperfections until advised by the contractor that it is no longer obliged under the main contract to make good defects. Within 7 days of receipt of a written notice from the contractor requiring such maintenance works the same shall be promptly executed and completed by the sub-contractor to the satisfaction of the contractor and the supervising officer/architect failing which the contractor may employ others to execute and complete such works and deduct the cost from monies owing to the subcontractor or recover such costs from the sub-contractor as a debt.
- 2.6. Should the sub-contract require any element of design or the selection of goods or materials the sub-contractor will when required by the contractor enter into collateral warranties with the employer or others in the form required by the employer or others. Failure of the sub-contractor to enter into any such collateral warranties shall suspend the sub-contractor's right to payment and no payment shall further become due until such collateral warranties are entered into.
3. **The contractor's obligations:-**
 - 3.1. The contractor shall allow to the sub-contractor non-exclusive entry to the site and the works to enable the sub-contractor to execute its works in accordance with the sub-contract.
 - 3.2 The contractor will provide on a non-exclusive basis the attendance detailed upon the "Schedule of Attendances" agreed in writing and upon the terms so agreed. Should the contractor be prevented by reasons beyond its control from providing any such attendance the same shall not constitute a breach of contract by the contractor.
 - 3.3 The contractor shall make payment to the sub-contractor at the time and in the manner detailed by this sub-contract.
4. **Instructions & Variations:-**
 - 4.1 The sub-contractor shall immediately comply with all instructions and directions of the contractor.
 - 4.2 Should any such instruction or direction necessitate an amendment to the nature or scope of the sub-contract works (a variation) the sub-contractor shall only comply if the contractor gives the instruction or direction in writing.
 - 4.3 If a written instruction of the contractor requiring a variation states that the work is to be valued upon a time and materials (day works) basis, the sub-contractor must provide to the contractor upon a daily basis records for the agreement of the contractor which fully detail the operations undertaken in accordance with the instruction and the resources used. Payment for works undertaken upon a day work basis shall only be made in accordance with such agreed records.
 - 4.4 All other varied works shall be measured and valued by the contractor in accordance with the following rules:
 - 4.4.1 If the varied works is analogous to work required by the subcontract then any sub-contract rate or price applicable to such sub-contract work shall be used to value the variation without adjustment
 - 4.4.2 If the varied works is similar to work required by the subcontract then any such similar sub-contract rate or price shall be used as the basis of the evaluation with an appropriate adjustment to take account of any differences between the work required and the similar sub-contract work
 - 4.4.3 In the event that no sub-contract rate or price can be used as the basis of the evaluation of the varied work, the varied work shall be valued at fair and reasonable market prices.
5. **Payment:-**
"Minor Works"- less than 45 days
 - 5.1 If the sub-contract order or letter of instruction provides that the work is to be completed within a period not exceeding 45 days or it is agreed between the parties in writing that the duration of the work is estimated to be less than 45 days, the sub-contractor is entitled to payment as follows:
 - 5.1.1 Not later than the evaluation date notified in writing by the contractor (or in the event of no such notification not later than 5 working days before the end of the calendar month during which the sub-contract works were completed) the sub-contractor shall provide to the contractor by post* an application for payment which fully details the works completed to the satisfaction of the contractor, free from defects, and its value in accordance with this sub-contract. The application for payment shall not determine the amount of payment due. (*submission by fax or e-mail is not acceptable)
 - 5.1.2 Payment of the value of the work executed and completed in accordance with this contract shall become due 35 days after the month in which the sub-contract works were completed. This is the payment due date.



- 5.1.3 not later than 14 days prior to the payment due date the contractor shall give to the sub-contractor in writing a payment notice the sum that the contractor considers to be or to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated.
- 5.1.4 Payment to the sub-contractor by the contractor shall be conditional upon receipt by the contractor not less than 5 calendar days prior to the final date for payment of a VAT invoice in accordance with the notice issued pursuant to clause 5.1.3 or in such other sum as is otherwise agreed by the contractor in writing. Failure by the sub-contractor to provide such a VAT invoice shall postpone the final date for payment until five calendar days after receipt of the said VAT invoice.
- 5.1.5 The contractor may give a notice of its intention to pay less than the notified amount providing that the notice is given not later than 2 calendar days before the final date for payment and the notice states the amount that the contractor considers to be due on the date of the notice and the basis on which the sum is calculated.
- "Major Works"** – exceeding 60 days
- 5.2. If the sub-contract order or letter of instruction does not provide that the work is to be completed within a period not exceeding 60 days the sub-contractor is entitled to stage payments as follows:
- 5.2.1 Not later than the valuation date notified in writing by the contractor (or in the event of no such notification not later than 5 working days before the end of the calendar month) the sub-contractor shall provide to the contractor by post* an application for payment which fully details the value of the works completed to the satisfaction of the contractor, free from defects in accordance with this sub-contract together with an estimate of the value of the works to be so completed by the end of that calendar month less the cumulative amount of the notices previously issued in accordance with clauses 5.2.3 or 5.2.6 hereof. The application for payment shall not determine the amount of payment due. (*submission by fax or e-mail is not acceptable)
- 5.2.2 Payment of the value of the work executed and completed in accordance with this contract during the month that contains the valuation date and which has not been included in any notice previously issued in accordance with clauses 5.2.3 or 5.2.6 hereof shall become due on the 45 days after the month following the month that contains the valuation date. This is the payment due date.
- 5.2.3 Not later than 14 days prior to the payment due date the contractor shall give to the sub-contractor in writing a payment notice specifying the sum that the contractor considers to be due on the payment due date in respect of the payment and the basis on which that sum is calculated.
- 5.2.4 Payment to the sub-contractor by the contractor shall be conditional upon receipt by the contractor not less than 5 calendar days prior to the final date for payment of a VAT invoice in accordance with the notice issued pursuant to clauses 5.2.3 or 5.2.5 or in such other sum as is otherwise agreed by the contractor in writing. Failure by the sub-contractor to provide such a VAT invoice shall postpone the due date for payment until five calendar days after receipt of the said VAT invoice.
- 5.2.5 The contractor may give a notice of its intention to pay less than the notified amount providing that the notice is given not later than 2 calendar days before the due date for payment and the notice states the amount that the contractor considers to be due on the date of the notice and the basis on which the sum is calculated.
- 5.3. Unless the order states that the terms are net all payments made in accordance with this contract shall be subject to the non refundable discount stated in the order or letter of instruction, or in the event of no discount being so stated a discount of 2.5%,
- 5.4. Unless the order states that retention does not apply all payments made in accordance with this sub-contract until 3 calendar months has expired after completion of the subcontract works (incl. snagging and the provision of all warranties or guarantees and the discharge of all other undertakings) shall be subject to the retention stated in the order or letter of instruction, or in the event of no retention being so stated retention of 6% shall apply. Once the said period of 6 months has expired, the amount of the

retention shall be reduced by one half. Once a further period of 12 calendar months has expired and subject to all patent defects having been remedied. no retention shall apply. The contractor shall not be obliged to hold any amount of retention in a separate bank account or in trust. The contractor shall not be obliged to issue a notice pursuant to clause 5.1.5 or 5.2.5 in respect of retention.

5.5 If upon the date that the contractor makes payment to the subcontractor the sub-contractor has not provided to the contractor proof of current Construction Industry Scheme certification then only such payment which is permissible by law shall be made, all other right to payment being suspended pending proof of certification.

5.6 The contractor shall not be obliged to issue a notice pursuant to clause 5.1.5 or 5.2.5 in respect of any such suspended payment nor to pay interest pursuant to clause 5.8. The contractor shall not be obliged to make any payment or further payment to the sub-contractor if payment to the contractor from the employer has not been made due to the insolvency of the employer or a third party or any other person, which directly or indirectly deprives the contractor of payment.

5.7 Subject to the giving of a notice as required by clause 5.1.5 or 5.2.5 the contractor shall be entitled to set-off from any payment otherwise due to the sub-contractor under this or any other contract any damages suffered by the contractor due to any breach of the sub-contract by the sub-contractor, any potential damages likely to be suffered by the contractor due to any breach of the sub-contract by the sub-contractor and any other sum expressly provided by or reasonably to be implied from any term of this sub-contract.

5.8 Should the contractor fail to make any payment to the subcontractor in accordance with this sub-contract the contractor shall pay to the sub-contractor simple interest on any unpaid balance (excluding VAT) at the rate of the general base lending rate of the Bank of England plus 3%, which the parties agree is a substantial remedy. Upon payment being made by the contractor to the subcontractor the property of all works executed or materials supplied shall pass to the contractor.

6. Indemnity and Insurance.

6.1 The sub-contractor shall provide to the contractor in respect of the sub-contract work the same indemnity as required of the contractor under the main contract and shall take out and maintain policies of insurance compatible with those required of the contractor under the main contract.

6.2 The sub-contractor shall not be entitled to commence its works until it has provided to the contractor evidence satisfactory to the contractor as to the policies of insurance which it has taken out together with a written undertaking that such policies shall be maintained until insurance under the main contract is no longer required of the contractor.

6.3 The sub-contractor shall when required by the contractor provide evidence satisfactory to the contractor that policies of insurance are being maintained. Failure to provide such evidence shall entitle the contractor to effect the necessary insurance at the expense of the sub-contractor which expense shall be deducted from any moneys due to the sub-contractor or recovered as a debt.

7. Complete and fully fixed price.

7.1 It is the obligation of the sub-contractor to fully investigate all aspects of and risks associated with the proposed work prior to the submission of its tender. Accordingly the sub-contractor's offer shall be deemed to be fully inclusive of all risks and obligations. No additional payment shall be made to the subcontractor except as expressly provided by this sub-contract.

7.2 Unless stated to the contrary in the order or letter of instruction the sub-contractor's tender sum, rates or prices shall not be subject to any increase as a consequence of inflation.

8. Sub-contract price.

8.1 Unless stated to the contrary in the order or letter of instruction the works of the sub-contractor shall be the subject of re-measurement and valuation in accordance with the sub-contract rates and prices and clause 4 hereof.



9. Health and Safety.

- 9.1 The contractor operates a strict health and safety policy. The sub-contractor shall be deemed to have full knowledge of such policy and the sub-contractor shall make all its operatives and staff fully familiar with it and ensure their compliance with it and the CDM Regulations at all times.
- 9.2 A site specific written method statement and risk assessment and COSHH assessment must be provided to the contractor not less than 10 working days prior to the commencement of any operation on site. Generic documentation is not acceptable.
- 9.3 Safety headgear, footwear and all other necessary and appropriate personal protection equipment must be worn at all times.
- 9.4 All rubbish and waste must be cleared to a skip or other designated point as work proceeds such that it does not present a hazard.
- 9.5 Any operative or member of staff employed by the subcontractor that the contractor has reasonable reason to believe is endangering themselves or others by their action, inaction or as a consequence of the influence of alcohol or drugs will be immediately removed from the site. Smoking on site is prohibited.

10. Delay and extension of time.

- 10.1. If the sub-contractor is likely to be delayed in the execution and completion of the sub-contract works
- by any circumstance or occurrence other than a breach of the sub-contract by the sub-contractor entitling the contractor to an extension of time to the completion of the main contract works or
 - the execution of any varied and/or additional sub-contract work or
 - any breach of this sub-contract by the contractor then strictly subject
 - to the sub-contractor giving written notice in respect thereof within 7 days of when the delay did or should first have become apparent and
 - the sub-contractor constantly using its best endeavours to proceed with the works such as to prevent or minimise any delay and
 - the sub-contractor providing full and detailed particulars of the delay or potential delay to the contractor within 14 days of when the delay did or should first have become apparent
- that the contractor shall allow to the sub-contractor a fair and reasonable extension to the period for the execution and completion of the sub-contract works.
- 10.2 In respect of the delay notified by the sub-contractor the contractor shall not be obliged to allow any extension of time to the sub-contractor in excess of that allowed to the contractor under the main contract.

11. Assignment and further sub-contracting.

- 11.1 The sub-contractor shall not assign the whole or any part of this sub-contract without the prior written consent of the contractor.
- 11.2 The sub-contractor shall not sub-let or sub-contract any of its obligations or liabilities or work to be performed under this subcontract without the prior written consent of the contractor, which shall not be unreasonably withheld.

12. Determination of the main contract.

- 12.1 If the main contract is determined for any reason whatsoever before the sub-contractor has fully performed its obligations under this sub-contract then the contractor may at any time thereafter by written notice to the sub-contractor forthwith determine the sub-contractor's employment under the subcontract. The sub-contractor shall immediately remove from site his men, plant and equipment. The sub-contractor shall not remove any work or materials for which it has received payment.
- 12.2 Upon such determination, and subject to clause 5 hereof the subcontractor shall be entitled to receive payment for all work completed at the date of determination and for all materials left on site upon the written instruction of the contractor. However if the main contract is determined by the employer in consequence

of any breach of this sub-contract by the subcontractor then no further payment shall be made by the contractor to the sub-contractor but the rights of the contractor and the sub-contractor shall be the same as if the sub-contractor had by such breach repudiated this sub-contract and the contractor had by his notice of determination under this clause elected to accept such repudiation.

13. Default by the sub-contractor.

- 13.1 If the sub-contractor fails to proceed with the sub-contract works with due diligence or fails to execute the sub-contract works or fails to perform any of its obligations under this subcontract or refuses or neglects to remove defective materials or refuses or neglects to make good defective work or commits any act of bankruptcy or enters into a deed of arrangement with its creditors or being a company goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction) or has a receiver appointed of all or part of its undertaking then in any such event and without prejudice to any other rights or remedies the contractor may by written notice to the sub-contractor forthwith determine the sub-contractor's employment under this sub contract.
- 13.2 Upon such determination of the sub-contractor's employment the contractor may take possession of all materials construction plant and other things whatsoever brought on to the site by the sub-contractor and may use them for the purpose of executing, completing and maintaining the sub-contract works and may sell all or any of them and apply the proceeds to the satisfaction of any money otherwise due from the sub-contractor to the contractor.
- 13.3 Upon such determination the rights and liabilities of the contractor and the sub-contractor shall, subject to this clause, be the same as if the sub-contractor had repudiated this sub contract and the contractor had by his notice of determination under this clause elected to accept such repudiation.
- 13.4 Instead of determining the employment of the sub-contractor the contractor may take part only of the sub-contract works out of the hands of the sub-contractor and may complete and/or maintain such part. In such event the contractor may recover from the sub-contractor the costs incurred together with an addition of 15% in respect of overheads as a debt or make a deduction from any money otherwise due to the sub-contractor.

14. Resolution of disputes and law.

- 14.1 Any disagreement between the contractor and the sub-contractor shall be resolved between the parties by discussion and negotiation. Both parties shall use their best endeavours to resolve any such disagreement promptly and amicably.
- 14.2 Any dispute between the parties shall be referred to adjudication in accordance with Part 1 of Statutory Instrument 1998 No 649 The Scheme for Construction Contracts (England and Wales) Regulations 1998 or any amendment thereof current at the time. If the dispute touches or concerns a dispute under the main contract the sub-contractor shall upon the written request of the contractor consent to the dispute of the sub-contractor being referred to the Adjudicator appointed, or to be appointed, under the main contract.
- 14.3 As a contractual provision the Adjudicator has power and shall include in the decision the allocation and award as between the parties of costs relating to and arising out of the adjudication. The Adjudicator shall allocate liability for his/her fees and expenses as between the parties as he/she sees fit. The Adjudicator shall allocate and award party costs as the liability of the party that referred the dispute to adjudication.
- 14.4 This sub-contract shall be considered to be an English contract and subject to the laws of England.
- 14.5 Any dispute which has been referred to adjudication and in respect of which the parties have complied with the decision of the Adjudicator but which a party or the parties are unable to fully and finally resolve by agreement shall be referred to the English Courts.

15. Right of third parties.

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

16. Entire contract.

This sub-contract is an entire contract. Any agreements or representations or conditions made prior to the entering into this contract shall be of no effect unless expressed in writing in this sub-contract.

Version 1 dated 20/7/2023