

1. DEFINED TERMS

1.1 In these terms and conditions the following words and expressions shall have the following meanings:

“BMSI”	means Building Management Solutions Integrators Ltd trading as BMSI (company number 03584156) whose registered office is at Foundation House, Fairacres Industrial Estate, Dedworth Road, Windsor, Berkshire, SL4 4LE;
“Buyer”	means BMSI;
“Purchaser”	means BMSI;
“Supplier”	means any commercial service provider selected and approved by BMSI to carry out the Works and shall include relevant Sub-Contractors;
“Order”	means any Purchase Order or Sub-Contract Issued to the Supplier for the works in accordance with Clause 2;
“Works”	means the works to be undertaken by the Supplier;
“Normal Working Hours”	means between the hours of 08:00 and 18:00 Monday - Friday and 08:00 – 13:00 on Saturdays;
“Contract Sum”	means the value of the Order for which the works are to be carried out for
“Standard Conditions”	means these terms and conditions;
“Variation”	means alteration, addition or omission to the works as further described in clause 4;
“Retention”	means the deductible value to be retained on payments made by Purchaser as further described in Clause 6;
“VAT”	means Value Added Tax.
“Main Contract”	means the head end contract, documentation and terms and conditions which may be incorporated into the Order by reference.

2. THE ORDER

- 2.1 The Order is subject to these Standard Conditions.
- 2.2 In the event of any conflict between these Standard Conditions and the Main Contract conditions, where the Order references a Main Contract, the Main Contract conditions shall prevail.
- 2.3 The Order will state the Works to be undertaken by the Supplier, the site, the Contract Sum and will reference any applicable documentation.
- 2.4 All Orders are placed on a fixed price lump sum basis unless otherwise specified.

3. SUPPLIER OBLIGATIONS

- 3.1 The Supplier will exercise all reasonable skill and care in carrying out and completing the works.
- 3.2 The Supplier will at all times maintain appropriate levels of insurances to cover the liability of the Purchaser in respect of personal injury or death and/or damage to property real or personal arising out of the or in the course of or by reason of carrying out the Works and caused by negligence omission or default of the Supplier its servants or agents.
 - 3.2.1 All insurances required to be maintained by the Supplier under any provision of the Order shall extend to indemnify the Purchaser.
 - 3.2.2 The Supplier shall on demand of the Purchaser produce evidence as required by the Purchaser to prove that any and all such insurances are in force.
 - 3.2.3 Should the Supplier be in breach of its obligations as defined in items 3.2, 3.2.1 and 3.2.2 then the Purchaser shall have the right, but not the obligation, to arrange insurance(s) itself and deduct the premiums of said insurance(s) from amounts due to the Supplier under or in relation to this this Order or any other Order placed by the Purchaser with the Supplier.
- 3.3 The Supplier shall observe and comply in all respects with all current Health and Safety legislation and shall further comply with the Purchasers rules and regulations.
 - 3.3.1 The Supplier shall be deemed to have knowledge of and allowed any and all associated costs and/or attendances in complying with all laws, rules and regulations that shall need to be complied with in carrying out the Works.
- 3.4 The Supplier is deemed to have made allowance for any and all attendances and co-ordination with other trades as required to complete the Works as detailed in the Order and any referenced documentation.
- 3.5 The Supplier shall protect their Works as necessary to prevent damage by any cause whatsoever.
- 3.6 Upon receipt of the Order the Supplier shall commence the Works in accordance with agreed lead times and/or programme of Works as detailed within the Order.
 - 3.6.1 Where the Supplier fails to meet agreed delivery dates the Purchaser reserves the right to pass on any and all costs, under this Order or any Order existing between the Purchaser and the Supplier, borne out of the Suppliers failure.
 - 3.6.2 Should the Supplier at any time believe their onsite Works to be in delay, for any reason whatsoever, they must, as soon as they become aware of any such delay, notify the Purchaser in writing of the delay ‘delay letter’ and the reasons causing the delay.
 - 3.6.2.1 No later than 7 working days following the issue of a delay letter the Supplier must:
 - (i) Where the delay has, in the opinion of the Supplier, been caused by the Supplier; and where the programme is recoverable, present in detail how they propose to mitigate the delay; or where the delay is not recoverable and the Supplier believes the completion date cannot be achieved will write to the Purchaser requesting an extension of time in which they will advise the date they now expect to complete the Works and provide details of how this will be achieved;
 - (ii) Where the delay has, in the opinion of the Supplier, been caused by others and where the programme is recoverable, present in detail and with an associated cost breakdown, how they propose to mitigate the delay; or where the delay is not recoverable and the Supplier believes the Completion date cannot be achieved write to the Purchaser requesting an extension of time in which they advise the date they now expect to complete the Works and provide details and associated cost breakdown of how this will be achieved;
 - 3.6.2.2 The Purchaser having received an extension of time request will:
 - (i) Where the delay has been caused by the Supplier and an extension of time has been granted via the Main Contract the Purchaser will write to the Supplier informing them as such. Any and all additional cost incurred by the Supplier will be borne by the Supplier. Furthermore any and all costs levied on the Purchaser via the Main Contract and any and all costs incurred by the Purchaser, as a result of delay, will be passed on to the Supplier and deducted from this Order or any other Order that exists between the Purchaser and Supplier;
 - (ii) Where the delay has been caused by the Supplier and an extension of time has not been granted via the Main Contract the Purchaser will write to the Supplier informing them as such. The Supplier must, at their own cost, take all appropriate measures and accelerate their work to mitigate the delay. Furthermore any and all costs levied on the Purchaser via the Main Contract, and any and all costs incurred by the Purchaser, as a result of the acceleration will be passed onto the Supplier and deducted from this Order or any other Order that exists between the Purchaser and Supplier. Where the Supplier is not able to accelerate their Works and/or increase labour levels and/or shifts the Purchaser reserves the right to terminate the Suppliers Order and appoint others to complete the Works on the Suppliers behalf with any and all

associated costs be passed onto the to the Supplier and deducted from this Order or any other Order between the Purchaser and the Supplier;

- (iii) Where the delay is established as having been caused by others and an extension of time is granted via the Main Contract the Purchaser will write to the Supplier informing of them as such. The Supplier will be entitled to a Variation to recover, demonstrable, costs incurred as a direct result of the extension;
- (iv) Where the delay, in the opinion of the Supplier has been caused by others, but no extension of time has been granted via the Main Contract the Supplier will proceed as instructed by the Purchaser.

- 3.7 The Supplier shall provide all notices and other particulars in respect of the Works within the same time allowed for in the Main Contract (instructions/quotations etc) so as to allow the Purchaser to provide the same except as otherwise stated in the Order.
- 3.8 Time is of the essence with respect to all obligations and deliveries under this Order.

4. VARIATIONS

- 4.1 Where the Supplier believes they are entitled to a Variation they must inform the Purchaser as soon as they become aware of any such change requesting an instruction.
- 4.2 The Supplier, in requesting an instruction, must provide details of the Variation and why they believe it is a change to the Works.
- 4.3 Where an instruction to proceed is issued by the Purchaser the Supplier shall commence and progress the Works as required.
- 4.4 The Supplier, within 10 working day of receipt of an instruction to proceed shall present details of the Works carried out/to be carried out, an associated cost breakdown and advise of any programme implications.
- 4.5 The issue on an instruction by the Purchaser does not represent an agreement of, nor entitlement to any additional costs presented by the Supplier.
- 4.6 Variations are to be priced in accordance with the quantified schedule of rates (QSoR) where one exists. Where a QSoR does not exist the Supplier upon request of the Purchaser shall submit invoices to substantiate costs presented and be entitled to a 10% mark up for over heads and profit.
- 4.7 It shall remain the Suppliers responsibility to prove entitlement to any Variation and present appropriate information, in the opinion and on the request of the Purchaser to substantiate the change and associated costs.
- 4.8 Any Variations carried out by the Supplier without a written instruction from BMSI are undertaken at the Suppliers own risk.

5. PAYMENT

- 5.1 Where an Order has been placed as a Purchase Order the Supplier will issue an invoice, with the order number clearly stated, on a monthly basis on the last working day day of each month, or where the last working day falls on a weekend or bank holiday, the last working day before this, for Works carried out in the preceding calendar month prior and with enough detail and/or supporting information to enable payment to be authorised.
- 5.1.1 It is the Suppliers responsibility to ensure that the Order value is not exceeded. Should an invoice be issued that results in the Order value being exceeding then this may result in delayed payment.
- 5.2 Where no other express agreement exists, terms of payment are 60 days from the end of the month of the invoice or from the date of delivery of the Products or Services, whichever is the later, unless otherwise stated on the front of the Purchaser Order.
- 5.3 Where an order has been placed as a sub-contract the supplier will issue interim applications on a monthly basis on the 15th day of each month or, where the 15th falls on a weekend or bank holiday, the last working day before this.
- 5.3.1 The application should be valued to the end of the month in which it is issued.
- 5.3.2 It is the responsibility of the Supplier to issue the appropriate level of breakdowns and supporting information to enable the Purchaser to asses and value the application.
- 5.3.3 Applications will be valued by the Purchaser and a certification issued no later than 30 days after the end of month in which the application was issued.
- 5.3.4 Upon receipt of an authorised payment certificate the Supplier shall raise their corresponding VAT invoice and issued, along with a copy of the payment certificate, to BMSI accounts payable either via e-mail (Central-Accounts@BMSI.co.uk) or post (FAO: Accounts Payable, BMSI, Foundation House, Fairacres Industrial Estate, Dedworth Road, Windsor, SL4 4LE).
- 5.3.5 Should the Purchaser intend to pay less than the sum stated in the payment certificate then a pay less notice shall be issued no later than 1 working days before the final date for payment, stating the value and basis.
- 5.4 The final date for payment, where the criteria in clause 5 has been met, will be made 30 days from the date of the authorised payment certificate.
- 5.5 If the Supplier fails to meet the criteria set out in clause 5, this may result in delayed payment.

6. RETENTION

- 6.1 Unless otherwise expressly agreed, the Purchaser will hold 5% Retention on all payment certificates issued.
- 6.2 The first 2.5% of Retention will be payable to the Supplier 3 months after practical completion.
- 6.3 The final 2.5% of Retention will be payable to the Supplier 12 months following practical completion or upon the issue of the making good defect certificate, whichever is later.
- 6.4 The final date for payment of Retention monies will be 60 days from the end of the month in which the criteria as stated in items 6.1 and 6.2 has been met.

7. ASSIGNMENT AND SUB-LET

- 7.1 The Supplier is not at liberty to assign or sub-let the whole or any part of the Works without first informing the Purchaser and gaining express written consent.

8. INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT

- 8.1 By providing any design the Supplier gives to the Purchaser an irrevocable, worldwide, royalty free licence to copy and/or use any drawings, computer disks, software and information for any purpose connected with the Works and/or any future modification thereto and the Purchaser shall be entitled to assign or sub licence this licence to third parties for those same purposes.

9. SET-OFF

- 9.1 The Purchaser shall be entitled to deduct from the Supplier any money (including the Suppliers Retention) due or becoming due to the Supplier and to recover from the Supplier as a debt any amount due to the Purchaser, or awarded to the Purchaser in adjudication, arbitration or litigation and which arises out of or under this Order or any other sums payable to the Purchaser under this Order or any other Order that exists between the Purchaser and Supplier;
- 9.2 Where the Purchaser has a claim against the Supplier for loss and/or expense and/or damage which it has incurred, or is likely to incur by reason of any breach of, or failure to observe the provisions of the Order and/or any tortious act or omission or breach of statutory duty by the Supplier (whether or not the Purchaser may have further claims for loss and/or expense and/or damage by reason of any such breach, failure, act or omission, the Purchaser shall be entitled to set-off the amount of such loss and/or expense and/or damage so suffered or incurred and/or which the Purchasers bona fide estimates is likely to incur against any money otherwise due to the Purchaser including any Supplier Retentions.

10. TERMINATION

- 10.1 If the Supplier is in material breach of any of the terms of the Order the Purchaser may, at its sole discretion, immediately terminate the Order by giving notice in writing to the Supplier.

- 10.2 The Purchaser may by 7 days written notice immediately terminate for convenience or immediately suspend for convenience its services of all or any obligations under the Order without liability for compensation or damages.
- 10.3 On the termination of this Order (howsoever arising):-
- (i) The Supplier's only rights to payment shall be as set out in clause 5.
 - (ii) Without prejudice to any other right or remedy of the Purchaser, the Supplier shall pay or allow to the Purchaser the amount of any loss, expense, or damage caused to the Purchaser by the termination.
- 10.4 Termination of this Contract shall not discharge the Supplier from any existing obligation accrued due on or prior to the date of termination.
- 10.5 For the avoidance of doubt, any termination or cancellation of this Contract shall not affect the continuance in force of Software licences granted to the Purchaser or its customers.

11. ADJUDICATION

- 11.1 Whilst the Purchaser and Supplier will attempt to resolve any disputes through negotiation in addition to the provisions of arbitration included in clause 12, the Purchaser and the Supplier have the right to refer any such dispute under the order for adjudication and either party may give written notice to the other at any time of their intention to do so.
- 11.2 The decision of the Adjudicator shall be binding until the dispute is finally determined by legal proceeding, by arbitration or by agreement.
- 11.3 The Supplier will proceed with Works with all due diligence throughout the adjudication process.

12. ARBITRATION

12. Any dispute arising out of or in connection with the Order, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules (LCIA Rules of Arbitration 2014) which are deemed to be incorporated by reference into this clause.

13. DETERMINATION

13. Without prejudice to any other rights and remedies which the Purchaser may possess:
- 13.1 If the Supplier is in breach of any of its obligations under this Order or any other Order placed by the Purchaser with the Supplier then the Purchaser may give to the Supplier a notice by recorded delivery specifying the default and if the Supplier shall continue to default for more than seven days after receipt of such notice or shall at any time thereafter repeat such default (whether previously repeated or not); or
- 13.2 If the Supplier has a receiver, manager, administrator or administrative receiver appointed or has passed a resolution for its winding up or has a petition presented to any court for its winding up or for an administration Order or if any proceedings whatsoever are commenced against the Supplier relating to its insolvency or possible insolvency then the Purchaser may by recorded delivery give notice in writing to determine the Supplier's employment.
- 13.3 The employment of the Supplier shall automatically determine upon the determination of the Purchaser's employment under the Main Contract.
- 13.4 On the determination of the employment of the Supplier under this Order (howsoever arising):-
- (i) The Purchaser shall have the same rights and powers in relation to the Supplier's materials and property whether on or off the site as are given in respect of the Purchaser's materials and property by the Main Contract; and
 - (ii) The Supplier's only rights to payment shall be as set out in clause 5 above provided that for the avoidance of doubt where determination arises from any act or omission whatsoever of the Supplier the Purchaser shall not be obliged to make payment until after completion of the Works by the Purchaser or any other Supplier employed by the Purchaser to complete the Works.
 - (iii) Without prejudice to any other right or remedy of the Purchaser, the Supplier shall pay or allow to the Purchaser the amount of any loss, expense, or damage caused to the Purchaser by the determination except where determination is caused by breach or default of the Purchaser.

14. NOTICES

- 14.1 All notices issued under these terms and conditions shall be issued to the office of BMSI, Foundation House, Fairacres Industrial Estate, Dedworth Road, Windsor, SL4 4LE.

15. SUBSTITUTION & MUTUALITY

- 15.1 The Supplier is not obliged to utilise any specific individual to undertake the Works and can utilise any individual it considers necessary. The Supplier has the right to supply a substitute of equivalent knowledge and skill. Where substitution occurs, the Supplier will remain responsible for its obligations under the Order and will be responsible for the payment of the replacement, so that there will be no further payments outside of the agreed terms to pay for any handover period between the original worker and the replacement.
- 15.2 Neither the Purchaser nor the Supplier seeks to create or imply any mutuality of obligation between the parties in the course of the performance of this Order for services or during any notice period. The Purchaser is not obliged to offer work to the Supplier and the Supplier is not obliged to accept work where offered or provide services. The Purchaser is not obliged to pay the Supplier at any time that there is no work available during the course of this Order or for periods where no work is undertaken.

16. CONTRACTS RIGHTS (RIGHTS OF THIRD PARTIES)

- 16.1 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Order.

17. ENTIRE AGREEMENT

- 17.1 This Order is placed by the Purchaser as an Order to a Main Contract and in accordance with the terms and conditions therein and in accordance with any terms and conditions implied by law in favour of a Purchaser of goods or services, shall constitute the entire agreement between the Purchaser and the Supplier. Any reference to the Suppliers tender, offer or quotation shall be deemed to refer to the prices contained within that tender only.

18. ANTI-BRIBERY

- 18.1 The Supplier shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

19. APPLICABLE LAW

- 19.1 This Order shall be governed by the Laws of England and Wales.