

CONVERGE TECHNOLOGY LTD- TERMS AND CONDITIONS OF PURCHASE FOR SUBCONTRACT LABOUR**1. Existence and Scope of Contract**

- 1.1 These Terms and Conditions together with the Order set out all the rights and obligations of the parties each to the other and no other terms or conditions shall be implied save to the extent that such terms and conditions are implied by statute.
- 1.2 Unless otherwise expressly agreed, commencement of the Subcontract Works shall signify acceptance of these Terms and Conditions. For the avoidance of doubt CONVERGE do not intend to enter into contract on any terms and conditions other than those set out herein.
- 1.3 The Subcontract Works are executed as part or all of the work to be carried out by CONVERGE for its Customer under the Principle Contract.

2. Interpretation

- 2.1 In these Conditions:-

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| "CONVERGE" | CONVERGE TECHNOLOGY LTD, a company registered in England and Wales under number 8225307 whose registered office is at , Herrick Way, Staverton Technology Park, Cheltenham, GL51 6TQ; |
| "Subcontractor" | means the name to whom the Order is addressed; |
| "these Conditions" | means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller; |
| "Subcontract" | means CONVERGE's Order and the Subcontractor's acceptance thereof these Terms and Conditions and any document referred to therein including the provisions of the Principle Contract; |
| "the Order" | means CONVERGE's Purchase Order; |
| "the Principle Contract" | means the contract between CONVERGE and its Customer; |
| "Subcontract Works" | means the works to be carried out by the Subcontractor; |
| "Subcontractor Sum" | means the amount stated in the Order and any adjustment thereto which is accepted by CONVERGE as being the value of the Subcontract Works. |

3. Subcontractors Obligations

- 3.1 The Subcontractor shall with due diligence and in a good and workmanlike manner carry out and complete the Works in accordance with the Order and subject to these Terms and Conditions using materials where applicable and appropriate and workmanship of the quality and standard therein specified or in accordance with current British Standards and Codes of Practice, all to the reasonable satisfaction of CONVERGE.
- 3.2 The Subcontractor shall comply with and give all notices required by any Act of Parliament and Instrument, rule or order made under any Act of Parliament or any regulation or byelaw of any Local Authority or of any Statutory Undertaker or Public Utility which has any jurisdiction with regard to the Subcontract Works or with those systems the same are or will be incorporated. The Subcontractor shall fully acquaint itself of all restrictions, local conditions, requirement and the like which will affect the execution of the Subcontract Works. No claim will be allowed due to a lack of knowledge of any such matter.
- 3.3 The Subcontractor shall not assign, transfer or sub-let the Works or any part thereof.
- 3.4 The Subcontractor shall fully comply with its Industry's Working Rule Agreement current in force and shall supply such evidence in verification of its compliance as may reasonably be required by CONVERGE from time to time upon request.
- 3.5 The Subcontractor shall comply with all right to work regulations within the EU and indemnify CONVERGE in respect of this.
- 3.6 The Subcontractor shall comply with all requirements in respect of eligibility to work in the UK as defined within the Immigration (Restrictions on Employment Order 2007, SI2007/3290, the Immigration, Asylum and Nationality Act 2006, along with the Employment Relations Act 1999.

4. Instructions and Variations

- 4.1 CONVERGE may, without invalidating this Subcontract, issue instructions, order additions to or omissions from or other change in the Works which the Subcontractor shall carry out forthwith
- 4.2 Variations, additions or omissions shall not be made unless ordered by CONVERGE in writing.
- 4.3 CONVERGE will require the value of any variation to be agreed before its execution by the Subcontractor.
- 4.4 In variations in respect of daywork the Subcontractor shall only be entitled to payment at the daywork rates contained in the Order or as otherwise agreed, if prior to the commencement of that work CONVERGE shall have issued express written instructions that the work shall be valued upon a daywork basis.

5. Defects

- 5.1 The Subcontractor shall be liable for and shall make good at his own expense any defects in the Subcontract Works which are due to a failure of the Subcontractor to comply with his obligation hereunder and which are notified to the Subcontractor.

6. Time

- 6.1 On the date or dates for commencement stated in the Order the Subcontractor shall commence the Subcontract Works on site and regularly and diligently proceed with and complete Works with the period or periods (if any), specified in the Order. CONVERGE may issue from time to time directions to amend the phasing, sequencing or coordination of the Subcontract Works to facilitate the overall progress of the Principle Contract works. It is the responsibility of the Subcontractor to ensure that it is aware of the requirements of the construction program on a daily basis. If it becomes reasonably apparent that the Subcontractor is failing to maintain progress in accordance with the requirements of the construction program, CONVERGE may employ other persons to carry out that part of the Subcontract Works so affected without being in breach of the Subcontract. The costs of labour, plant and materials incurred by CONVERGE including a reasonable allowance for overheads and profit in carrying out that part of the Subcontract Works shall be deducted from any monies due to the Subcontractor.
- 6.2 The Subcontractor shall have allowed for the required number of visits to site to properly complete the Subcontract Works in accordance with the construction program including any amendments thereto. If the Subcontractor considers it necessary to leave site at any time and make additional visits to complete the Subcontract Works, then it is its responsibility to ensure that any such arrangements are confirmed in writing to CONVERGE before withdrawing operatives and/or leaving site.
- 6.3 If the Subcontractor fails to complete the Works or any section thereof within the period or periods specified or any extended period or periods which may be granted by CONVERGE, the Subcontractor shall pay or allow to CONVERGE a sum equivalent to any loss and/or expense suffered or incurred by CONVERGE and caused by the failure of the Subcontractor as aforesaid. CONVERGE shall at the earliest opportunity give reasonable notice to the

Subcontractor that loss or damage or expense is being or has been suffered or incurred.

- 6.4 The loss, damage or expense referred to in Clause 6.3 shall be recovered by CONVERGE from the Subcontractor by way of deduction from any monies due to the Subcontractor under this Subcontract or any other contract between CONVERGE and the Subcontractor. CONVERGE shall also be entitled to apply monies due to the Subcontractor under this Subcontract towards payment of any sum owing by the Subcontractor to CONVERGE in relation to any matter whatsoever.

7. Price and Payment

- 7.1 The Subcontract sum shall include the cost of labour, holidays, overtime, site restrictions on working hours, tools, travel, subsistence, statutory payments, overheads and profit and all other matters necessary to enable the Subcontractor to fulfil its obligations except items listed in the Order as being provided by CONVERGE.
- 7.2 CONVERGE shall pay to the Subcontractor, at the intervals stated in the Order, the total value of all work properly executed by the Subcontractor under these conditions less amounts previously paid, less any other sums to which CONVERGE is entitled.
- 7.3 Interim valuations of work in progress shall be made by measurement and valued by using the schedule of rates/schedule of works/bill of quantities if any referred to in the Order or some other such method as shall be agreed.
- 7.4 The Subcontract sum unless specifically stated to the contrary shall be exclusive of VAT. If the Subcontractor is a registered person within the meaning of the VAT legislation, it shall immediately after signing this Subcontract give to CONVERGE the registration number shown on the registration certificate issued to the Subcontractor by HM Customs and Excise and shall produce the certificate to the customer on demand. Provided the Subcontractor complies with this clause, CONVERGE shall add to the amount of each payment due, VAT at the rate or rates properly chargeable on any such supply by the Subcontractor.

8. Supervision, Health and Safety

- 8.1 The Subcontractor shall allow for working with and around other subcontractors and cooperating fully as necessary and instructed by CONVERGE.
- 8.2 The Subcontractor as part of its own management role, shall be responsible for the proper and effective coordination of the Subcontract Works with all the other subcontractors either already working or about to commence work on the site.
- 8.3 The Subcontractor shall provide CONVERGE with a Labour on Site Return on a daily basis or otherwise as may be agreed with CONVERGE.
- 8.4 The Subcontractor shall take whatever steps are necessary to comply with all relevant health and safety regulations including the obligations on a Contractor as defined in the Construction (Design and Management) Regulations 2015.
- 8.5 The Subcontractor shall comply with the provision for health safety and quality of works under the Principle Contract and the provisions of CONVERGE's current Health and Safety Regulations, a copy of which shall be given to the Subcontractor.
- 8.6 Method statements and Risk Assessments will be applicable to all works carried out by the Subcontractor for CONVERGE. The Subcontractor agrees to work in compliance with these documents without exception.
- 8.7 In line with the UK Contracting Group's commitment to a fully trained workforce, CONVERGE has a set requirement of having 100% of its workforce including Subcontractors qualified and holding a valid Construction Skills Card and a CITB 1-day H&S Awareness course certificate. It is the responsibility of the Subcontractor to ensure that they hold these qualifications and issue copies to CONVERGE as and when they are renewed.
- 8.8 Subcontractors at all times on site must wear the appropriate PPE. CONVERGE will supply hard hats and hi-vis vests, Subcontractors must supply their own protective boots, gloves and eyewear.

9. Indemnity and Insurance

- 9.1 The Subcontractor shall indemnify CONVERGE against and from any breach, non-observance or non-performance by the Subcontractor, its servants or independent contractors of any of the provisions of the Principle Contract, any act, omission or default of the Subcontractor, its servants, agents or independent contractors which involves CONVERGE in any liability whatsoever and against any claim, damage, loss or expense due to or resulting from any negligence or breach of duty of the Subcontractor, its servants, agents or independent contractors. The limit of such indemnity shall be no less than £10,000,000.
- 9.2 The Subcontractor shall without prejudice to its liability to indemnify CONVERGE as aforesaid, adequately insure against any expense, liability, loss, claim or proceedings whatsoever arising under any statute in force or at common law in respect of personal injury to or death of any person whomsoever and arising out of, or in the course of, or caused by or in connection with the carrying out of the Subcontract Works and against any expense, liability, loss, claim or proceedings in respect of any injury, loss or damage whatsoever to any property real or personal in so far as such injury or damage arises out of, or in the course of, or is caused by, or by reason of or in connection with the carrying out of the Subcontract Works and provided that the same is due to any act, omission or default of the Subcontractor or anyone for whom the Subcontractor is responsible.
- 9.3 The Subcontractor shall provide for inspection the policies of insurance required by Clause 9.2 on the occasion of renewal.

10. Termination

- 10.1 Without prejudice to any other rights and remedies which CONVERGE may possess, if the Subcontractor shall make default in any of the following respects, viz:
- a) If without reasonable cause it fails to commence Works on the date or dates set for commencement, or
 - b) If without reasonable cause it wholly suspends the carrying out of the Subcontract Works before completion thereof, or
 - c) If it fails to proceed regularly and diligently with the Subcontract Works, or any part thereof, or
 - d) If it refuses or persistently neglects after notice in writing from CONVERGE to remove defective work or materials, or
 - e) If it refuses or persistently neglects after notice in writing from CONVERGE to comply with any of his obligations under this Subcontract.

then if such default shall continue for three days after a notice by registered post or recorded delivery specifying the default has been given to it by CONVERGE, CONVERGE may thereupon by notice or registered post or recorded delivery determine the employment of the Subcontractor under this Subcontract.

- 10.2 In the event of determination of the Subcontractor's employment CONVERGE may either complete the Works itself or employ others in place of or in addition to the Subcontractor and in any event retain monies which may be due to the Subcontractor and apply the same towards the amount of the damage suffered and/or loss and expense incurred by reason of the said determination, the balance of any such damage, loss and expense being a debt recoverable by CONVERGE from the Subcontractor.
- 10.3 If for any reason CONVERGE's employment under the Principle Contract is determined then the employment of the Subcontractor under this Subcontract shall automatically be determined and the Subcontractor shall be entitled to payment for work properly carried out to the extent that it has not already received such payment, but it shall not be entitled to recover from CONVERGE any amount in respect of loss of profit on work not carried out as a result of such determination.

11. Right of Set-Off

- 11.1 CONVERGE shall be entitled to deduct from any money (including sub-contractor's retention) otherwise due under the Order and to recover from the

Subcontractor as a debt any amount agreed by the Subcontractor as due to CONVERGE, or awarded to CONVERGE in adjudication or finally awarded in arbitration or litigation to CONVERGE, and which arises out of or under the Order or any other sums payable by the Subcontractor to CONVERGE under the Order.

- 11.2 Where CONVERGE has a claim against the Subcontractor 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 this Order and/or any tortious act or omission or breach of statutory duty by the Subcontractor (whether or not CONVERGE may have further claims for loss and/or expense and/or damage by reason of any such breach, failure, act or omission) CONVERGE shall be entitled to set-off the amount of such loss and/or expense and/or damage so suffered or incurred and/or which CONVERGE bona fide estimates it is likely to incur against any money otherwise due to the Subcontractor including any Subcontractor's retention.
- 11.3 The Subcontractor waives the right to set off any claim and/or dispute against CONVERGE for loss and/or expense and/or damage which it has incurred, or believes to have incurred by any other means other than those detailed under section 13.

12. **Non-solicitation**

12.1 During the period of the Subcontract Works and for six months thereafter, the Subcontractor shall not (with the prior consent of CONVERGE) whether as shareholder, director, employee, contractor, partner, consultant, proprietor, agent or otherwise, either directly or indirectly:

- a) be engaged by, or
- b) provide services to, or
- c) be, or become involved in,

any business which is in competition with any business carried on, or about to be carried on, at the relevant time by CONVERGE or which could otherwise have a prejudicial effect on any such business.

11.2 During the period of the Subcontract Works and for six months thereafter, the Subcontractor shall not (with the prior consent of CONVERGE) whether as shareholder, director, employee, contractor, partner, consultant, proprietor, agent or otherwise, either directly or indirectly solicit for employment or solicit with the intention of entering into a contract for services with, any employee, officer or director of CONVERGE or the Client.

13. **Settlement of Disputes**

- 13.1 Should any dispute or difference arise at any time between the parties under the Subcontract, either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions.
- 13.2 If any such dispute or difference arises then one party ("the Applicant") may serve upon the other ("the Respondent") a notice in writing ("the Notice") which shall state in sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.
- 13.3 The parties shall within four days of the Notice being served upon the Respondent agree upon a suitable Adjudicator. Failing agreement the Applicant shall and the Respondent may apply for an appointment to the Academy of Construction Adjudicators (whilst at the same time serving a copy of the application on the other party) whose written notification of an appointment of an Adjudicator shall be served on both parties and shall be binding on both parties.

14. **Governing Law and Jurisdiction**

The Contract shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English and Welsh courts.

Signed for and on behalf of the Subcontractor

Subcontractor Name:

Address:

Signed for and on behalf of Converge Technology Ltd

Signed:

Address: Herrick Close

Staverton

Name:

Gloucester

GL51 6TQ

Title:

Date:

Signed: 

Name: Kevin Slater

Title: Operations Manager

Date: