

LABOUR ONLY CONDITIONS OF SUB-CONTRACT

1. Definitions and Agreement

1.1 In these Conditions of Business the following expressions shall, where the context admits, have the following meanings:-

“MPB” means MPB Structures Limited (company number 02002335) being a company incorporated in England and Wales and whose registered office is at 14 Crucible Road, Corby, Northants, NN17 5TS.

“MPB Equipment” means any item of plant, equipment, materials or any other resource (whether or not owned or hired by MPB) which is made available to the Sub-Contractor for use in connection with the Sub-Contract Works.

“Sub-Contract Sum” means the sum to be paid in respect of the Sub-Contract Works as set out on the Sub-Contract Order and as may be subject to adjustment as provided in the Sub-Contract.

“Force Majeure Event” means an event beyond the reasonable control of MPB including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of MPB or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, or default of MPB’s other suppliers or other Sub-Contractors.

“Insolvent” means that a person is Insolvent if he enters into an arrangement, compromise or composition in satisfaction of his debts; or he passes a resolution or makes a determination that he would be wound up; or he has a winding up order or bankruptcy order made against him; or he has appointed to him an administrator or administrative receiver or he is the subject of any analogous arrangement, event or proceedings;

“Operatives” means the person or persons who may be supplied by the Sub-Contractor to MPB to perform the Sub-Contract Works.

“Rate” means the hourly rate or daily or other rate to be paid in respect of the Sub-Contract Works as set out in the Sub-Contract Order and as may be subject to adjustment by MPB as provided in the Sub-Contract.

“Site” means the property at which the Sub-Contract Works are to be carried out as identified in the Sub-Contract Order.

“Statutory Requirements” means any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Sub-Contract Works or performance of any obligations under the Sub-Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with

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regard to the Sub-Contract Works or with whose systems they are, or are to be connected.

- “Sub-Contract” means the Sub-Contract Order and any specification or documents referred to therein and includes these conditions.
- “Sub-Contract Order” means the MPB purchase order for the Sub-Contract Works which sets out, inter alia, the Sub-Contract Works and the Contract Sum.
- “Sub-Contractor” means the person, company or the legal entity named as the Sub-Contractor in the Sub-Contract Order.
- “Sub-Contract Works” means the Sub-Contract Works described or referred to in the Sub-Contract Order.
- “Variations” means any variation to the Sub-Contract Works as provided in clause 3.

1.2 In this Sub-Contract:

- 1.2.1 a person includes a natural person, partnership, limited liability partnership, corporate or unincorporated body (whether or not having separate legal personality), statutory or governmental body;
- 1.2.2 a reference to a party includes its successors or permitted assigns and words expressed in the singular shall include the plural and vice versa;
- 1.2.3 a reference to specific standards, codes of practice, or other instruments shall be construed as including all amendments, supplements, and substitutes thereto and any changes relating thereto;
- 1.2.4 references to specific statutory or regulatory provisions shall be construed as including any statutory or regulatory provision which subsequently amends, extends, re-enacts, consolidates or replaces the same or which has been amended, extended, re-enacted, consolidated or replaced by the same and shall include any and all subordinate instruments, orders, rules, regulations any bylaws made thereunder and any guidelines, specific standards or codes of practice issued in respect thereof.

2. Provision of the Sub-Contract Works

- 2.1 The Sub-Contractor shall carry out and complete the Sub-Contract Works in accordance with the Sub-Contract and MPB’s instructions as may be issued to the Sub-Contractor. The Sub-Contractor shall commence the Sub-Contract Works on Site in accordance with the Sub-Contract or MPB’s instructions. The Sub-Contractor shall carry out the Sub-Contract Works in a good and workmanlike manner and with due and proper diligence and shall ensure that any Operatives are competent to carry out the Sub-Contract Works in accordance with the Sub-Contract and any instructions issued by MPB. The Sub-Contractor shall carry out the Sub-Contract Works in compliance with all Statutory Requirements.
- 2.2 The Sub-Contractor shall be responsible in all respects for the Sub-Contract Works and warrants to MPB that;
 - 2.2.1 the Sub-Contract Works shall comply with all the terms of the Contract; and/or
 - 2.2.2 the Sub-Contract Works shall be carried out in a good and workmanlike manner; and/or

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- 2.2.3 where British or European Standard Specifications are referred to or are relevant the Sub-Contract Works shall comply in all respects with those British or European Standards; and/or
 - 2.2.4 the Sub-Contract Works shall comply with the Statutory Requirements, codes of practice and/or MPB's guidance relating to any Health & Safety issues; and/or
 - 2.2.5 all areas where Sub-Contract Works are to be carried out are in suitable condition for the Sub-Contract Works to be undertaken
- 2.3 The Sub-Contractor shall be responsible for the routine daily maintenance, servicing, security and supervision in use of any MPB Equipment and any costs or associated with the cost of repair or replacement of any of MPB Equipment incurred by MPB as a result of any damage caused by the Sub-Contractor (fair wear and tear excepted) shall be paid by the Sub-Contractor to MPB or may at MPB's discretion be deducted from any sums due to the Sub-Contractor.
- 2.4 The Sub-Contract Works shall be carried out and completed with due and proper diligence and/or within the time period or time periods specified in the Sub-Contract and/or within such time period or time periods as may be instructed by MPB from time to time and/or reasonably in accordance with the progress of other works being carried out by MPB at the Site and in the event of a breach of these obligations by the Sub-Contractor and/or in the event that MPB (in its absolute discretion) considers a breach of these obligations is likely MPB may (without prejudice to any other rights and remedies);
- 2.4.1 refuse to accept or pay for the Sub-Contract Works or any part or parts of the Sub-Contract Works.
 - 2.4.2 procure and/or employ others to carry out the Sub-Contract Works or any part of the Sub-Contract Works (at the same time as the Sub-Contractor)
 - 2.4.3 carry out remedial Sub-Contract Works and/or
 - 2.4.4 or instruct the Sub-Contractor to accelerate (at no additional cost to MPB) the progress of the Sub-Contract Works.
- In the event that MPB has to procure others to carry out the Sub-Contract Works (or any part of the Sub-Contract Works) or progress of the Sub-Contract Works has to be accelerated (without prejudice to MPB's other rights and remedies) any costs or expenses of any nature incurred MPB or likely to be incurred by MPB shall be paid by the Sub-Contractor.
- MPB may at its discretion extend the time period or time periods for carrying out the Sub-Contract Works in the event of any breach of the Contract or other default by MPB or any other party for whom MPB is responsible or any instruction issued by MPB postponing or affecting the carrying out of the Sub-Contract Works.
- 2.5 The Sub-Contractor shall remain responsible in all respects for the Sub-Contract Works and any Operatives throughout the Sub-Contract Works including (without limitation) the Sub-Contractor shall be responsible for and shall ensure that any Operatives;
- 2.5.1 provide to MPB or its site representative prior to commencement of the Sub-Contract Works all the relevant qualifications, certification and authorisations relevant to the Sub-Contract Works including but not limited to the use of power tools or operated plant; and/or
 - 2.5.2 are entitled to work in the United Kingdom without any additional approvals; and/or

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- 2.5.3 undertake an induction prior to commencing the Sub-Contract Works on site and that they are aware of all the health and safety policy, statements and rules relating to the Sub-Contract Works and/or the site; and/or
- 2.5.4 are provided with and wear any reasonably necessary personal protective equipment (PPE) required to provide the Sub-Contract Works which PPE shall be clean and in good condition and in the absence of such PPE MPB reserves the right to provide the same to the Operatives on loan or outright at its discretion. If MPB provides such personal protective equipment the Sub-Contractor shall pay a reasonable sum to MPB in respect of the hire or purchase of the same and such sum may be set off by MPB against any sums due to the Sub-Contractor; and/or
- 2.5.5 are suitably skilled and experienced and present themselves in an acceptable manner; and/or
- 2.5.6 are suitably managed, supervised, co-ordinated with other contractors, skilled and experienced and behave in an acceptable manner and execute the Sub-Contract Works with due respect to the location of the Sub-Contract Works; and/or
- 2.5.7 record their time spent on the Sub-Contract Works accurately and diligently and promptly obtain the signature of a MPB representative to any time sheets or other time records; and/or
- 2.5.8 at all times comply with any Statutory Requirements including (without limitation) requirements as to certification and/or qualifications to perform the Sub-Contract Works and/or certification and/or qualifications as to safety, health and the environment and that no Operatives will drive or use any equipment on site without the prior written approval of MPB; and/or
- 2.5.9 immediately advise MPB of any accident or incident resulting in injury to person or damage to property or equipment (including MPB Equipment) and shall inform MPB immediately in accordance with MPB health and safety policies on becoming aware of any such accident or incident and if appropriate a reference must be made in MPB's accident book; and/or
- 2.5.10 work outside of the hours specified in the Sub-Contract Order (subject to applicable laws relating to working time) when instructed to do so by MPB. If any Operatives are unable to work outside of the hours specified in the Sub-Contract Order the Sub-Contractor shall use reasonable endeavours to provide substitute Operatives who are able to do so to fulfil MPB's instructions; and/or
- 2.5.11 arrive at the Site in sufficient time for Sub-Contract Works to commence at the times prescribed in the Sub-Contract Order or as instructed by MPB; and/or
- 2.5.12 keep the Sub-Contract Works clean and tidy and remove rubbish on a day to day basis or as instructed by MPB; and/or
- 2.5.13 behave in a way acceptable to MPB and not bring onto the Site any illegal drugs or alcohol or appear at any time to MPB to be under the influence of the same
- 2.5.14 do not accept delivery of or sign on behalf of MPB or for any other contractor on Site for any delivery of plant, equipment, vehicles or materials.

MPB may in its absolute discretion (without prejudice to MPB's other rights and remedies) immediately and without notice exclude or remove any Operatives from the Site in respect of any breach or in MPB opinion likely breach of any of the foregoing provisions or any other terms of the Sub-Contract and/or MPB may (without prejudice to MPB's other rights and remedies)

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exercise the right not to pay the Sub-Contractor in respect of the time spent on Site by any such Operatives.

2.6 Any specifications, information, drawings and/or dimensions provided by MPB are approximate only and MPB shall have no liability or responsibility of any nature for any inaccuracies or errors in any such information.

2.7 Without prejudice to MPB's other rights and remedies and without limitation to the Sub-Contractor's obligations the Sub-Contractor shall be liable to forthwith make good all defects arising in the Sub-Contract Works at no cost to MPB and with the minimum inconvenience to MPB and any other persons or contractors (including without limitation the Main Contractor) within 7 days of a notice to do so from MPB. Any defects in the Sub-Contract Works shall be made good at such times as MPB in its absolute discretion shall instruct (including outside usual business hours and/or at weekends if required).

3. Variations

3.1 MPB may, at its discretion, instruct any Variations (including omissions) to the Sub-Contract Works including a change in quantity, specification or the conditions for carrying out the Sub-Contract Works. All such variations shall be instructed in writing by MPB.

3.2 Notwithstanding any other provision of the Sub-Contract MPB may at its absolute discretion instruct the Sub-Contractor to postpone or delay the time period or time periods (including the intended sequence of the Sub-Contract Works) when the Sub-Contract Works are to be carried out by the Sub-Contractor. The Sub-Contractor shall comply with any such postponement or delay instructions issued by MPB entirely at its own cost and MPB shall have no liability of any nature or any costs or expenses of any nature incurred by the Sub-Contractor arising from or relating in any way to MPB's instructions to postpone or delay the carrying out of the Sub-Contract Works.

3.3 The Sub-Contractor agrees that any Variation in accordance with this clause 3 may be notified by MPB either to the Sub-Contractor or directly to the Operatives in MPB's discretion.

4. Payment

4.1 The Contract Sum shall be as set out in the Sub-Contract Order subject to adjustments as provided in these Conditions.

4.2 The obligations of MPB to make any payment to the Sub-Contractor are subject to the provisions of the Construction Industry Scheme under the Finance Act 2004 or any statutory amendment or modification thereof.

4.3 Notwithstanding any other provision of the Sub-Contract Order the following provisions shall be conditions precedent to any payment falling due to the Sub-Contractor of any nature;

4.3.1 that the Sub-Contractor shall have returned to MPB duly executed the Sub-Contract Order; and/or

4.3.2 that there shall have been proper presentation to MPB by the Sub-Contractor of time sheets and agreement and signature of all time sheets by MPB. Timesheets shall be in such format and including such information as MPB shall in its discretion require and presented for signature by MPB at weekly intervals during the course of the Sub-Contract Works or on such date and at such times as MPB shall require; and/or

4.3.3 that the Sub-Contractor shall submit all applications for payment no later than 1 month after Practical Completion.

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The Sub-Contractor acknowledges that if the Sub-Contractor shall fail to comply with any of these conditions precedent no payment shall fall due to the Sub-Contractor of any nature and that these are agreed to be reasonable provisions in the circumstances.

- 4.4 Subject to clause 4.3 the Sub-Contractor shall submit applications for payment (with all supporting documents MPB may require) to MPB on the valuation dates notified by MPB. The Sub-Contractor shall issue monthly applications to MPB (or applications at the intervals provided in the Sub-Contract Order (if any)) together with locations/dimensions of any measured works carried out and time sheets for all resources used on site both of which shall be signed for on behalf of MPB the applications shall also state the full site address and MPB site specific order number and all applications shall be submitted by post to MPB Structures, 14 Crucible Road, Corby, Northants, NN17 5TS. Any claim for payment in respect of overtime and "stand-down" shifts shall be authorised and signed for in advance in writing by a MPB Senior Contracts Manager and may not be authorised or signed for at Site Manager level. The application shall include such information as MPB may require and be in sufficient detail to enable MPB to validate the accuracy of the value and that the valuation has been calculated in accordance with the Sub-Contract and an invoice if requested by MPB.

The Sub-Contractor's applications for payment shall be on account of the Contract Sum and the amount due to the Sub-Contractor in respect of each application shall be assessed by MPB taking into account the Rate each month. Payment of the amount assessed by MPB shall become due 28 days after the application date. The final date for payment of the amount assessed by MPB shall be the payment period specified in the Sub-Contract Order or if no period is specified 90 days after the date when the payment becomes due. The Contract Sum is exclusive of VAT which shall (where applicable) be paid in addition to the Contract Sum.

In the event that the Sub-Contract Order states that the Works are to be re-measured MPB shall remeasure the works and may adjust the Rate applicable to areas of the Works on the basis of reasonable and fair rates if in the circumstances such adjustment is reasonable. Any Variations instructed by MPB shall be valued on a fair and reasonable basis by MPB taking into account the Rate.

The Rate shall be deemed to include all the costs of the Sub-Contractor including all costs for the provision of the Operatives by the Sub-Contractor including (without limitation) Employer's National Insurance Contribution, Employer's Liability Insurance, CITB Levy, travel, subsistence, overheads and profit, holiday pay, sickness pay, redundancy pay and any other sums that may fall due from the Sub-Contractor to the Operative.

- 4.5 Payment shall be made to the Bank account nominated in writing by the Sub-Contractor or by cheque at MPB's discretion.
- 4.6 MPB shall be entitled at any time or times to set off, abate, deduct or otherwise withhold from monies due to the Sub-Contractor under the Sub-Contract any sums which, in the opinion of MPB, are likely to become due to MPB under any provisions of the Sub-Contract and/or are likely to become due or payable by MPB as a result of:

- 4.6.1 any breach of the Sub-Contract; or
- 4.6.2 any breach of any other contract entered into between MPB and the Sub-Contractor (whether or not related to the subject matter of the Sub-Contract);

provided that MPB provides prior written notice to the Sub-Contractor of the sums to be set off, abated, deducted or otherwise withheld and the ground or grounds upon which MPB is entitled to set off, abate, deduct or otherwise withhold such sums not later than one day before the final date for payment of any monies which have become due to the Sub-Contractor.

- 4.7 Notwithstanding any other provision of the Sub-Contract if any third party for whom MPB is carrying out works of which the Sub-Contract Works form part becomes Insolvent MPB shall not

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be obliged to make any further payment to the Sub-Contractor of any amount which is due or may become due to the Sub-Contractor unless MPB has received payment in respect thereof from the said third party and then only to the extent of such receipt.

- 4.8 In the event of any breach of the Sub-Contract by MPB and/or negligence and/or any breach of tortious or other duty (including without limitation) breach of statutory duty by MPB or other claim against MPB of whatever nature (with the exception of liability for death or personal injury arising from MPB's negligence or fraudulent misrepresentation) MPB shall have no liability of whatever nature to the Sub-Contractor in respect of any claims for (without limitation) loss of profit or anticipated savings, loss of contracts, loss of future business or revenue, damage to reputation or depletion of goodwill, damages or losses relating to the cost of delay or loss of use, damages, costs or expenses payable to any third party (including any ex gratia payment), any additional costs of funding or borrowing or interest or similar costs or any special indirect consequential or pure economic loss, costs, damages, charges or expenses.

5. Health and Safety

- 5.1 The Sub-Contractor shall comply and shall ensure that any Operatives comply in all respects with MPB's policies on health and safety, and Drug and Alcohol Abuse. Details of these two policies are available from MPB regional offices upon request.
- 5.2 The Sub-Contractor warrants that the Sub-Contract Works will be carried out in compliance with the Statutory Requirements including those relating to health and safety. The Sub-Contractor shall take all reasonable precautions and safety measures necessary to protect his Operatives and MPB's employees and any other persons who are at any time directly or indirectly affected by the Sub-Contract Works.
- 5.3 The Sub-Contractor shall also observe and shall ensure that any Operatives comply in all respects with any appropriate guide or codes or recommendations issued or made by any government, professional or trade organisation or any other responsible organisation relating to health and safety. The Sub-Contractor shall comply and shall ensure that any Operatives comply in all respects with any MPB policies, directions or instructions relating to health and safety.

6. Indemnity and Insurance

- 6.1 The Sub-Contractor shall be liable for and shall indemnify MPB against any expenses, liabilities, losses (including without limitation any consequential losses including loss of profit, and/or loss of reputation), claims, demands, damages, tax or duty, proceedings and/or costs (including without limitation legal and/or professional fees) of any nature whatsoever that MPB incurs or becomes liable for either directly or indirectly in the event of any breach on the part of the Sub-Contractor, its servants, or agents (including without limitation any Operatives) of any of the terms of the Sub-Contract and/or any negligence and/or any breach of any statutory or tortious or other duty on the part of the Sub-Contractor, its servants, or agents (including without limitation any Operatives).
- 6.2 The Sub-Contractor shall also be liable for and shall indemnify MPB against any expenses, liabilities, losses (including without limitation any consequential losses including loss of profit, and/or loss of reputation), claims, demands, damages, tax or duty, proceedings and/or costs (including without limitation legal and/or professional fees) of any nature whatsoever that MPB incurs or becomes liable for either directly or indirectly in the event of;
- 6.2.1 any employment related claim based on worker status brought by the Sub-Contractor or any Operatives against MPB arising out of or in any way connected with the Sub-Contract and/or the provision of the Sub-Contract Works; and/or
- 6.2.2 any claim related to tax or duty, or deduction or statutory deduction under the Construction Industry Scheme which ought to have been made or paid is brought against

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MPB by H M Revenue and Customs arising out of or in any way connected with the Sub-Contract and/or the provision of the Sub-Contract Works.

6.3 Without prejudice to its obligations to indemnify MPB under the Sub-Contract, the Sub-Contractor shall take out and maintain, for the duration of any potential liabilities arising from or in connection with the Sub-Contract Works, insurance policies for the cover and amounts as required by the Sub-Contract Order or if not stated therein for Employer's Liability Insurance (minimum £10,000,000 for each occurrence) and Public liability Insurance (minimum £5,000,000 for each occurrence) and any other insurances MPB may specify in writing. The Sub-Contractor shall produce documentary evidence at MPB's request showing that the insurance as required under this clause and been taken out and being maintained.

7. Determination

7.1 MPB may determine the Sub-Contractor's engagement under the Contract with immediate effect by giving written notice to the Sub-Contractor if:

7.1.1 the Sub-Contractor commits any breach of the Sub-Contract;

7.1.2 the Sub-Contractor becomes or appears likely to MPB to become Insolvent

7.1.3 MPB exercises its absolute discretion to do so

7.2 If the engagement of the Sub-Contractor is determined under clause 7.1.1 or 7.1.2 no further payment shall become due to the Sub-Contractor and MPB shall have no liability or obligation of whatever nature to make any further payments to the Sub-Contractor.

7.3 If the engagement of the Sub-Contractor is determined under clause 7.1.3, MPB shall pay to the Sub-Contractor a fair and reasonable sum in respect of the Contract Sum determined by MPB. The sum payable shall be notified by MPB to the Sub-Contractor within 28 days of the date of determination and shall become due 14 days after the valuation date. The final date for payment of the amount due shall be 90 days after the date when the payment becomes due.

7.4 In the event that the engagement of the Sub-Contractor is determined under clause 7.1.1, 7.1.2 or 7.1.3 the Sub-Contractor shall return all of the all goods, materials, equipment, documents and any other property of MPB. If the Sub-Contractor fails to do so, then MPB may enter the Sub-Contractor's premises and take possession any such goods, materials, equipment, documents and any other property of MPB.

7.5 The provisions of this clause are without prejudice to any other rights or remedies which MPB may possess.

8. Miscellaneous Matters

8.1 All notices required to be given by either party under the Sub-Contract shall be in writing and delivered by facsimile or recorded delivery at the address set out in the Sub-Contract Order or the parties Registered Office or principal place of business. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 10.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

8.2 MPB shall not be liable to the Sub-Contractor as a result of any delay or failure to perform its obligations under this Sub-Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents MPB from carrying out the Sub-Contract Works for more than one month, MPB shall, without prejudice to any other rights or remedies which MPB may possess have the right to

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determinate its engagement under this Sub-Contract immediately by giving written notice to the Sub-Contractor in which event the provisions of clause 7.2 shall apply.

- 8.3 Either party may refer any dispute arising out of or in connection with the Sub-Contract to adjudication in accordance with the provisions of The Technology and Construction Solicitors Association (TeCSA) Adjudication Rules (Version 2).
- 8.4 MPB may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Sub-Contract and may subcontract or delegate in any manner any or all of its rights or obligations under the Sub-Contract to any third party or agent. The Sub-Contractor shall not, without the prior written consent of MPB, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Sub-Contract.
- 8.5 No failure or delay by MPB in exercising any right or remedy under the Sub-Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy by MPB shall preclude or restrict the further exercise of that or any other right or remedy. Any amendment of the Sub-Contract shall only be binding when agreed in writing and signed by MPB.
- 8.6 The Sub-Contract constitutes the entire agreement between the parties and the Sub-Contractor acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of MPB which is not set out in writing in the Sub-Contract.
- 8.7 If a court or any other competent authority finds that any provision of the Sub-Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Sub-Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Sub-Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 8.8 The Sub-Contract shall not and shall not purport to confer on any third party any right to enforce any term of the Sub-Contract for the purposes of the Contracts (Rights of Third Parties) Act 1999
- 8.9 The Sub-Contract shall be governed by and construed in accordance with English Law. The English Courts shall have exclusive jurisdiction over any dispute or difference between the parties which arises out of or in connection with the Sub-Contract.

Signed by for and on behalf of
MPB Structures Ltd

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Signed by the Subcontractor:

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