

1.1 DEFINITIONS:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: has the meaning given in Clause 3.2 and is the date stated in the Order or otherwise notified by the Company to the Supplier.

Conditions: these terms and conditions as amended from time to time in accordance with Clause 7.5.

Contract: the contract between the Supplier and the Company for the supply of Services formed when the Company issues an Order to which these terms and conditions apply.

Contract Sum: the sum payable by the Company to Supplier for the carrying out and completion of the supply of the Services in accordance with Clause 5

Completion Date: the date stated in the Order being the date when the Services ought to have been completed.

Company: means Creative Retail (Developments) Limited or the person or firm who purchases Services from the Supplier.

Customer: the party who has entered into a contract with the Company for the supply of Goods and services at the Property.

Customer Contract: the contract for the supply of the Goods and services (which shall include the Services) between the Company and the Customer a copy of which has been provided or is available for inspection upon a request from the Supplier to the Company.

Deliverables: the deliverables set out in the Customer Contract.

Goods: the goods to be supplied by the Company to the Customer in accordance with the Customer Contract the installation of which forms part of the Services.

Order: the Company's order for Services as set out in the Company's purchase order or the Company's clear written acceptance of the Supplier's quotation.

Property: the Customer's property or other place where the Services are to be carried out as either identified in the Order or otherwise notified to the Supplier by the Company.

Services: the labour services, including the Deliverables, to be supplied or otherwise carried out by the Supplier at the Property as set out in the Specification.

Specification: the description or specification of the Services to be provided by the Supplier to the Company that are supplied with, attached to or identified in the Order.

Supplier: means the party carrying out the Services as identified in the Order.

1. INTERPRETATION

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** or to **notices** includes fax and email which are set out in the Order or otherwise notified to the Supplier.
- (d) A reference to **day** or **days** means Business Day.

2. BASIS OF CONTRACT

2.1 Any quotation given by the Supplier shall not constitute a contract. The Contract comes into existence when the Company issues the Order to the Supplier.

2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or those which are asserted as being implied by law, trade custom,

Supply Terms and Conditions

Creative Retail (Developments) Limited's Standard Terms and Conditions for the Supply of Works and/or Services and Services by Creative Retail (Developments) Limited to a Customer.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document;

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Works and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Works and/or Services from the Supplier.

Force Majeure Event: has the meaning given in clause 10.

Order: the Customer's order for the Works and/or Services, as set out in either the Customer's purchase order form or in the Customer's written acceptance of the Supplier's quotation or in the Customer's purchase order form as the case may be..

Specification: any specification for the Works and/or Services, including any related plans and drawings, that is agreed by the Customer and the Supplier.

Supplier: Creative Retail (Developments) Limited (registered in England and Wales with company number 08258036).

Works and/or Services: the Works and/or Services (or any part of them) set out in the Order.

1.2 Construction. In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes [and emails].

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Works and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues an acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Works and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Works and/or Services given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue after that the Supplier may accept the entering into of a contract but shall be permitted to increase the prices for carrying out and complete the Works or Services for such reasonable amount as the Supplier deems appropriate.

3. WORKS AND/OR SERVICES

- 3.1 The Works and/or Services are described in the Specification.
- 3.2 To the extent that the Works and/or Services are to be provided in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the specification if required by any applicable statutory or regulatory requirements or out of necessity due to constraints of the building or premises on which the Works and/or Services are to be sited.

4. PERFORMANCE OF THE WORKS OR SERVICES

- 4.1 The Supplier shall carry out the Works and/or Services to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Works and/or Services are ready to be performed.
- 4.2 Any dates quoted for performing the Works or Services are approximate only, and the time for performance is not of the essence. The Supplier shall not be liable for any delay in performance of the Works and/or Services.
- 4.3 The Supplier shall have no liability for any failure to deliver the Works and/or Services to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate instructions that are relevant to the supply of the Works and/or Services.

5. QUALITY

- 5.1 The Supplier warrants that on delivery, and for a period of 30 days from the date of delivery (**warranty period**), the Works and/or Services shall:
- (a) conform in all material respects with their description and the Specification; and
 - (b) be free from material defects in design, material and workmanship
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Works and/or Services do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Works and/or Services; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Works and/or Services to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Works and/or Services, or refund the price of the defective Works and/or Services or the cost of repair of the Works and/or Services (whichever is the lesser amount).

- 5.3 The Supplier shall not be liable for Works and/or Services' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Works and/or Services after giving notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Works and/or Services or (if there are none) good trade practice regarding the same;

- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Works and/or Services without the written consent of the Supplier;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (f) the Works and/or Services differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Works and/or Services' failure to comply with the warranty set out in clause 5.1.
- 5.5 These Conditions shall apply to any repaired or replacement Works and/or Services supplied by the Supplier.
- 6. TITLE AND RISK**
- 6.1 The risk in any goods, plant and materials provided as part of the Works and/or Services shall pass to the Customer on completion of delivery.
- 6.2 Title to any goods, plant and materials provided as part of the Works and/or Services shall not pass to the Customer until the earlier of:
- (a) the Supplier receives payment in full (in cash or cleared funds) for the Works and/or Services and any other Works and/or Services that the Supplier has supplied to the Customer in respect of which payment has become due; and
 - (b) the Customer resells the Works and/or Services, in which case title to the Works and/or Services shall pass to the Customer at the time specified in clause 6.4
- 6.3 Until title to any goods, plant and materials provided as part of the Works and/or Services has passed to the Customer, the Customer shall:
- (a) any goods, plant and materials provided as part of the Works and/or Services store the Works and/or Services separately from all other goods, plant and materials held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the goods, plant and materials
 - (c) maintain the goods, plant and materials in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and

- (e) give the Supplier such information relating to the goods, plant and materials as the Supplier may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the goods, plant and materials in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Works and/or Services. However, if the Customer resells the goods, plant and materials before that time:
- (a) it does so as principal and not as the Supplier's agent; and
 - (b) title to the Works and/or Services shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the goods, plant and materials passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell the goods, plant and materials or use them in the ordinary course of its business ceases immediately; and
 - (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all goods, plant and materials in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the goods, plant and materials are stored in order to recover them.
- 7. PRICE AND PAYMENT**
- 7.1 The price of the Works and/or Services shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery or such other reasonable amount as determined by the Supplier..
- 7.2 The Supplier may, by giving notice to the Customer at any time up to 2 Business Days before delivery, increase the price of the Works and/or Services to reflect any increase in the cost of the Works and/or Services that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); and or
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Works and/or Services ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions; and or

- (d) the occurrence of any event out of the control of the Customer or any event which would be treated as a “relevant event” under the JCT Design and Construction Contract.
- 7.3 Unless otherwise stated, the price of the Works and/or Services is exclusive of the costs and charges of packaging, insurance and transport of the Works and/or Services, which shall be invoiced to the Customer.
- 7.4 The price of the Works and/or Services is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Works and/or Services.
- 7.5 Payment shall be due in the instalments as specified in the quotation if not otherwise stated or agreed, the Supplier may invoice the Customer for the Works and/or Services on or at any time after the completion of delivery.
- 7.6 Unless otherwise agreed, the Customer shall pay the invoice in full and in cleared funds 10 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Barclay's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8. TERMINATION AND SUSPENSION**
- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.
- 8.2 For the purposes of clause 8.1, the relevant events are:
 - (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section

268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer];
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (g) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(f) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Works and/or Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.2(a) to clause 8.2(l), or the Supplier

reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 25% of the price of the Works and/or Services; and
- (c) the Supplier shall have no liability to the Customer for any design of the Works and or Services; and
- (d) the Supplier shall have no liability for any damage to the Works during the carrying out and completion of the Works;
- (e) the Supplier shall have no liability for any damage to the property that the Works are being carried out in or any connected properties whether owned by the Customer or a third party.

9.3 The Customer is expected to take out and maintain adequate insurance for the Works and the property during the carrying out of the Works and procure that the Supplier is a co-insured under such policy and that any rights of subrogation as against the Supplier shall be waived. The Customer shall indemnify the Supplier against their failure to adequately insure the Works and the property.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. GENERAL

11.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 **Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

11.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.

11.7 **Insurance.** The Customer shall maintain adequate insurance of the Works and or Services and the property in which the Works and or Services are to be carried out.

11.8 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it 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.

11.9 **Jurisdiction.** 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 this Contract or its subject matter or formation (including non-contractual disputes or claims).

practice or course of dealing.

3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Company in accordance with the Specification in all material respects.

3.2 The Supplier shall commence the execution of the Services on the Commencement Date and shall thereafter proceed with the Services regularly and diligently and shall complete the Services by the Completion Date subject only to the Supplier being entitled to such fair and reasonable extension of time as the Company shall allow where the Services are delayed where (in the opinion of the Company) such delay results from:

3.2.1 any default on the part of the Company its servants or agents or their servants or agents or sub-contractors; and/or

3.2.2 any change in the Specification or variation to the Services; and/or

3.2.3 an act of hindrance or prevention by the Company which materially affects the commencement, progress or completion of the Services

but provided that should any such delay occur, in order to be entitled to be granted such an extension of time by the company, the Supplier shall have first given notice to the Company within three days of when it became aware, or should have become aware that the Services were likely to be delayed which notice shall include details of the cause and likely length of delay. The Supplier shall be required to maintain accurate records such as may be required to be used by the Supplier to support a claim for additional time or increases to the Contract Sum.

3.3 The Company reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Company shall notify the Supplier in any such event but the Supplier shall not be entitled to any increase in the Contract Sum.

3.4 The Supplier warrants to the Company that the Services will be provided using the reasonable skill, care and diligence of a building contractor experienced in carrying out works of a similar type, scale, size, complexity and cost to the Specification.

3.5 If the Supplier fails to complete the Services by the Completion Date and/or causes or contributes to delays in the completion of the works under the Customer Contract, the Supplier shall pay or allow the Company to deduct a sum equivalent to any loss or damage incurred by the Company or likely to be suffered or incurred by the Company by reason of such delay. Such sum may include, but is not limited to, damages, losses, costs and expenses the Company is liable to pay under the Customer Contract or any other sum the Company may from time to time reasonably estimate as the damages, losses, costs and expenses it may be liable to pay to the Customer or any third party in connection with the Customer Contract.

3.6 For any act or omission by the Supplier that constitutes, causes or contributes to a breach of the Customer Contract by the Company of its obligations under the Customer Contract then the Supplier shall indemnify the Company against all damages, losses, costs and expenses incurred including those recoverable by the Customer from the Company pursuant to the Customer Contract.

3.7 The Supplier shall observe and comply in all respects with all current health and safety legislation and shall further comply with the Company's rules and regulations from time to time in existence connected therewith. The Supplier shall be deemed to have allowed for complying with all rules regulations and requirements from time to time in force in connection with the Contract which govern the carrying out of the Services. The Supplier shall provide the Company with a copy of all safety procedures instructions and regulations issued by the Supplier to the its subcontractors or

suppliers.

3.8 Prior to the Supplier carrying out any part of the Services, it shall be required to confirm the identities of those team members or personnel who will be carrying out the Services. The Customer has an absolute discretion to require the Supplier to remove or replace any team member or personnel without the need to provide reasons.

3.9 The Company shall be entitled to instruct a variation to the Services either by the additional, deduction, omission or substitution of all or any part of the Services. In such circumstances the parties shall endeavour to agree the increase or reduction to the Contract Sum within 48 hours of the instruction being received. In the absence of such agreement, the Supplier shall still be required to carry out and complete the Services as varied and shall be entitled to payment of a reasonable sum calculated by the Company for the proper carrying out and completion of the Services in accordance with this Contract.

4. SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall:

- (a) on their receipt, ensure that the terms of the Order and any information provided in the Specification are fully complete and accurate and sufficiently describe the Services to allow the Supplier to comply with its other obligations under the Contract and these Conditions without incurring additional cost or additional time;
- (b) co-operate with the Company and the Customer in all matters relating to the Services;
- (c) provide the Company, the Customer and their respective employees, agents, consultants and subcontractors as directed with access to the Supplier's premises, office accommodation and other facilities as reasonably required by the Company or the Customer;
- (d) provide the Company with such information documentation and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises as required by the Deliverables and the Specification for the supply of the Services and the Goods;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the carrying out of the Services before the Commencement Date;
- (g) comply with all applicable laws, including health and safety laws;
- (h) carry out the Services so as to fully comply with the Company's rules and regulations from time to time in force together with the Customer's instructions and requirements concerning the carrying out of the Services at the Property;
- (i) carry out the Services so as to fully comply with the installation and operation and maintenance manuals from time to time issued by the manufacturer of the Goods being installed as part of the Services and once installed ensure that the Goods are protected from damage that could be caused by others;
- (j) comply with any additional requirements that are set out in the Specification;
- (k) comply with all instructions of the Company including an instruction to vary the Services; and
- (l) the Supplier shall at all times keep the Property free from waste and excess site materials and ensure that there is no interference with the works being carried out by the Company or others contractors at the Property.

4.2 The Supplier shall be deemed to have complete knowledge of the extent and nature of the Services and the nature and conditions of the Property (including, but not limited to, any environmental conditions, restrictions on working hours, methods of working and access routes) and to have made all necessary allowances and provisions in the Contract Sum necessary for the Services to be

carried out and completed in accordance with the Contract. The Supplier shall not be entitled to any extension to the time to the Completion Date or additions to the Contract Sum where the Services are delayed, prolonged and/or additional costs are incurred by reason of matters which were referred to, or reasonably ought to have been inferred from the Contract or otherwise foreseeable by a reasonably competent Supplier.

- 4.3** The Supplier shall be deemed to be aware of the Company's duties and obligations under the Customer Contract and shall not, in the performance of the Services, do anything (or fail to do anything) which would cause the Company to breach the Customer Contract or otherwise disrupt, prolong or delay, or add to the cost of the works being provided by the Company to the Customer under the Customer Contract. For any act or omission by the Supplier that constitutes, causes or contributes to a breach by the Company of its obligations under the Customer Contract then the Supplier shall indemnify the Customer against all losses, damages, costs and expenses (whether direct or consequential) so incurred including those recoverable by the Customer from the Supplier.
- 4.4** The Supplier shall maintain insurance policies for not less than the amount stated in the Order (or as otherwise notified by the Company) to cover the liability of the Supplier in respect of personal injury or death and or damage to property real or personal arising out of or in the course of or by reason of the carrying out of the Services and caused by any negligence omission or default of the Supplier its servants or agents. The Supplier shall forthwith on demand by the Company produce such evidence as the Company requires that the insurances as referred to above are in force. If the Supplier is in breach of any of its obligations under this clause, the Company shall have the right (but not the obligation) to arrange such insurance(s) itself and to deduct the premiums in respect of such insurance(s) from any amounts due to the Supplier under or in relation to this Contract or any other order placed by the Company with the Supplier.
- 4.5** The Company shall be entitled to vary or change the Services and increase or reduce the scope of the Services and the Contract Sum shall be varied by such reasonable amount as determined by the Company.

5. PAYMENT

- 5.1** The Contract Sum for the Services shall be the sum set out in the Order or such other sum as shall become payable under any provision of the Contract. The Company shall pay the Supplier the Contract Sum in accordance with this clause 5.
- 5.2** Unless otherwise provided for by this Contract, the Contract Sum is fixed and not subject to re-measurement of quantities or any fluctuations in cost or price whatsoever including, inter alia, the cost of labour, materials and imposition of any government taxes or levies.
- 5.3** The Supplier shall submit an application for payment for work carried out specifying the sum the Supplier considers to be due and the basis on which it has been calculated 7 days before the end of the calendar month ("Interim Application"). The payment due date in relation to each payment to be made under this Contract will be the last calendar day of the month of a valid Interim Application (the "Due Date").
- 5.4** Within 5 days following the last calendar day of the month of a valid Interim Application, the Company may give to the Supplier a notice specifying the sum that the Company considers to be due as at the payment due date and the basis on which it has been calculated ("Payment Notice").
- 5.5** Subject to clauses 5.6 and 5.7 the Company shall pay to the Supplier on or before the Final Date for Payment the amount specified in the Payment Notice in accordance with clause 5.4 or, if no such notice is given, the amount specified in the Interim Application.
- 5.6** Not later than one working day before the Final Date for Payment, the Company may give to the Supplier a notice of its intention to pay less than the amount which has become due specifying the

sum that the Company considers to be due on the date the notice is given and the basis upon which it has been calculated ("Pay-Less Notice"). In such a case the amount due will be the amount specified in the Pay-Less Notice

- 5.7** The final date for payment of any amount which becomes due under an Interim Application is 45 days after the Due Date ("Final Date for Payment"). For the avoidance of doubt all payments made in respect of and in response to Interim Applications shall be on account only and not conclusive as to the final value of any part thereof.
- 5.8** Within 60 calendar days of the date when the Services are complete, or within 14 calendar days of the Company's written request to do so whichever is the earlier, the Supplier shall submit to the Company the Supplier's final account for the Services supported by such documents, vouchers and receipts as shall be necessary for computing the same or as may be required by the Company (the "Final Account"). If the Supplier fails to submit the Final Account as required by this clause the Company shall ascertain the final value of the Contract Sum for the Services by reference to the last Interim Application received. The due date for payment of the Final Account monies (the "Final Account Due Date") shall be 60 calendar days or the end of the second calendar month, after receipt of the Final Account submitted in accordance with this clause or alternatively, the date when the Supplier should have submitted the Final Account whichever is the later in time.
- 5.9** The Company shall notify the Supplier not later than 45 calendar days after receipt of the Final Account of the sum the Company considers is due by either Party to the other under the Final Account and the basis on which that sum was calculated (the "Final Account Payment Notice").
- 5.10** The Company or the Supplier shall be liable to pay the difference (if any) between the Contract Sum as finally adjusted in accordance with the provisions of the Contract and the total amount already paid to the Supplier.
- 5.11** The final date for payment of the Final Account monies shall be 30 calendar days after the Final Account Due Date (the "Final Date for Payment of the Final Account"). If the Company intends to pay less than the sum stated as due in the Final Account Payment Notice, the Company shall issue to the Supplier no later than one (1) day before the Final Date for Payment of the Final Account a notice specifying the sum the Company considers due to the Supplier on the date the notice is given and the basis on which that sum is calculated (the "Final Account Pay Less Notice"). The Company shall pay to the Supplier the sum stated in the Final Account Pay Less Notice on or before the Final Date for Payment of the Final Account.
- 5.12** Any sum due under the Contract which is not paid by the final date for payment will carry interest for the period between the final date for payment and the date on which payment is made at the rate of three percent (3%) above the Base Rate from time to time of the Bank of England plus such further amount of interest (if any) as is held in any proceedings to be necessary to satisfy the minimum requirement for a substantial remedy (within the meaning of section 9 of the Late Payment of Commercial Debts (Interest) Act 1998).
- 5.13** Notwithstanding any other provision of the Contract, if either the Supplier or the Customer becomes insolvent as defined by section 113 of the Construction Act, then no further sum shall become due to the Supplier under the Contract. In such circumstances, the Company is also not obliged to pay any sum that has already become due to the Supplier where the Company has given or gives a Pay Less Notice, or where the Supplier or Customer becomes insolvent after the last date on which a Pay Less Notice could be given by the Company in respect of that sum.
- 5.14** The Company may deduct from any sum paid or payable to the Supplier any amount that the Company may be or become liable to deduct from or pay on account by reason of any Act of Parliament, Statutory Instrument, rule or regulation which may be or become law during the

subsistence of Contract or any sums due as a result of breaches of the Contract by the Supplier or where the Supplier has acted in a manner which is in contravention of the Customer Contract;

- 5.15** The Company shall in addition to the Contract Sum pay to the Supplier such Value Added Tax as may be properly chargeable on payments due under the Contract. The arrangements for payment of Value Added Tax by the Company and the Supplier therefore shall unless otherwise agreed in writing be the same as under the provisions of the Contract and the Customer Contract.
- 5.16** It shall be a further condition precedent to any payment becoming due by the Company that the Supplier shall have complied with all Construction Industry Scheme requirements or similar requirements in force in respect of any payment and presented valid VAT documentation or any other documents reasonably required by the Company to enable payment to be made.
- 5.17** The Company shall be entitled to retain the sum of 2.5% from each payment that is otherwise due to the Supplier, such retention shall be released on the later of the (a) when in the opinion of the Company all defects or deficiencies under this Contract have been fully remedied by the Supplier or (b) the end of the defects rectification period in the Customer Contract.
- 5.18** Without prejudice to any other provisions of this Contract, should the Customer suffer an insolvency event akin to those stated in clause 6.4.6 the Company shall not be required to make any further payment to the Supplier, irrespective of whether the payment has become due or otherwise.
- 5.19** Where it has not been possible to conclude a fixed Contract Sum for the carrying out of the Services and the Services have been carried out on day rates, all applications for payment by the Supplier shall be accompanied by detailed records which show the individuals that have carried out the Services, the work that they have carried out and their time records. The Company shall be entitled to deduct or withhold any amounts from sums applied for or due where in its reasonable opinion the Supplier has used personnel in contravention of this Contract or the quality or quantity of work is not in accordance with the Contract or the requirements of the Company.

6. TERMINATION

- 6.1** The Company shall be entitled to determine the Supplier's employment under the Contract at any time on the giving of a written notice without prejudice to the accrued rights and liabilities of either party.
- 6.2** If for any reason the Company's employment under the Customer Contract is determined before the Supplier has fully performed his obligations under the Contract then the employment of the Supplier may be determined by written notice forthwith by the Company.
- 6.3** In relation to the events of determination set out in 6.1 and 6.2, the Supplier shall be entitled to be paid the value of the Services properly carried out up to and including the date of such determination excluding loss of contribution, overhead or profit on the value of the Services that have been provided by the Supplier as at the date fully in accordance with the terms of the Contract.
- 6.4** If the Supplier:
- 6.4.1** fails to proceed regularly and diligently with the Services; or
 - 6.4.2** fails to comply with an instruction after being required in writing so to do; or
 - 6.4.3** without reasonable cause suspends the Services or any part thereof; or
 - 6.4.4** refuses or persistently neglects to remove defective work or improper materials; or
 - 6.4.5** commits any breach of the terms of the Contract; or
 - 6.4.6** becomes bankrupt or makes a composition or arrangement with his creditors or has a proposal for a voluntary arrangement for a composition of debts or a scheme of arrangement approved in accordance with the Insolvency Act 1986 (or any amendment thereof) or has an application made under the Insolvency Act 1986 to the Court for the

appointment of an administrator or has a petition for a winding up order presented or a winding up order made or (except for the purposes of an amalgamation or reconstruction) a resolution for voluntary winding-up is passed, a provisional liquidator, receiver or manager of its business or undertaking appointed, or has an administrative receiver (as defined in the Insolvency Act 1986) appointed or possession taken of any property comprised in or subject to a floating charge by or on behalf of the holders of any debentures secured by such a floating charge, or has any lien enforced or arrestment order made against it or served on any of its debtors on behalf of any of its creditors or commits any act of insolvency as defined in the Insolvency Act 1986

Then the Company shall be able to immediately determine the Contract immediately by notice.

- 6.5** Upon the determination of the Supplier's employment pursuant to clause 6.4:
- 6.5.1 the Company may take possession of all materials, machinery, plant, appliances and other things whatsoever brought on to the Property by the Supplier and may use them for the purpose of executing, completing and maintaining the Services and may, if the Company thinks fit, sell all or any of them and apply the proceeds in or towards the satisfaction of monies otherwise due to the Company from Supplier.
 - 6.5.1 the Company will not be bound by any provision of the Contract to make any further payment to the Supplier and no further sums that may otherwise be due shall be due until 35 days after the expiry of the defects rectification period specified or identified in the Customer Contract or in the absence of such a clause, then 13 months after the Contractor has concluded the works under the Customer Contract and the amount that shall otherwise be due shall be calculated by reference to the Services that at the date of such determination have been validly carried out by the Supplier by reduced by the costs, charges and expenses incurred by the Company in completing the Services together with a reasonable sum by way of overhead charges and supervision and any costs associated with and satisfying the continuing liabilities in respect of the Services. In so far as this calculation results in a negative amount due to the Supplier this amount shall be payable by the Supplier to the Company on demand without prejudice to any other claim or right of action which the Company may have against the Supplier.
- 6.6** The remedies above shall be without prejudice to any other rights and remedies the Company may have against the Supplier. In respect of the Supplier they shall be the sole remedy for recovery against the Company. For the avoidance of doubt, the Company shall not be liable to the Supplier for any loss of profits, opportunities, contracts for operation of the determination provisions under this clause 6 or any breach of Contract.

7 GENERAL

7.1 Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes which are deemed to be beyond its reasonable control and incapable of being rectified within a reasonable time.

7.2 Assignment

The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust

over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.

7.3 Confidentiality

The Supplier undertakes that it shall not at any time or at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, clients or suppliers of the other party and neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract. Each party may disclose the other party's confidential information:

- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

7.4 Entire agreement

The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Supplier acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract and agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

7.5 Variation

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

7.6 Waiver

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by the Company exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

7.7 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

7.8 Notices

Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by email to the address specified in the Order (in the case of the Company)

and the quotation (in the case of the Supplier).

7.9 Set-Off

The Company shall be entitled to deduct from any money otherwise due under the Contract and to recover from the Supplier as a debt any amount due to the Company, or awarded to the Company in adjudication or finally awarded in arbitration or litigation to the Company, and which arises out of or under the Contract or the Order or any other sums payable by the Supplier to the Company whether under the Contract or another contract between the Supplier and the Company

7.10 Copyright

The copyright in all documents produced by the Supplier in connection with the Contract shall vest in the Company and the Company may use such documents for any purpose whatsoever.

7.11 Dispute Resolution

Whilst it is the intent of the Company and the Supplier to resolve any dispute by negotiation the Company and the Supplier have the right to refer any such dispute under the Contract for adjudication and either party may give written notice to the other at any time of his intention so to do. Any adjudication shall be conducted in accordance with the latest version of the Technology and Construction Solicitors Association Procedural Rules for Adjudication (The TeCSA Procedural Rules for Adjudication) current as at the date of the relevant Notice of Adjudication.

7.12 Third party rights

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

7.13 Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

7.14 Jurisdiction.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.