

	<p>Title</p> <p style="text-align: center;">Sub-Contract Terms & Conditions</p>	<p>Quality Management System Document</p> <p style="text-align: center;">FR1036C</p>
---	--	---

Subcontractor's Name:

Site:

SUB-CONTRACT TERMS & CONDITIONS

Frosts Landscape Construction Ltd
Liscombe Central, Liscombe Park, Soulbury,
Leighton Buzzard, LU70JL

	Title Sub-Contract Terms & Conditions	Quality Management System Document FR1036C
---	--	---

CONTENTS

1	DEFINITIONS	3
2	BASIS OF THE CONTRACT	3
3	DRAWINGS AND INFORMATION	3
4	TECHNICAL DATA	4
5	QUALITY, MATERIALS, DESIGN AND WORKMANSHIP	4
6	ASSIGNMENT AND SUB-CONTRACTING.....	4
7	INSPECTION AND TESTING	5
8	MAKING GOOD DEFECTS	5
9	CHANGES/ORDER AMENDMENTS.....	5
10	PATENTS AND INTELLECTUAL PROPERTY.....	5
11	COMPLETION AND DELIVERY	5
12	ADVERTISING	6
13	TERMINATION FOR DEFAULT OR INSOLVENCY	6
14	TERMINATION GENERALLY.....	7
15	SUB-CONTRACT SUM.....	7
16	PAYMENT	7
17	TITLE AND RISK	12
18	INDEMNITIES	12
19	LIENS.....	12
20	CONFIDENTIALITY	12
21	GENERAL	13
22	DISPUTE RESOLUTION	13
23	ENGLISH LAW AND JURISDICTION.....	13
24	AUTHORISED SIGNATURE.....	14

	Title Sub-Contract Terms & Conditions	Quality Management System Document FR1036C
---	--	---

1 DEFINITIONS

"Act"	The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009, Part 8 .
"Frosts"	Frosts Landscape Construction Limited.
"Completion Date"	the date for completion of the Product as specified in the Sub-Contract or any Sub-Contract Amendment.
"Sub-Contract"	Frosts Sub-Contract together with all documents referred to therein or attached thereto by Frosts Landscape Construction and these conditions and any additional conditions imposed by the Client upon Frosts Landscape Construction whether as referred to herein below or otherwise.
"Order Amendment"	a variation or order issued pursuant to Clause 9.
"Performance"	the manufacture, ordering goods, entry on site and installation if applicable, or setting aside goods or materials for the purposes of the Sub-Contract.
"Sub-Contract Sum"	all sums payable to the Sub-Contractor for performance of the Works as stated in the Sub-Contract Documents.
"The Works"	all goods and/or services to be supplied pursuant to the Sub-Contract whether as expressly described in the Sub-Contract or to be inferred therefrom.
"Sub-Contractor"	the person, firm or company with whom this Sub-Contract is placed.
"Specification"	includes any plans, drawings, data, or other information relating to the goods and or services, to which the goods and or services supplied shall conform.

2 BASIS OF THE CONTRACT

- 2.1 These conditions instructions and all documents issued by Frosts Landscape Construction in connection with this Order or referred to therein whether printed, typed or handwritten shall form part of this Sub-Contract. No amendment, modification, instruction, variation, waiver or change shall have effect unless in writing and signed on behalf of Frosts Landscape Construction by an authorised signatory.
- 2.2 The Sub-Contract as defined herein shall govern Frosts contractual relationship with the Sub-Contractor and unless expressly accepted in writing signed on behalf of Frosts by an authorised signatory no terms inconsistent herewith shall have effect. In the event that the Sub-Contractor commences Performance before countersigning or otherwise expressly and unconditionally accepting the Order, then such act of commencement shall be deemed to be an unqualified acceptance of the Sub-Contract upon these conditions.
- 2.3 The Sub-Contractors terms and conditions as contained within their quotation are expressly excluded and no term or condition of the Sub-Contractor shall have any legal effect unless expressly accepted in writing by Frosts Landscape Construction and signed on behalf of Frosts by an authorised signatory.

3 DRAWINGS AND INFORMATION

- 3.1 No drawings, designs, specifications, know how or other information provided in connection with this Sub-Contract by Frosts or its servants or agents (including all features whether patented or patentable or not and whether separately or collectively shown) nor any other intellectual copyright matter so provided may be reproduced in whole or in part nor used for any purpose other than the execution of this Sub-Contract. All such drawings, designs and other matters are provided on loan only to the Sub-Contractor and are subject to immediate return upon demand.

	Title Sub-Contract Terms & Conditions	Quality Management System Document FR1036C
---	--	---

- 3.2 The Sub-Contractor at its own expense shall prepare and submit for approval such drawings as may be required by Frosts but approval by its servants or agents or any third party shall in no sense relieve the Sub-Contractor from any of its obligations under the Sub-Contract. No drawings shall be varied or modified after such approval in any respect without prior written approval from Frosts which if necessary shall be promptly applied for in good time with full supporting explanation and particulars.
- 3.3 Frosts Landscape Construction is hereby granted an irrevocable and perpetual royalty free licence to use and reproduce for any purpose all copyright matter produced by Sub-Contractor or its servants or agents pursuant to this Sub-Contract.
- 3.4 Any such drawings, designs and other matter shall be regarded by the Sub-Contractor as secret and confidential and shall not without the consent in writing of Frosts Landscape Construction be published or disclosed to any third party except for the purposes of implementing the Sub-Contract.

4 TECHNICAL DATA

- 4.1 The Sub-Contractor shall be responsible for any errors or omissions in any information, drawings, packing details or any other documents produced by it, whether such information has been approved by Frosts or not.
- 4.2 In the event that the Sub-Contractor discovers any ambiguity or discrepancy in the drawings, specification and documents issued in connection with the Sub-Contract or subsequently whether by way of Sub-Contract Amendment or otherwise, the Sub-Contractor shall immediately submit the ambiguity or discrepancy to Frosts for its determination.

5 QUALITY, MATERIALS, DESIGN AND WORKMANSHIP

- 5.1 The Product shall be supplied strictly in accordance with the Sub-Contract and any Sub-Contract Amendments. Materials shall be of satisfactory quality and materials and workmanship shall be fit for their respective intended purposes and in conformity absolutely with the particulars of the Sub-Contract. The Product shall only be accepted after it has in the opinion of Frosts Landscape Construction satisfied the requirements of the Sub-Contract. Insofar as the Product involves any design on the part of the Sub-Contract, the design shall be such that the Product is fit for its purpose.
- 5.2 Frosts Landscape Construction shall be deemed not to have any intrinsic expert or specialist knowledge or skill in relation to the Sub-Contract and the Sub-Contractor is deemed to be aware of and to accept this.

6 ASSIGNMENT AND SUB-CONTRACTING

- 6.1 The Sub-Contractor shall not assign the Order (nor sub-contract any major part of the Sub-Contract) without Frosts' prior written consent (such consent shall not be unreasonably withheld). No assignment or Sub-Sub-Contract (even with Frosts' consent) shall relieve the Sub-Contractor of any of its obligations under the Order. Frosts Landscape Construction may assign the Sub-Contract at any time without prior consent of the Sub-Contractor.
- 6.2 All applicable terms and conditions of the Sub-Contract shall be imposed in all Sub-Sub-Contracts entered into by Sub-Contractor.
- 6.3 Frosts Landscape Construction may as a condition precedent of consent to sub-contracting insist that the Sub-Contractor obtain from its proposed Sub-Sub-Contractor a deed of warranty in favour of Frosts and/or any third party in such terms as Frosts Landscape Construction may require.

	Title Sub-Contract Terms & Conditions	Quality Management System Document FR1036C
---	--	---

7 INSPECTION AND TESTING

- 7.1 Frosts Landscape Construction and its representatives shall at all reasonable times be granted access to any premises (including those of the Sub-Contractors suppliers) and be allowed to inspect and test the Product at any time prior to acceptance of delivery.
- 7.2 Frosts Landscape Construction or its representatives shall have the option to reject any Product that it considers to be defective or inferior in quality of material, workmanship or design and/or not in accordance with the Sub-Contract in any respect. Any Works so rejected shall immediately be replaced in its entirety or corrected as required by Frosts Landscape Construction or its representative at the Sub-Contractors expense. The Sub-Contractor shall then re-submit to Frosts Landscape Construction the replacement or corrected Works for re-inspection and re-testing.
- 7.3 Neither inspection, testing nor acceptance of any Works nor any waiver of any rights in respect thereof by Frosts Landscape Construction nor its representative shall release the Sub-Contractor in any respect from any of its obligations under the Sub-Contract or otherwise including without limitation its responsibility for any defects subsequently found in materials and/or workmanship.

8 MAKING GOOD DEFECTS

- 8.1 Without prejudice to the operation of the other provisions of the Sub-Contract where defects appear in the Works at any time resulting from a breach of the Sub-Contract then Frosts shall notify the Sub-Contractor in writing as soon as reasonably practicable and may at its discretion require the Sub-Contractor at its own expense to make good by repair or replacement such defects or to pay the cost of replacement or repair by others. In addition the Sub-Contractor shall be responsible for and indemnify Frosts against any consequential costs incurred arising from or in consequence of the defect and in any event making good of defects shall not prejudice any other rights or remedies to which Frosts is or shall become entitled to pursuant to the Sub-Contract.

9 CHANGES/ORDER AMENDMENTS

- 9.1 The Sub-Contractor shall carry out any changes to the Works as directed by Frosts Landscape Construction in writing which without limitation may include alterations in the quantity of the Works as well as additions or omissions to the scope and subject matter of the Works or to the delivery arrangements and no change shall vitiate the Sub-Contract. No such changes shall be complied with unless expressed by way of written Sub-Contract Instruction from Frosts to the Sub-Contractor signed by an authorised signatory of Frosts. All changes shall be valued at the rates and prices set out in the Sub-Contract. If the rates and prices in the Sub-Contract are not applicable to the changes then suitable rates based on those in the Sub-contract shall be agreed between Frosts and Sub-Contractor.

10 PATENTS AND INTELLECTUAL PROPERTY

- 10.1 The Sub-Contractor shall indemnify and save harmless Frosts Landscape Construction against and from all actions, liabilities, claims, demands, proceedings, losses, damages, expenses, costs, fees, charges whatsoever or howsoever arising out of or in connection with the infringement of any patent or other intellectual property right in respect of the Works supplied hereunder or in relation thereto save where the patent or other intellectual property right is supplied by Frost'.

11 COMPLETION AND DELIVERY

- 11.1 The Works shall be completed and/or delivered by the Completion Date. Further the Sub-Contractor shall complete and/or deliver the Works to any programme Frosts may issue from time to time or to any revision thereof. Time to be of the essence.

	Title Sub-Contract Terms & Conditions	Quality Management System Document FR1036C
---	--	---

- 11.2 The Sub-Contractor shall immediately report any delay or anticipated delay whatsoever and its cause and shall keep Frosts Landscape Construction fully informed with dates of anticipated actual completion and shall use its best endeavours (without prejudice to its other contractual obligations) to eliminate such cause or causes of delay.
- 11.3 If the Sub-Contractor shall fail to commence performance of the Sub-Contract on the starting date or if Frosts Landscape Construction considers that the Sub-Contractor may not be able to complete the Works by the Completion Date or if in fact the Sub-Contractor shall fail to do so, then in either event Frosts Landscape Construction may determine the Sub-Contract or any part thereof and the provisions of Clause 16 shall apply.
- 11.4 Delivery of the Works shall be effected in the manner and at the time or times specified by Frosts Landscape Construction and if the Works are not delivered accordingly then the Sub-Contractor shall be fully responsible for any additional expenses arising therefrom. In any event unless otherwise provided the Sub-Contractor shall be responsible for despatch delivery (including packaging, loading and if so required unloading) to the site designated by Frosts.
- 11.5 Deliveries will only be accepted by Frosts Landscape Construction between 8:30am and 3:00pm unless by prior written arrangement with Frosts.

12 ADVERTISING

- 12.1 No advertising, publicity matter or other literature in relation to the Works or to the associated project is to be published, released or utilised by the Sub-Contractor except with the prior written permission of Frosts Landscape Construction signed by an authorised signatory.

13 TERMINATION FOR DEFAULT OR INSOLVENCY

- 13.1 In the event of any default by Sub-Contractor in performance of any of its obligations, which in the opinion of Frosts Landscape Construction constitutes a material breach of such obligation or obligations, then Frosts Landscape Construction may forthwith determine the Sub-Contract by notice in writing. No forbearance whether by allowing an opportunity to rectify such default or breach or otherwise shall constitute a waiver of Frosts' rights to determine and the exercise of the rights to determine shall be without prejudice to any of Frosts' other rights arising under the Sub-Contract or otherwise.
- 13.2 In the event of the Sub-Contractor compounding or entering into any arrangement with its creditors whether a Voluntary Arrangement or otherwise or going into bankruptcy or into creditors' voluntary liquidation or compulsory winding-up or having an administrator or administrative receiver or provisional liquidator appointed then Frosts Landscape Construction shall be entitled forthwith or at any time thereafter to determine the Sub-contract by serving notice in writing to any business address of the Sub-Contractor without prejudice to any of Frosts' other rights under the Sub-Contract or otherwise.
- 13.3 For the avoidance of doubt no determination, whether pursuant to Clause 13 or Clause 14 shall adversely affect the operation of any clause of the Sub-Contract giving rights to Frosts.
- 13.4 In the event of determination pursuant to Clause 13 or Clause 14 Frosts Landscape Construction shall be entitled to enter the Sub-Contractors premises or any place where the materials for the Works are situated in whole or in part and take possession of the whole or any part of the materials and remove the same and title thereto (insofar as the same shall not already be vested in Frosts) shall forthwith vest in Frosts Landscape Construction and conversely Frosts Landscape Construction shall be entitled to repudiate title in or otherwise reject any goods which it does not require.
- 13.5 In the event of determination pursuant to this clause 13 such determination shall be treated as a repudiation of the Sub-Contract between the Sub-Contractor and Frosts Landscape

	Title Sub-Contract Terms & Conditions	Quality Management System Document FR1036C
---	--	---

Construction and which repudiation has been accepted by Frosts.

14 TERMINATION GENERALLY

14.1 Frosts Landscape Construction shall be entitled at any time to determine the Sub-Contract in whole or in part by serving notice in writing upon the Sub-Contractor to that effect and thereupon the Sub-Contractor shall cease all performance unless to the extent otherwise provided by Frosts Landscape Construction in the said notice of termination. In the event of such termination Frosts Landscape Construction shall fully discharge all liabilities to the Sub-Contractor by making payment pursuant to the terms hereof within a reasonable period of time for all Works satisfactorily completed up to the date of determination together with all goods and materials properly procured by the Sub-Contractor for incorporation in the Works which had not yet been incorporated at that time but delivered to the place of the Works. In the event of payment being made for such goods and materials then title therein shall pass forthwith to Frosts.

Despite the provisions of Clause 14.1 hereinabove under no circumstances shall the payment thereunder exceed, when added to sums previously paid or otherwise due, the amount which would have been payable to the Sub-Contractor had this Sub-Contract not been determined and the Sub-Contractor had therefore received payment in full pursuant to Clause 16.

15 SUB-CONTRACT SUM

15.1 The Sub-Contract Sum is fixed for the duration of the Sub-Contract and is not subject to fluctuations or variation.

16 PAYMENT

Valuations and Interim Payments

16.1 If one is not already incorporated herein, promptly after confirmation by Frosts of the Sub-Contractors employment, the Sub-Contractor shall prepare for Frosts approval a Sub-Contract payment breakdown, showing the values of the various elements of the Works, in such detail and with such supporting evidence as Frosts may require. Unless such Sub-Contract payment breakdown is incorporated herein, no amount shall be due for payment by Frosts to the Sub-Contractor under or pursuant to the Sub-Contract unless and until such approval has been given by the Frosts. Further items may subsequently be added to the agreed Sub-Contract payment breakdown pursuant to the terms of the Sub-Contract.

16.2 On or before a date (“the Designated Date”) in each month designated by Frosts and set out in the Sub-Contract (or where such day does not fall on a Working Day, the following Working Day), Frosts and the Sub-Contractor shall conduct a Site progress review, at which they shall use best endeavours to agree the percentage of completion of each element of the Works separately identified in the Sub-Contract payment breakdown incorporated herein or approved pursuant to Clause 16.1 as may be amended pursuant to the terms of the Sub-Contract. Frosts shall record such percentages agreed (or where Clause 16.4 applies, the percentages adjudged by him) in a Site progress certificate.

16.3 If agreement as to the percentage of completion of each element of the Works is reached at or within five (5) Working Days of such Site progress review, the Employer shall within a further five (5) Working Days issue to the Sub-Contractor, and the authorised representative of the Sub-Contractor shall on the same day sign and return to Frosts, a Site progress certificate recording the agreed percentage of completion of each element of the Works.

16.4 If agreement as to the percentage of completion of each element of the Works cannot be reached within five (5) Working Days of the Site progress review, then:

	Title Sub-Contract Terms & Conditions	Quality Management System Document FR1036C
---	--	---

- 16.4.1 Frosts shall within a further five (5) Working Days of the expiry of such five (5) Working Day period issue to the Sub-Contractor a Site progress certificate recording such percentage of each element of the Works as is adjudged to have been completed in the opinion of Frosts; and
- 16.4.2 the percentage completion recorded in accordance with sub-clause 16.4.1 above shall remain valid until such time as Frosts and the Sub-Contractor shall agree the percentage of completion of each element of the Works, or, if there is no subsequent agreement, shall remain valid until the issue by the Frosts of the final statement (and thereafter shall be subject to the provisions of 16.17 or if earlier, until determined by adjudication and/or court proceedings.
- 16.4.3 No later than five (5) Working Days after the Sub-Contractor has returned (or should have returned) a signed Site progress certificate pursuant to Clause 16.3, Frosts shall issue to the Sub-Contractor an application for payment form showing the amount due, as calculated in accordance with Clause 16.6. The Sub-Contractor shall then return to Frosts the application for payment form duly signed by the Sub-Contractor's authorised representative together with an original invoice for the amount shown as due in such application for payment form (the "Interim Application").
- 16.4.4 In the event that Frosts has issued to the Sub-Contractor a Site progress certificate under Clause 16.4.1, at the same time as or immediately after such issue, Frosts shall issue an application for payment form based upon such Site progress certificate. After receipt of such Site progress certificate and application for payment, on or before the date for the submission of the same (or where such day does not fall on a Working Day, the following Working Day), the Sub-Contractor shall issue an original invoice for the amount due pursuant to such application for payment calculated in accordance with Clause 16.6, and in such case, such invoice shall be the Interim Application.
- 16.5 Provided that the Sub-Contractor shall have submitted an Interim Application in accordance with the provisions of Clause 16.4.3 (or, as the case may be, Clause 16.4.4, subject always to further deductions, abatements or set offs which Frosts is entitled to make the date when the payment in respect of an Interim Application becomes due ("due date") shall be forty five (45) days from the date of receipt by Frosts of the Interim Application (or, in the absence of an Interim Application, from the date it should have been received), and the final date for payment in relation to any Interim Application which becomes due shall be five (5) days from the relevant due date.
- 16.6 The amount due pursuant to an Interim Application shall be the total value (calculated on the basis of the percentage of completion of each element of the Works separately identified in the Sub-Contract payment breakdown approved by Frosts or incorporated herein) of the work properly executed up to and including the date of the Site progress review immediately prior to the Designated Date (as agreed or adjudged under Clause 16.3 or 16.4 as the case may be), together with any sums agreed under Clause 9 or valued under Clause 9, plus, where applicable, any sums referred to in Clauses 16.10.1 or 16.10.2, less any amount which may be deducted by Frosts in accordance with the provisions of the Sub-Contract and less any amounts previously paid under the Sub-Contract. Frosts shall not be obliged to make any payment for any Materials until such Materials are fully, finally and properly incorporated in the Works although he may in his sole discretion and subject to such conditions as he may stipulate, agree to do so. No later than one (1) days after the due date, Frosts shall provide to the Sub-Contractor a notice ("Payment Notice") specifying the sum that Frosts considers to be due at the due date in respect of the relevant payment and the basis on which that sum has been calculated. For the avoidance of doubt, the Payment Notice is deemed to be the notice referred to in section 110A(1)(a) of the HGCRA. Frosts shall give a Payment Notice even if the sum in question is zero.

	Title Sub-Contract Terms & Conditions	Quality Management System Document FR1036C
---	--	---

- 16.7 Subject to any Pay Less Notice given by Frosts under Clause 16.9, the amount of the Interim Payment to be made by Frosts in respect of an Interim Application on or before the final date for payment shall be the sum stated as due in the Payment Notice.
- 16.8 If a Payment Notice is not given in accordance with Clause 16.6, the application for payment form issued by Frosts under Clause 16.4.3 or 16.4.4 (as the case may be) shall stand as the Payment Notice, and the amount of the Interim Payment to be made by Frosts shall, subject to any Pay Less Notice under Clause 16.9, be the sum stated as due in such form.
- 16.9 If Frosts intends to pay less than the sum stated as due in the Payment Notice (or, in the absence of a Payment Notice, the application for payment form issued by Frosts under Clause 16.4.3 or 16.4.4 as the case may be), he shall not later than two (2) days before the final date for payment give the Sub-Contractor notice of that intention (a "Pay Less Notice"). The Pay Less Notice shall specify both the sum that Frosts considers to be due to the Sub-Contractor at the date the Pay Less Notice is given and the basis on which that sum has been calculated. Where a Pay Less Notice is given, the payment to be made in respect of the Interim Payment on or before the final date for payment shall be the amount stated as due in the Pay Less Notice.
- 16.10 Retention
- 16.10.1 Before the issue of the Practical Completion Certificate, Frosts may deduct a retention of five (5) percent of the total value of the work and Materials referred to in Clause 16.6. No fiduciary relationship is intended or created with regard deducted retention monies.
- 16.10.2 After the issue to the Sub-Contractor of the Practical Completion Certificate, but before the issue to the Sub-Contractor of a Certificate of Completion of Making Good Defects, Frosts may deduct a retention of two and a half (2½) percent of the total value of the work and Materials referred to in Clause 16.6.
- 16.11 The amounts deducted in accordance with the provisions of Clause 16.10 shall be subject to the following rules:
- 16.11.1 Frosts may have recourse to any amounts so deducted from time to time for payment of any amounts to which he is entitled under the provisions of the Sub-Contract or otherwise at law or in equity to deduct, abate or to set-off from any sum due or to become due to the Sub-Contractor.
- 16.11.2 After the issue to the Sub-Contractor of the Practical Completion Certificate or after completion by the Sub-Contractor of work of remedying of defects or after completion of any other of the Sub-Contractor's obligations under the Sub-Contract (whichever is the earlier), the Sub-Contractor may, subject to Clause 16.11.1, include in its next application for payment pursuant to Clauses 16.4.3 and 16.4.4, one moiety of the total amounts then so deducted.
- 16.11.3 After the issue to the Sub-Contractor of the Certificate of Completion of Making Good Defects, or, if earlier, after proper completion of any other of the Sub-Contractor's obligations under or in connection with the Sub-Contract (including, but not limited to, compliance by the Sub-Contractor with Clause 16.12, the Sub-Contractor may include in its next application for payment pursuant to Clauses 16.4.3 and aboveabove16.4.4 the residue of the amounts then so deducted.
- 16.12 Final Account
- 16.12.1 As soon as reasonably practicable and not later than six (6) months after practical completion of the Works, the Sub-Contractor shall send to Frosts all further documents necessary for the purpose of the final valuation and adjustment of the Contract Sum. If the Sub-Contractor fails to send such documents within such period, Frosts shall in any event prepare the statement referred to in Clause

	Title Sub-Contract Terms & Conditions	Quality Management System Document FR1036C
---	--	---

16.12.2 based upon the information available to him.

- 16.12.2 As soon as reasonably practicable and not later than six (6) months after receipt by Frosts of the documents referred to in Clause 16.12.1 or the expiry of the six (6) month period referred to therein, whichever is the later, (during which time Frosts may from time to time request reasonable further information from the Sub-Contractor in respect of the final valuation which information the Sub-Contractor shall provide within a reasonable time), Frosts shall ascertain any loss and/or expense under Clause 8, and shall prepare a statement of all other adjustments to be made to the Contract Sum as referred to in Clause 16.13 and Frosts shall forthwith send a copy of any such ascertainment and such statement to the Sub-Contractor.
- 16.13 The Contract Sum shall be adjusted as follows:
- 16.13.1 There shall be deducted the value of any:
- 1) omissions instructed under Clause 8;
 - 2) provisional sums included in the Sub-Contract Sum for work that was executed by the Sub-Contractor;
 - 3) costs incurred by the Employer by reason of the Sub-Contractor's failure to comply with an instruction under Clause 8;
 - 4) other amount that may be deducted under or in connection with the Sub-Contract.
- 16.13.2 There shall be added:
- 1) any amounts agreed between Frosts and the Sub-Contractor under Clause 8; 2 the value of any variations (except for omissions) valued by Frosts in accordance with Clause 8, including work instructed for which a provisional sum was included in the Sub-Contract Sum;
 - 3) any other amount which is required by the Sub-Contract to be added to the Sub-Contract Sum.
- 16.14 Frosts shall send to the Sub-Contractor a final statement (the "Final Statement") not later than two (2) months after the latter of the issue of the Certificate of Completion of Making Good Defects, and the statement referred to in Clause 16.12.2. The Final Statement shall state:
- 16.14.1 the sum of the amounts already paid to the Sub-Contractor; and
- 16.14.2 (the Contract Sum adjusted as necessary in accordance with Clause 16.13, and the difference (if any) between the two sums shall be expressed in the Final Statement as a balance due to the Sub-Contractor from Frosts or to Frosts from the Sub-Contractor, as the case may be. The Final Statement shall state the basis on which that amount has been calculated.
- 16.15 The due date for the payment of the balance referred to in Clause 16.14 shall be forty five (45) days from the date Frosts sends (or, as the case may be, should have sent) the Final Statement to the Sub-Contractor, and the final date for payment shall be fifteen (15) days from the due date. Not later than five (5) days after the due date, Frosts shall give to the Sub-Contractor a Payment Notice showing the details referred to in Clause 16.14. Subject to any Pay Less Notice under Clause 16.16, the payment to be made on or before the final date for payment shall be the sum stated in the Payment Notice or, if no such notice is given, the balance stated in the Final Statement. The said balance shall, at the final date for payment, become a debt payable by Frosts to the Sub-Contractor or, as the case may be, from the Sub-Contractor to Frosts.
- 16.16 If Frosts intends to pay less than the sum stated in the Payment Notice or, in default of

	Title Sub-Contract Terms & Conditions	Quality Management System Document FR1036C
---	--	---

such notice, less than the amount stated in the Final Statement, he shall not later than five (5) days before the final date for payment give to the Sub-Contractor a Pay Less Notice specifying the sum the Frosts considers to be due at the date the Pay Less Notice is given and the basis on which that sum has been calculated. Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall be the amount stated as due in the Pay Less Notice.

16.17 If, at his discretion, Frosts shall so agree, final payment, including the release of any or all outstanding deductions under Clause 16.10, may be made to the Sub-Contractor at any time after practical completion of the Works, subject to the Sub-Contractor certifying in writing to Frosts that such payment is accepted by the Sub-Contractor as final and conclusive of all rights of the Sub-Contractor to payment or damages (other than claims in respect of Value Added Tax) arising out of or in connection with the Sub-Contract. Such payment by Frosts and certification by the Sub-Contractor shall have the equivalent effect under this Sub-Contract as the final statement referred to in Clause 16.14.

16.18 Final Statement

16.18.1 The Final Statement (save in respect of fraud) shall have effect in any proceedings arising out of or in connection with the Sub-Contract as final and conclusive evidence that any necessary effect has been given to all the terms of the Sub-Contract with regard to payment by Frosts, save where there has been any accidental inclusion or exclusion of any work, Materials, goods or figure in any computation or any arithmetical error in any computation, in which event, the Final Statement shall have effect as final and conclusive evidence as to all other computations. Save as expressly provided in this sub-clause, the Final Statement shall not have effect in any proceedings arising out of or in connection with the Sub-Contract as final and conclusive evidence of any matter.

16.18.2 If court or adjudication proceedings have been commenced and served by either party before the Final Statement has been issued, the Final Statement shall have effect as final and conclusive evidence as provided in Clause 16.18.1 after either:

- 1) such court proceedings have been concluded or any court proceedings arising out of such adjudication proceedings have been concluded, whereupon the Final Statement shall be subject to the terms of any award or judgement in or settlement of such proceedings; or
- 2) a period of six (6) months during which neither party has, taken any further steps in such court proceedings or in any such court proceedings arising out of such adjudication proceedings or has taken steps to enforce any decision of an adjudicator or to have a matter decided by an adjudicator re-heard by the courts, whereupon the Final Statement shall be subject to the terms (if any) agreed in partial settlement,

whichever shall be the earlier.

16.18.3 If court or adjudication proceedings have been commenced and served by either party within ten (10) Working Days after the Final Statement has been issued, the Final Statement shall have effect as final and conclusive evidence, as provided in Clause 16.18.1, save only in respect of those matters to which those proceedings relate.

16.19 No interim or final payment and no statement shall be evidence that any Materials or work carried out by the Sub-Contractor to which it relates are in accordance with the Sub-Contract.

16.20 All payments hereunder shall be made in Pounds Sterling. Frosts Landscape Construction reserves the right to make payments by BACS.

	Title Sub-Contract Terms & Conditions	Quality Management System Document FR1036C
---	--	---

17 TITLE AND RISK

17.1 Title in the Works shall pass from the Sub-Contractor to Frosts Landscape Construction on the sooner of the creation of the relevant goods forming the whole or part of the Works of those goods or allocation from stock or acquisition by the Sub-Contractor. Notwithstanding the passing of title the risk in such goods shall remain with the Sub-Contractor until delivery or until acceptance of the Works by Frosts Landscape Construction in accordance with the provisions of the Sub-Contract whichever shall be later.

18 INDEMNITIES

18.1 The Sub-Contractor shall indemnify and save harmless Frosts Landscape Construction against and from any actions, liabilities, claims, demands, proceedings, losses, damages, expenses, costs, fees, charges whatsoever or howsoever arising out of or in connection with any and all of the following:

18.1.1 The breach of ANY provision of this Sub-Contract.

18.1.2 Injury, loss or damage to persons or property contributed to or caused by the negligence or breach of duty of the Sub-Contractor its servants or agents or otherwise arising out of or in the course of or caused by the acts, omissions or defaults of the Sub-Contractor, its servants or agents pursuant to the Sub-Contract (save where the injury, loss or damage is caused solely by the negligent act or omission of Frosts).

18.1.3 All third party allegations, liens, claims, arrestment's, garnishees, executions, judgments and awards (including expenses) whether groundless or not which may arise out of or in connection with this Sub-Contract.

18.2 The Sub-Contractor shall at Frosts request furnish proof satisfactory to Frosts Landscape Construction that all such liens and claims, judgments and awards etc., as referred to in Clause 18.1.3 have been satisfied or released and further agrees that Frosts Landscape Construction shall have the right to make payment direct to such third party and recover such payments from the Sub-Contractor as a contract debt.

18.3 The Sub-Contractor shall maintain insurance cover against such liabilities as are referred to at Clause 18 and shall provide to Frosts Landscape Construction on demand valid certificates of insurance in respect thereof.

19 LIENS

19.1 The Sub-Contractor agrees to waive any right to exercise a lien upon the Works or upon any materials, component parts, work in progress and, relevant drawings and acknowledges that its sole remedy in the event of any breach by Frosts Landscape Construction of its obligations under the Sub-Contract is to seek financial relief through the courts. As and when required by Frosts Landscape Construction the Sub-Contractor shall give a certificate of waiver of lien, and of any other rights over the Works or to any injunctive or performance remedies to Frosts Landscape Construction or to any third party nominated by Frosts.

20 CONFIDENTIALITY

20.1 The Sub-Contractor shall not, either during the period of this Sub-Contract or at any subsequent time, disclose to any other person any technology or other information disclosed to it by Frosts Landscape Construction pursuant to this Sub-Contract, and shall use its best endeavours to keep the same confidential (whether marked as such or not).

	Title Sub-Contract Terms & Conditions	Quality Management System Document FR1036C
---	--	---

21 GENERAL

- 21.1 Nothing in these conditions shall create, or be deemed to create, a partnership between the parties.
- 21.2 If any provision of these conditions is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of this Agreement and the remainder of the affected provisions shall continue to be valid.
- 21.3 Any notice or other information required or authorised by these conditions to be given by either party to the other may be given by hand or sent (by first class pre-paid post, email, cable, facsimile transmission or comparable means of communication) to the other party at the address referred to in the Sub-Contract.
- 21.4 Any notice or other information given by post under Clause 21.4 which is not returned to the sender as undelivered shall be deemed to have been given on the second day after the envelope containing the same was so posted; and proof that the envelope containing any such notice or information was properly addressed, and sent by first class, pre-paid post, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.
- 21.5 Service of any legal proceedings concerning or arising out of these conditions shall be effected by causing the same to be delivered to the registered office of the party to be served, or to such other address as may be notified by the party concerned in writing from time to time.

22 DISPUTE RESOLUTION

- 22.1 If any dispute arises out of or in connection with the Sub-Contract the parties will attempt to settle it by negotiation.
- 22.2 If any dispute cannot be resolved by negotiation then
- 22.2.1 If and insofar as the Act applies to the Sub-Contract then the Technology and Construction Solicitors' Association adjudication rules are hereby incorporated into the Sub-Contract save that any adjudicator appointed shall not have any right to decide on his own jurisdiction and shall decide the dispute only in relation to the parties legal rights.
- 22.2.2 If not applicable then the dispute shall be referred to an independent expert with appropriate qualification and practical experience to be agreed between the parties, or if they fail to agree shall be appointed by the President for the time being of the Law Society of England and Wales.
- 22.2.3 For the avoidance of doubt the provisions of this clause provide for an alternative form of dispute resolution and are not a reference to arbitration.

23 ENGLISH LAW AND JURISDICTION

- 23.1 Save where otherwise specifically agreed in writing and signed by an authorised signatory of Frosts, the Sub-Contract shall in all respects be construed in accordance with the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.

	<p>Title</p> <p style="text-align: center;">Sub-Contract Terms & Conditions</p>	<p>Quality Management System Document</p> <p style="text-align: center;">FR1036C</p>
---	--	---

SIGNED BY AN AUTHORISED SIGNATORY
FOR AND ON BEHALF OF
FROSTS LANDSCAPE CONSTRUCTION LTD

Signed:

Name:

Job title:

SIGNED BY AN AUTHORISED SIGNATORY
FOR AND ON BEHALF OF SUB CONTRACTOR (name).....

Signed:

Name:

Job title: