





- subcontractors and/or suppliers.
- 36.4 The Sub-Contractor shall indemnify Pexhurst against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, Pexhurst as a result of:
- 36.4.1 any breach of this clause 36 by the Sub-Contractor; and/or
- 36.4.2 any breach of provisions equivalent to clauses 36.1 or 36.3 in any contract with a sub-consultant or sub-subcontractor;
- 36.4.3 any act or omission by a sub-consultant or sub-subcontractor which would have amounted to a breach of the relevant sub-subcontract had the Sub-Contractor complied with its undertaking set out in clause 36.1.4.
- 37. GENERAL**
- 37.1 Nothing in these Sub-Contract Conditions shall confer any right on a third party whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 37.2 These Sub-Contract Conditions shall be governed by and construed in accordance with the law of England.
- 37.3 Where these Sub-Contract Conditions do not specifically state the manner of giving or service of any notice or other document under these Sub-Contract Conditions such notice or other document may be given or served by any effective means to any agreed address. If no address has been agreed, then if given or served by being addressed and sent by pre-paid post to the addressee's last known principal business address or where the addressee is a body corporate to the body's registered or principal office, it shall be treated as having been effectively given or served.
- 37.4 The waiver by either party to the Sub-Contract of any default or breach of these Sub-Contract Conditions shall not constitute a waiver of any other or subsequent default or breach. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. No waiver of any of the provisions of this Sub-Contract shall be effective unless it is expressly stated to be a waiver and communicated to the Sub-Contractor in writing.
- 37.5 If any provision of these Sub-Contract Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Sub-Contract Conditions and the remainder of the provision in question shall not be affected.
- 37.6 Neither Pexhurst or the Sub-Contractor shall be liable for non-performance or delays from causes beyond its reasonable control including but not limited to strikes (of its own or other employees), fires, insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials, or requirements or regulations of any civil or military authority. In the event of the occurrence of any of the foregoing, the date of performance shall be deferred for a period equal to the time lost by reason of the delay. The affected party shall notify the other in writing of such events or circumstances promptly upon their occurrence.
- 37.7 Pexhurst expects all Suppliers/Contractors to comply with the requirements of the Criminal Finances Act 2017 and the Company's Anti-Tax Evasion Policy.
- 37.8 The Sub-Contractor warrants that it has the necessary skills, knowledge, experience and behaviours to demonstrate it is competent to understand and carry out their duties under the Building Safety Act 2022.
- 38. TERMINATION**
- 38.1 If the Sub-Contractor is insolvent, Pexhurst may at any time by notice to the Sub-Contractor terminate the Sub-Contractor's employment under the Sub-Contract.
- 38.2 The Sub-Contractor shall immediately notify Pexhurst if it makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any matter relating to insolvency, including:
- 38.2.1 making any composition or arrangement with his creditors;
- 38.2.2 has a winding up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed;
- 38.2.3 has a provisional liquidator, receiver or manager of his business or undertaking duly appointed;
- 38.2.4 has possession taken by or on behalf of the holders of any debentures secured by a floating charge, or of any property comprised in or subject to the floating charge;
- 38.2.5 has execution levied upon any of his goods on the site; and
- 38.2.6 any other matter defined as insolvent under the Act.
- 38.3 Without prejudice to any other rights or remedies which Pexhurst may possess, if the Sub-Contractor defaults in any one or more of the following respects:
- 38.3.1 he fails to proceed diligently with the design and/or construction of the Sub-Contract Works to the satisfaction of Pexhurst and/or proceeds in such a manner as would in the reasonable opinion of Pexhurst prejudice the completion of the whole or any part of the Sub-Contract Works in accordance with these Sub-Contract Conditions; or
- 38.3.2 he refuses or fails within 7 days of written request by Pexhurst to rectify any defective Sub-Contract Works, design, workmanship and/or materials and/ or goods supplied to the satisfaction of Pexhurst; or
- 38.3.3 he fails to complete and deliver up the whole or any part of the Sub-Contract Works by the date or dates specified or by such extended date or dates as may be allowed by Pexhurst; or
- 38.3.4 he refuses to comply with a written notice from Pexhurst requiring him to remove and immediately replace any one or more of his employees to whom Pexhurst has reasonable grounds of objection due to poor time keeping, work performance, disruptive behaviour or otherwise; or
- 38.3.5 he fails to comply with a written notice from Pexhurst to proceed and to diligently comply with any of his obligations and/ or instructions given under these Sub-Contract Conditions; or
- 38.3.6 breach of its obligations under clauses 33.2 or 33.3; or
- breach of its obligations under clauses 36.1.1, 36.1.2 or 36.1.3, then Pexhurst may give notice in writing to the Sub-Contractor specifying the default or defaults ("Notice of Default").
- 38.4 If, following receipt of a written Notice of Default specifying any breach by the Sub-Contractor of the foregoing provisions of clause 38.3, the Sub-Contractor continues or fails to rectify a specified default for 7 days or for such other time as is reasonably set out in the notice then by written notice Pexhurst may immediately terminate the employment of the Sub-Contractor and such employment shall terminate upon the date of the notice.
- 38.5 In circumstances where the Sub-Contractor is in default in the respects identified in clause 38.3 Pexhurst may forthwith upon written notice to the Sub-Contractor, take part only of the Sub-Contract Works out of the hands of the Sub-Contractor and may by himself, his servants or agents complete and maintain such part, and in such event, Pexhurst may recover his reasonable costs of doing so from the Sub-Contractor, or deduct such costs from monies otherwise becoming due to the Sub-Contractor.
- 38.6 In the event of the employment of the Sub-Contractor being terminated, the Sub-Contractor shall immediately and without delay supply in paper and electronic form to Pexhurst for retention and use in completing the Sub-Contract Works a new and complete set of such drawings, calculations and details that the Sub-Contractor has prepared prior to the termination of the Sub-Contract; and the Sub-Contractor shall promptly, safely and in a reasonable manner agree with Pexhurst to remove from site all his temporary buildings, plant, tools and equipment.
- 38.7 If the employment of the Sub-Contractor is terminated under either clause 38.1 or 38.4 Pexhurst may employ and pay other persons to execute any work that is outstanding under the Sub-Contract and Pexhurst shall not be bound to make any further payment to the Sub-Contractor until all the Sub-Contract Works have been completed, including the making good of any defects.
- 38.7.1 Thereafter Pexhurst shall pay to the Sub-Contractor any sum due or outstanding including the cost of any materials actually supplied at the date of termination in respect of Sub-Contract Works and for work properly executed by the Sub-Contractor in accordance with these Sub-Contract Conditions and the Sub-Contractor shall allow or pay to Pexhurst the amount of any direct loss and expense and/or damage caused to Pexhurst by the termination and any other loss or damage whether direct or indirect which may be suffered by Pexhurst including the cost of employing any other persons to execute the works in accordance with the terms of the Sub-Contract as a result of any breach by the Sub-Contractor of his obligations under these Sub-Contract Conditions. If the total amount of loss and expense and/or damage incurred by Pexhurst exceeds the monies otherwise due to the Sub-Contractor then the difference shall be a debt payable to Pexhurst by the Sub-Contractor.
- 39. ADJUDICATION**
- 39.1 In the event that either party refers a dispute arising under the Sub-Contract to adjudication then;
- 39.1.1 the adjudicator shall be nominated by the Royal Institution of Chartered Surveyors.
- 39.1.2 the respondent shall be allowed 14 days to reply to the referral.
- 39.1.3 the adjudication in all other respects shall be conducted in accordance with, and the adjudicator's powers shall be in accordance with, the statutory Scheme for Construction Contracts (England and Wales) Regulations 1998 or as may be amended or reissued from time to time.
- 40. SETTLEMENT OF DISPUTES**
- 40.1 Subject to clause 39 any dispute or difference arising under this Sub-Contract, either during the progress of the works, after completion or abandonment of the works or after termination of the employment of the Sub-Contractor, shall be determined by legal proceedings.