



Business to business standard conditions for supply of works and/or services (Conditions)

1. DEFINITIONS

In the Contract (as defined below) the following words and expressions shall have the meanings assigned to them except where the context otherwise expressly requires:

- 1.1 **"Best Industry Practice"** means the exercise of reasonable skill, care and diligence to be expected from a contractor engaged in the provision of works similar in scope, scale, complexity and cost to the Works;
- 1.2 **"CDM Regulations"** means the Construction (Design and Management) Regulations 2015 (SI 2015/51) and any associated code of practice as amended, extended or re-enacted from time to time.
- 1.3 **"Collateral Warranties"** means any collateral warranties to be given by the Contractor and any sub-contractor and/or any sub-consultant appointed by the Contractor in connection with the Works and the Services and in favour of any person specified in the Purchase Order in the draft form(s) appended to the Purchase Order;
- 1.4 **"Client"** means the Client stated in the Purchase Order;
- 1.5 **"Client Representative"** means the person or organisation named as such in the Purchase Order who has the authority to act for and on behalf of the Client in all matters under the Contract (except any matters that the Client from time to time shall notify to the Contractor in writing) and who shall be responsible for issuing information, instructions and decisions to the Contractor and who shall receive copies of all information, communications and notices that the Contractor provides to the Client at the same time as the Client;
- 1.6 **"Completion"** means the date on which the Client Representative has certified that the Works and the Services have been completed pursuant to condition 8.3;
- 1.7 **"Completion Date"** means the date by which the Works and the Services are to have achieved Completion as stated in the Purchase Order;
- 1.8 **"Contract"** means the contract between the Client and the Contractor comprising the Purchase Order, the Conditions, the Special Conditions and any other documents specified or referred to in the Purchase Order;
- 1.9 **"Contractor"** means the individual, firm or company stated in the Purchase Order;
- 1.10 **"Contractor's Persons"** means all employees, directors, partners sub-contractors, sub-consultants, agents and staff employed, engaged or associated with the Contractor;
- 1.11 **"Contractor's Information"** means the information supplied by the Contractor in connection with the Contract as set out or referred to in the Purchase Order;
- 1.12 **"Deleterious"** means any goods, materials, equipment, products or kits that are generally known, accepted, or generally suspected, in the construction and engineering industry at the relevant time as:
 - (a) posing a threat to the health and safety of any person;
 - (b) posing a threat to the structural stability, durability, performance or physical integrity of the Works or any part or component of the Works;
 - (c) reducing, or possibly reducing, the normal life expectancy of the Works, any part or component of the Works or any project, structure, machinery or development of which the Works form part;
 - (d) not being in accordance with any relevant British or

international (including European) standards, relevant codes of practice, good building practice; or

(e) having been supplied or placed on the market in breach of relevant construction and engineering regulations;

- 1.13 **"Effective Date"** means the date the Contractor accepts the Client's Purchase Order in accordance with condition 2;
- 1.14 **"Force Majeure Event"** means any acts of God, flood, earthquake, windstorm or other natural disaster; epidemic or pandemic; war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion or riots; nuclear, chemical or biological contamination or sonic boom; action taken by a government or public authority including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition; fire or explosion; permanent or temporary unavailability of materials or plant and equipment which is/are required in respect of the Works and the Services and which could not have been prevented by the reasonable diligence of the Contractor provided always that these circumstances or events do not arise by reason of any error omission negligence or default of the Contractor or the Contractor's Persons;
- 1.15 **"HS+E"** means Health, Safety and Environment;
- 1.16 **"Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, goodwill, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- 1.17 **"Main Contract"** means the contract between the Client and the Purchaser details of which are set out in the Purchase Order (where applicable);
- 1.18 **"Programme"** means the programme contained or referred to in the Purchase Order setting out the date(s) by which the Works and the Services are to reach Completion in accordance with condition 6;
- 1.19 **"Price"** means the sum to be paid to the Contractor for the execution of the Works and the Services in as set out in the in the Purchase Order;
- 1.20 **"Purchase Order"** means the Client's purchase order including these Conditions, any Special Conditions and any other documents specified or referred to in the Purchase Order;
- 1.21 **"Purchaser"** means the individual or organisation stated in the Purchase Order with whom the Client has entered into a contract in relation to the Works and the Services (or part of them);
- 1.22 **"Practical Completion Deliverables"** means the documents or other items described as such in the Purchase Order;
- 1.23 **"Retention"** means the percentage of the Price stated in the Purchase Order (if any) to be deducted and retained from the Price and which shall be paid to the Contractor in accordance with condition 19.10;
- 1.24 **"Services"** means the services (if applicable) described in the Purchase Order;
- 1.25 **"Site"** means the location(s) where the Works and the Services are to be carried out and completed set out in the Purchase Order;
- 1.26 **"Special Conditions"** means any special terms and conditions set out or referred to in the Purchase Order as applying to the



- Contract;
- 1.27 **"Specification"** means the specification attached and/or referred to in the Purchase Order including any specification, design and/or plans referred to in such specification;
- 1.28 **"Statutory Requirements"** means each and every obligation imposed by law relevant to the Contract including without prejudice to the generality of the foregoing all statutes, statutory instruments, regulations and by-laws, and any requirements of any statutory bodies or local authorities including for the avoidance of doubt any planning permission relating to the Works and the Services;
- 1.29 **"Variation"** means an instruction by the Client to the Contractor to vary the Works and/or the Services in accordance with condition 3 provided that the variation, in the reasonable opinion of the Contractor, does not:
- (a) fall outside the competency of the Contractor;
 - (b) adversely impact of the integrity of the Works and/or the Services; and/or
 - (c) materially change the scope of the Works and/or the Services;
- 1.30 **"Works"** means all works described in the Purchase Order (including, without limitation, the provision and /or instalment of any plant, equipment and materials) used in such Works) necessary to fulfil the Contract; and
- 1.31 **"working day"** means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

2. BASIS OF CONTRACT

- 2.1 The Purchase Order constitutes an offer to carry out the Works and the Services subject to the terms of the Contract.
- 2.2 The Purchase Order shall be deemed to be accepted by the Contractor on the earlier of:
- 2.2.1 the Contractor issuing written acceptance of the Purchase Order or the Contractor signing and returning a copy of the Purchase Order; or
 - 2.2.2 any act by the Contractor consistent with fulfilling the Purchase Order (including but not limited to commencing performance of the Works and the Services);
- at which point and on which date the Contract shall come into existence.
- 2.3 In the event of inconsistency between the documents comprising the Contract, they shall have precedence in the following order:
- 2.3.1 the Purchase Order;
 - 2.3.2 the Special Conditions;
 - 2.3.3 the Conditions;
 - 2.3.4 the Specification; and
 - 2.3.5 the Contractor's Information.
- 2.4 Where there is any discrepancy or divergence between the Specification and the Contractor's Information (including a discrepancy that results from a Variation under condition 3), the Contractor shall notify the Client of the discrepancy or divergence and of its proposed amendments to correct or remove it (as the case may be) at the Client's cost , subject always to the Contractor complying with the Statutory Requirements.

3. VARIATIONS

- 3.1 The Contractor shall carry out Variations in accordance with this condition 3. No Variation shall vitiate the Contract. Variations shall be instructed and confirmed by way of a written document entitled 'Variation Order' in the form attached to the Purchase Order and signed by the Client Representative.
- 3.2 Prior to instructing or authorising any proposed Variations, the Client may require the Contractor to submit in writing, within five (5) working days of receipt of the Client's request, a notice setting out:
- 3.2.1 the effect (if any) on the Price including any estimates regarding additional works and services required;
 - 3.2.2 the effect on the Completion Date (if any); and
 - 3.2.3 a schedule for the execution of the proposed Variation, showing the resources to be employed.
- 3.3 Each Variation shall be valued in accordance with the rates and prices set out in the Purchase Order. To the extent that the rates and prices in the Purchase Order are not applicable to the Variation then commensurate rates based on those in the Purchase Order shall be agreed between the Client and the Contractor or failing agreement, shall be fair and reasonable prices.
- 3.4 Upon the Client's review of any notice received in accordance with condition 3.2 (or if such notice is not received prior to the expiry of the five (5) period referred to in condition 3.2) the Client shall within five (5) working days either:
- 3.4.1 issue to the Contractor a notice to proceed with the Variation in accordance with condition 3.1; or
 - 3.4.2 decline to proceed to issue a Variation.
- 3.5 If the Client does not issue to the Contractor a notice to proceed or does not decline to proceed to issue a Variation, in either case, within five (5) working days, the Variation shall be deemed to be withdrawn and the Contractor shall not be obliged to proceed with the Variation.
- 3.6 Subject to condition 3.7, the Contractor shall not vary the Works except under this condition 3 or as directed in writing by the Client or as may be agreed with the Client in writing.
- 3.7 The Contractor may make minor changes to the Specification and/or the Contractor's Information without the Client's consent provided that:
- 3.7.1 the changes are insubstantial and immaterial;
 - 3.7.2 the changes are in accordance with Statutory Requirements;
 - 3.7.3 any substitute materials used are of an equal or better quality and suitability to those originally specified; and
 - 3.7.4 the changes do not incur additional expense or delay the Completion Date.
- ## 4. CONTRACTOR'S GENERAL OBLIGATIONS
- 4.1 The Contractor shall, subject to the provisions of the Contract, make regular and diligent progress to carry out and complete the Works and the Services by the Completion Date.
- 4.2 The Works shall comply with the relevant planning permission and the Specification.
- 4.3 The Contractor shall not cause or contribute to any breach by the



Client of the Main Contract or any other contract the Client may enter into with a third party the terms of have been disclosed to the Contractor before the Contract comes into existence.

4.4 In the absence of any such specific provisions, the Contractor shall:

4.4.1 within five (5) working days of the Effective Date of the Contract, provide for approval by the Client the Contractor's own HS +E policies and procedures, where necessary preparing such policies and procedures to reflect all aspects of the Works and the Services;

4.4.2 comply with any HS+E standards, policies and procedures in place at any location where Works and the Services are being carried out; and

4.4.3 carry out documented risk and hazard assessments and assist the Client in carrying out any such assessments that are required for the safe performance of the Works and the Services.

4.5 If stated in the Purchase Order as being applicable, on or before the Effective Date (or such other date as the Client may require) the Contractor shall procure the execution and delivery of the following security documents;

4.5.1 a performance bond for the value specified in the Purchase Order, in the form appended to the Purchase Order;

4.5.2 a parent company guarantee, in the form appended to the Purchase Order; and/or

4.5.3 advanced payment bond, in the form appended to the Purchase Order.

4.6 If required under the Purchase Order, within ten (10) working days or a written request to do so, the Contractor shall use reasonable endeavours to procure the execution and delivery of the Collateral Warranties to the Client in favour of any person specified in the Purchase Order.

5. CONTRACTOR WARRANTIES

5.1 The Contractor warrants to the Client that:

5.1.1 it will carry out and complete the Works in a good and workmanlike manner using Best Industry Practice and suitable good quality materials;

5.1.2 it will not specify or use anything in the Works which, at the time of specification or use is Deleterious;

5.1.3 when complete the Works will materially comply with the Specification subject to any Variations or changes referred to in condition 3 or agreed with the Client;

5.1.4 the Contractor is experienced, qualified, financed and organised to perform the Contract and that the Works and the Services will be performed by appropriately trained and qualified personnel in accordance with Best Industry Practice; and

5.1.5 the Contractor will comply with all Statutory Requirements and regulations relating to the Works and the Services.

5.2 In carrying out the Services the Contractor warrants and represents to the Client that: it will carry out and complete the Services using reasonable skill, care and diligence to be reasonably expected from a contractor engaged in the provision of services similar in scope, scale, complexity and cost to the Services.

6. PROGRAMME

6.1 The Contractor shall make regular and diligent progress to see

that the Works and the Services reach Completion by the Completion Date. In doing so the Contractor shall use reasonable endeavours to co-ordinate, interface, integrate and sequence the Works and the Services with the works and activities of any third party contractors working on or adjacent to the Site so as to minimise delay, obstruction to or interference with the carrying out of the Works and the Services and the activities of such third parties.

6.2 In the absence of the Completion Date being specified in the Purchase Order, the Works and the Services shall be completed as soon as practicable.

6.3 If the Purchase Order provides for the Works and the Services to be subject to tests on Completion the Works and the Services shall not be deemed to have achieved Completion until all such tests have been performed in accordance with condition 7 and have been passed to the satisfaction of the Client.

6.4 In the event that the Contractor fails to achieve Completion by the date stated in the Purchase Order, the Contractor shall subject to condition 6.5 be liable to the Client for liquidated damages which shall apply for day of delay and be charged or deducted in accordance with the rates of liquidated damages specified in the Purchase Order.

6.5 If the Works and the Services are delayed by reason of the following:

6.5.1 any delay impediment, prevention or default by the Client or the Client Representative or other contractors appointed by the Client that prevents the Contractor performing the Works and the Services;

6.5.2 any Variation; and/or

6.5.3 a Force Majeure Event;

then the Contractor may give written notice to the Client Representative to the effect that it considers itself entitled to a extension of time for Completion of the Works and the Services and to recover its loss and expense.

6.6 The Client Representative shall grant the Contractor a reasonable extension of time in which to complete the Works and the Services and the Contractor shall be entitled to be reimbursed its loss and expense in connection with such delay which shall be added to the Price.

6.7 The Contractor shall not be entitled to any extension of time or loss and expense where the event or cause of delay results from the negligence, omission, default, breach of contract or breach of statutory duty of the Contractor or the Contractor's Persons.

7. TESTING AND INSPECTION

7.1 Where applicable as stated in the Purchase Order, tests shall be carried out in the presence of the Client in accordance with the Contract.

7.2 If any part of the Works and the Services fail to pass the tests, such failure shall be notified by the Client to the Contractor and the Contractor shall rectify the failure. Upon rectification, the Contractor shall notify the Client in writing and shall give the Client reasonable notice of when the tests shall be repeated by the Contractor. The repeat tests shall be carried out in the presence of the Client and the Contractor. This process shall be repeated until the tests are passed to the reasonable satisfaction of the Client in accordance with the Contract.

7.3 Within three (3) working days after testing and any repeat testing, the Contractor shall provide to the Client one copy of a written schedule of the tests carried out and their results.

8. DEFECTS AND COMPLETION



- 8.1 If, upon testing in accordance with condition 7, or at any other time before Completion, the Client is not satisfied that the Works and the Services have been carried out in accordance with the Contract or affected by shrinkages (**Defects**), the Client shall as soon as reasonably practicable give to the Contractor notice in writing specifying particulars of the alleged Defects and the Contractor shall rectify the Defects.
- 8.2 If the Contractor shall fail to rectify the Defects within a reasonable time the Client may, at the Contractor's cost, take such steps as may in all the circumstances be reasonable to make good such Defects and the Client shall be entitled to charge the Contractor the cost of making them good. The provisions of this condition 8.2 are without prejudice to any other rights or remedies of the Client.
- 8.3 As soon as, in the opinion of the Client Representative, the Works and the Services have passed any tests in accordance with condition 7, any Defects have been rectified and the Works and the Services have been completed in accordance with the Contract, the Client Representative shall certify Completion.
- 8.4 For the avoidance of any doubt, the Contractor agrees that the Works and the Services shall not be deemed to have reached Completion and that the Client Representative shall be under no obligation to certify Completion unless and until the Practical Completion Deliverables have been provided to the Client.
- 8.5 Where the Client waives its right to have any tests completed or Defects of a minor nature rectified on or prior to Completion, the Client may, on receiving a written undertaking by the Contractor to rectify any such Defect and finish any outstanding tests and work within such time as the Client requires, authorise the Client Representative to issue a certificate confirming that the Works and the Services have reached Completion subject to such minor Defects and outstanding tests and works.
- 8.6 Notwithstanding any other provision of the Contract, the term approval, when used in the context of any approval to be given by the Client, shall have the meaning "acceptance of general principles only", and no such approval, perusal, inspection, issuing of any certificates or documents in relation to Completion or any other term of the Contract or any consent given by or on behalf of the Client, nor any inspection of or failure to inspect the Works and the Services, shall diminish or relieve the Contractor from any of his obligations or liabilities under this Contract.

9. DEFECTS LIABILITY PERIOD

- 9.1 The Contractor, upon receipt of a written notice from the Client, at any time during the Defects Liability Period specified in the Purchase Order, specifying any Defects, shrinkages or other faults in the Works and the Services, shall rectify them as soon as practicable to the reasonable satisfaction of the Client, at the Contractor's cost.
- 9.2 If the Contractor shall fail to rectify the Defects, shrinkages and faults in accordance with condition 9.1, the Client may take such steps as may in all the circumstances be reasonable to make good such Defects, shrinkages and faults and the Client shall be entitled to charge the Contractor for the cost of making them good and any resulting losses and/or deduct such costs and losses from any sums due to the Contractor. The provisions of this condition 9.2 are without prejudice to any other rights or remedies of the Client. Such action shall not relieve the Contractor of its continuing obligations under the Contract.

10. SITE ACCESS

- 10.1 The Client shall afford access to so much of the Site as is necessary for the performance of the Works and the Services.
- 10.2 The Contractor shall give access to the Works and the Services to the Client at all reasonable times for purposes of inspecting the Works and the Services provided that reasonable notice has been given to the Contractor and the Client complies with all site rules,

does not give instructions to anyone on site and is accompanied by a representative of the Contractor.

11. SITE REGULATIONS

- 11.1 The Client, acting reasonably, shall have the right to require the removal of any person brought to the Site by the Contractor who has committed an act of gross misconduct or has acted in a way that is prejudicial to HS+E
- 11.2 The Contractor shall ensure safe working practices for its own employees under the provisions of the Health and Safety at Work Act 1974 and all other Statutory Requirements and other regulations and must pay due regard to the safety of all persons on Site in accordance with ss3-4 of the Health and Safety Act 1974 and all other Statutory Requirements and other regulations.
- 11.3 The Contractor and Contractor's Persons shall observe the hours and conditions of working unless notified otherwise.
- 11.4 The Contractor shall ensure that no signs or advertisements are displayed on or around the Site without the Client's consent;

12. INDEPENDENT CONTRACTOR

- 12.1 The Client and the Contractor agree and declare that the Contractor (which shall be deemed to include the Contractor's Persons) is an independent contractor and not an employee or partner of the Client.
- 12.2 The Contractor undertakes to pay all remuneration due (including sick pay and holiday pay) to its employees engaged in the performance of the Contract.

13. SITE RESPONSIBILITIES

- 13.1 The Contractor shall use all reasonable endeavours to prevent damage to any highway or bridge on the routes to the Site by any traffic of the Contractor or any sub-contractor.
- 13.2 The Contractor shall use reasonable endeavours to prevent any nuisance (including any noisy working operations), inconvenience, disturbance or other interference with the rights of any third parties or any statutory undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the Works and the Services..
- 13.3 The Contractor shall use reasonable endeavours to prevent trespass by the Contractor on or over any adjoining or neighbouring property arising out of the Works and the Services and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public.
- 13.4 The Contractor shall be responsible for the adequacy, stability and safety of all its operations and methods necessary for the satisfactory and safe performance of the Works and the Services, and those of the Contractor's Persons and shall comply with any provisions incorporated in the Contract in relation to HS+E.
- 13.5 In carrying out the Works and the Services the Contractor shall use reasonable endeavours to see that:
- 13.5.1 the Site is secured at all times so as to prevent unauthorised entry so far as is possible;
 - 13.5.2 the Site is kept tidy and clear of rubbish and no goods or materials are deposited or stored on or around the Site (save to the extent that they are required within a reasonable time for the carrying out of the Works and the Services);
 - 13.5.3 no soil, gravel or other minerals are removed from the Site except to the extent necessary for the carrying out of the Works and the Services;
 - 13.5.4 unless the Purchase Order states otherwise, suitable arrangements are made with the relevant authorities



for the supply of water, electricity and other utilities to enable the carrying out of the Works and the Services; and

- 13.5.5 the Site is left in a clean and tidy condition, with all unused materials and plant, equipment and temporary structures having been removed.

14. INSURANCE

- 14.1 The Contractor shall take out and maintain (with reputable insurers lawfully carrying on business in the UK or the EU) all insurances sufficient to cover its liabilities and obligations under the Contract and which are required by applicable laws.
- 14.2 As required in the Purchase Order, the Contractor shall maintain the insurances below for the minimum levels of cover and on terms set out in the Purchase Order:
- 14.2.1 employer's liability insurance;
 - 14.2.2 public liability insurance;
 - 14.2.3 professional indemnity insurance; and
 - 14.2.4 products liability insurance;
- and any other insurances set out in the Purchase Order.
- 14.3 The Contractor shall provide the Client with certificates of such insurances evidencing cover prior to the commencement of the Works and the Services and immediately on receipt of a request from the Client.

15. TITLE

- 15.1 Title in any materials or goods provided as part of the Works shall pass to the Client on payment by the Client to the Contractor in respect of those materials or goods.

16. INFORMATION

The Contractor shall provide all information which is reasonably required by the Client to ensure that the Works and the Services comply with and that the Client is able to fulfil its obligations under Contract in relation to all applicable legislation and industry codes of practice.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 Subject to the Client paying the Price and conditions 17.2 and 17.3, the Contractor grants the Client a non-exclusive, royalty free, licence to copy documents and use them and the products and materials (excluding proprietary software) developed by the Contractor in relation to the Works and the Services only for the purposes required for the design, construction, funding, marketing, reinstatement, sale, letting, repair, maintenance and extension of the Works.
- 17.2 The licence does not allow the Client to reproduce the designs in such documents or to reproduce such products and materials in any extension of the Works.
- 17.3 The Contractor shall not be liable for the use of such documents, products and/or materials other than for the purpose for which they were originally prepared and intended and other than for the purpose set out in condition 17.1. The Client may only disclose such documents, products and materials to any other person if necessary for the design, construction, funding, marketing, reinstatement, sale, letting, repair, maintenance and extension of the Works on the condition that such person shall not disclose them to any third party without the prior written consent of the Contractor.

18. PRICE

- 18.1 The Price shall be as stated in the Purchase Order and, unless otherwise so stated, shall be:

- 18.1.1 fixed, unless otherwise agreed in writing by the parties;
- 18.1.2 exclusive of any applicable VAT (which shall be shown separately on all invoices as a strictly net charge); and
- 18.1.3 inclusive of all taxes other than VAT.

19. PAYMENT AND TERMS OF PAYMENT

- 19.1 Unless otherwise stated in the Purchase Order, the Contractor shall submit an invoice at the end of each month for all the Works and the Services supplied during that month under the Contract and not previously invoiced.
- 19.2 The due date for payment of the Contractor's invoice shall be the date the Client receives the Contractor's invoice (**Due Date**).
- 19.3 The Contractor acknowledges and agrees that the Contractor's failure to ensure that an invoice is received by the Client on or before the end of each month may result in the Due Date being postponed by reference to the delay in the Contractor providing its invoice to the Client.
- 19.4 No later than five (5) days after the Due Date the Client shall notify the Contractor of the sum that the Client considers to have been due to the Contractor at the Due Date and the basis on which that sum is calculated.
- 19.5 Unless otherwise stated in the Purchase Order, the final date for payment of the Contractor's invoice shall be twenty (20) working days from the Due Date (**Final Date for Payment**). Time of payment shall not be of the essence.
- 19.6 Unless the Client has served a notice under condition 19.7, it shall pay the Contractor the amount referred to in the Client's notice under condition 19.4 (or, if the Client has not served notice under condition 19.4, the sum stated in the Contractor's invoice) (**Notified Sum**) on or before the Final Date for Payment.
- 19.7 Not less than one (1) day before the Final Date for Payment the Client may give the Contractor notice that it intends to pay less than the Notified Sum (**Pay Less Notice**). Any Pay Less Notice shall specify:
- 19.7.1 the sum that the Client considers to be due on the date the notice is served; and
 - 19.7.2 the basis on which that sum is calculated.
- 19.8 Where a Pay Less Notice is given in accordance with condition 19.7, the obligation to pay the notified sum in condition 19.6 applies only in respect of the sum specified in the Pay Less Notice.
- 19.9 If the Client is overdue with any payment owing under the Contract (and the Client has not served a Pay Less Notice) then the Client will be liable to pay interest on the overdue amount at the annual rate of 4% above the prevailing base rate of National Westminster Bank Plc from time to time from the date payment becomes due until full payment of the amount due together with accrued interest. The parties agree that this is a 'substantial remedy' for purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 19.10 The Client shall be entitled to deduct and off-set from the Price the Retention which shall be paid to the Contractor as follows:
- 19.10.1 half of the Retention shall be paid to the Contractor on certification of Completion by the Client's Representative under condition 8.3; and
 - 19.10.2 the remaining half of the Retention shall be paid to the Contractor upon the expiry of the Defects Liability Period subject always to the Contractor's compliance with its obligations to rectify any Defects, shrinkages or other faults during that period under condition 9.1.

20. TAXES



- 20.1 The Price shall include all taxes, fees, duties and charges that may be imposed or levied in connection with the Works and the Services (excluding VAT).
- 20.2 The Contractor shall be responsible for payment of all taxes, fees and any other liabilities (including but not limited to income taxes, fees, duties, charges and national insurance contributions and other statutory payments) payable in relation to or by reference to any payments made to or other remuneration received by the Contractor under the Contract.
- 21 CONFIDENTIALITY**
- 21.1 All information, which would be regarded confidential by a reasonable business person, supplied by either party to the other or obtained whilst attending the Client's or Contractor's premises concerning the Client or Contractor:
- 21.1.1 shall be maintained in confidence by the recipient taking the same care to do so as it would take in respect of its own confidential information and, subject to the exclusions below, shall not be published or disclosed to any other party without the prior permission in writing of the supplying party; and
- 21.1.2 shall not be used other than in connection with and for purposes of fulfilling the Contract.
- 21.2 Each party shall endeavour to advise the other as to any confidential information that is written, oral, electronic or may be observed, prior to disclosure. In the absence of indication to the contrary, all information disclosed shall be treated as confidential.
- 21.3 The Contract shall not prevent either party from disclosing confidential information that is
- 21.3.1 required to persons engaged in the performance of either party's obligations under the Contract for the performance of those obligations (including disclosure to professional advisers advising in relation to the Contract);
- 21.3.2 already or becomes generally available and in the public domain otherwise than as a result of a breach by the disclosing party of this condition;
- 21.3.3 required to enable a determination of a dispute under condition 33;
- 21.3.4 already lawfully in the possession of the disclosing party, prior to its disclosure; or
- 21.3.5 required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned.
- 21.4 The restrictions in this condition shall apply to all officers, employees, agents, consultants and contractors of the parties. The parties shall ensure that all such officers, employees, agents, consultants and contractors who receive the information whether in whole or in part are notified as to and agree to comply with the contents of this condition.
- 21.5 The obligation of confidentiality set out in this condition shall continue to apply for a period of ten (10) years from the date that the Contract comes into existence unless superseded by another agreement between the parties.
- 21.6 All information that is in written form along with any copies made of it shall be returned by the receiving party within ten (10) working days of receiving a written request from the supplying party for the return of such.
- 21.7 Neither party shall without the prior written consent of the other party make any announcement or disclosure of any matters discussed, negotiated or agreed between them.
- 22 HEALTH AND SAFETY**
- 22.1 The Contractor shall at all times whilst on the Client's premises or on the Site comply with and procure that the Contractor's Persons comply with all health and safety legislation and with all security and safety regulations and rules from time to time in force on those premises or the Site as previously notified in writing to the Contractor.
- 22.2 The Contractor shall comply with and discharge its duties and obligations under the CDM Regulations.
- 23 QUALITY ASSURANCE**
- 23.1 The Contractor has and shall continue to have in place an established, documented and maintained quality assurance system which meets relevant industry standards applying to the Works and the Services.
- 24 MITIGATION OF LOSS**
- 24.1 The Contractor shall take all reasonable steps to mitigate the effects of any breach by the Contractor of its obligations under the Contract.
- 25 RIGHTS AND REMEDIES OF CLIENT**
- 25.1 The Contract sets out the exclusive rights of the Client under the Contract and otherwise.
- 25.2 If the whole or any part of the Works and/or the Services are not carried out or performed in accordance with the Contract, then the Client shall be entitled to:
- 25.2.1 require the Contractor to commence to rectify the breach and to proceed and complete rectification as soon as reasonably possible; and
- 25.2.2 terminate the Contract under condition 29.2.
- 26 LIMITATION ON LIABILITY**
- 26.1 Nothing in these Conditions shall limit or exclude either party's liability for:
- 26.1.1 death or personal injury caused by its acts or omissions (whether negligent or otherwise), or the acts or omissions (whether negligent or otherwise) of its employees, agents or sub-contractors;
- 26.1.2 fraud or fraudulent misrepresentation; or
- 26.1.3 any other liability for which it is illegal or unlawful for the either party to limit or exclude.
- 26.2 Subject to condition 26.1, the Contractor's total liability to the Client in respect of costs, claims, damages losses, expenses and demands arising under or in connection with the Contract, whether in contract, tort, breach of statutory duty, or otherwise, shall be the Price.
- 27 FORCE MAJEURE**
- 27.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from a Force Majeure Event.
- 27.2 If a Force Majeure Event prevents, hinders or delays the a party's performance of its obligations for a continuous period of more than forty (40) working days, the other party may terminate this Contract immediately by giving written notice to the party whose performance is so prevented, hindered or delayed.
- 28 SUSPENSION**
- 28.1 The Client may (without prejudice to any rights or remedies the



- Client may have) suspend (in whole or in part) the supply by the Contractor of the Works and/or the Services by giving the Contractor written notice and may subsequently notify the Contractor that the Contractor shall (wholly or partially) resume the carrying out of the Works and the Services.
- 28.2 Subject to condition 28.3, within twenty (20) working days of notice of suspension, the Client shall pay to the Contractor any payments that have become due by the date of suspension plus a fair and reasonable proportion of the value of the Works and the Services that have been carried out since the last payment was due and the date of suspension.
- 29 TERMINATION AND CONSEQUENCE OF TERMINATION**
- 29.1 The Client shall be entitled to terminate the Contract for any reason (other than for a reason set out in condition 29.2 to which the provisions of that condition apply) following commencement of the Works and/or the Services by giving not less than ten (10) working days' notice in writing to the Contractor.
- 29.2 The Client shall be entitled to terminate the Contract by giving written notice to the Contractor at any time if:
- 29.2.1 the Contractor is in breach of its material obligations and that breach cannot be remedied;
- 29.2.2 the Contractor is in breach of its material obligations and where that breach can be remedied the Contractor has failed to remedy it within fourteen ten (10) working days starting on the day after receipt of notice of the breach from the Client; and/or
- 29.2.3 the Contractor makes any voluntary arrangement with the Contractor's creditors or becomes subject to an administration order or goes into liquidation or bankruptcy or an encumbrancer takes possession or a receiver is appointed, of any of the Contractor's property or assets or is subject to an analogous event in a foreign territory or jurisdiction.
- 29.3 Within twenty (20) working days of any termination under condition 29.1 or 29.2, the Client shall pay to the Contractor any payments that have become due at the date of termination plus a fair and reasonable proportion of the value of the Works and the Services that have been carried out since the last payment was due and the date of termination, to the extent that the Contractor has not already been paid for them.
- 29.4 The Contractor shall be entitled to terminate the Contract by giving written notice to the Client if the Client has failed to pay to the Contractor an instalment of the Price in accordance with condition 19 within twenty (20) working days of the Final Date for Payment of that instalment. On termination the Client shall pay to the Contractor within ten (10) working days any payments that have become due to the Contractor at the date of termination plus the value of the Works and the Services that have been carried out since the last payment was due and the date of termination, to the extent that the Contractor has not already been paid for them.
- 29.5 On termination of the Contract, the Contractor shall return to the Client all the Client's materials, goods, data, information and documentation.
- 30 RELATIONSHIP**
- 30.1 Nothing in the Contract shall be construed as establishing the Contractor or any of the Contractor's Persons as the Client's employee.
- 30.2 Nothing in these Conditions shall create a partnership, agency or joint venture between the Client and the Contractor.
- 30.3 The relationship between the Contractor and the Client shall not be deemed to be that of agent and principal.
- 30.4 The Contractor shall not transfer, assign, charge, dispose of all or any part of the Contract without the consent of the Client.
- 30.5 The Client shall not transfer, assign, charge, dispose of all or any part of the Contract without the consent of the Contractor.
- 30.6 The parties agree that no contractual relationship is created between the Client and any of the Contractor's Persons.
- 31 GENERAL**
- 31.1 The Contract is personal to the Contractor and the Contractor shall not transfer, assign, charge, dispose of or deal in any manner or purport to do the same with any of the Contractor's rights or beneficial interests under or in connection with the Contract without the Client's prior written consent.
- 31.2 The Client has the right to transfer, assign, charge, dispose of or deal in any manner or purport to do the same with any of the Client's rights or beneficial interests under or in connection with the Contract.
- 31.3 The Contract shall constitute the entire agreement between the parties in relation to the subject matter of the agreement and supersedes any previous agreements, representations and commitments, whether oral or in writing, between the parties concerning such subject matter.
- 31.4 Each party agrees that it shall have no remedies in respect of any representation or warranty that is not set out in the Contract and that its only liability in respect of those representations and warranties that are set out in the Contract shall be for breach of contract. Nothing in these Conditions shall limit or exclude either party's liability for fraud.
- 31.5 Should either party elect not to enforce any of the provisions of the Contract or to require performance by the other party (as the case may be) of any of the provisions hereof, it shall in no way be construed to be a waiver of such provisions or requirements in the future, nor in any way affect the validity of the Contract or any part thereof, and the parties reserve the right thereafter to enforce each and every provision of the Contract.
- 31.6 If any provision of these Conditions is held by any competent authority to be invalid, unlawful or unenforceable in whole or in part the validity of the remainder shall not be affected.
- 31.7 Except as expressly provided (including in respect of indemnity), the parties do not intend any term of this Contract to create any rights or benefits to any other party other than the parties to the Contract or to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 but this does not affect any express right or remedy of any third party which exists or is available apart from the Act.
- 31.8 Reference to any statute or statutory provisions shall be deemed to include any statutory modifications or re-enactments thereof or any rules or regulations made there under or any enactment repealing and replacing the Act referred to.
- 31.9 Any notice to be given by either party to the other under these Conditions must be in writing and sent by pre-paid first class or other next working day delivery service, hand delivered or emailed to the other party for the attention of the person and at the postal or email address set out in the Purchase Order or such other postal or email address as may have been notified in writing for these purposes. This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 31.10 Any notice referred to in condition 31.9 or communication shall be deemed to have been received:
- 31.10.1 if delivered by hand, at the time the notice is left at the postal address referred to in condition 31.9;
- 31.10.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting; or



- 31.10.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours (9.00am to 5.00pm on a working day) resume in the place of receipt.
- 31.11 All documentation required for the performance of this Contract shall be written in the English language, which is hereby designated as the governing language of this Contract.
- 31.12 Unless the context otherwise requires, words importing the singular shall include the plural and vice versa; words importing the masculine gender shall include the feminine gender and vice versa; and references to persons shall include bodies of persons whether corporate or incorporate.

32 ANTI-BRIBERY AND CORRUPTION

- 32.1 The Contractor shall:
 - 32.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
 - 32.1.2 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;
 - 32.1.3 have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and condition 32.1.2, and will enforce them where appropriate; and
 - 32.1.4 promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Contract.
- 32.2 The Contractor shall ensure that any person associated with the Contractor who is performing the Works or the Services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this condition (**Relevant Terms**). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Client for any breach by such persons of any of the Relevant Terms.

33 GOVERNING LAW, DISPUTES AND JURISDICTION

- 33.1 Any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 33.2 Either party may refer a dispute arising under the Contract to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was incorporated into this clause.
- 33.3 Notwithstanding condition 33.2, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

34 SURVIVAL

- 34.1 Conditions 1, 2, 13, 14, 15,16,17,20, 21,24,26 and 29-34 both inclusive shall survive termination of the Contract.