

OUR TERMS OF BUSINESS WITH OUR CUSTOMERS

IMPORTANT NOTICE: These Terms, together with our quotation and your order, form a legal agreement between us and you. Please read these Terms carefully and make sure that you understand them before ordering from us.

Your attention is particularly drawn to the provisions of Condition 12 which limits what we will be liable to you for if we breach these Terms and in other circumstances.

1 DEFINITIONS

1.1 In these Terms, the following definitions apply:

Additional Work: works and/or goods requested by you not included in the Specification.

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

CDM Regulations: the Construction (Design and Management) Regulations 2007 as amended from time to time.

Terms: these terms and Terms as amended from time to time in accordance with Condition 17.7.

Contract: the contract between us and you for the supply of Goods and/or Works in accordance with these Terms.

Delivery Location: has the meaning set out in Condition 4.2.

Event Beyond Our Control: has the meaning given to it in Condition 15.

Goods: the goods (or any part of them) set out in the Specification.

Order: your order for the supply of Goods and/or Works, or your written acceptance of our quotation, as the case may be.

Our Materials: has the meaning set out in Condition 8.1.10.

Permission: all planning, building regulation, party wall, landlord consents, health and safety requirements and all other third party permissions, notice or certificates whatsoever necessary or desirable for any stage of the Works including completion of them.

Site: the place where the Works are to be carried out.

Specification: any specification for the Works and/or Goods, including any relevant plans or drawings, either set out or referred to in the Order or that is agreed in writing by you and us.

Surveyor: a member of the Royal Institution of Chartered Surveyors instructed by us.

Warranty Period: a period of 3 months from the completion of the Works.

We/us/our: Interspace Building Services Limited whose registered office is situated at Unit 3 Brampton Sidings, Brampton Industrial Estate, Newcastle Under Lyme, Staffordshire ST5 0SR registered in England and Wales with company number 04922326.

Works: the works supplied by us to you as set out in the Specification.

You/yours: the person or firm who purchases the Goods and/or Works from us.

1.2 In these Terms, the following rules of construction shall apply:

1.2.1a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2a reference to a party includes its personal representatives, successors or permitted assigns;

- 1.2.3a reference to a statute or statutory provision is a reference to such statute or statutory 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;
- 1.2.4 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; and
- 1.2.5a reference to **writing** or **written** includes faxes but not emails.

2 **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by you to purchase Goods and/or Works in accordance with these Terms.
- 2.2 Following receipt of an Order, we may undertake such credit checks as we consider appropriate and you agree that you are giving your consent to us undertaking credit checks by submitting the Order.
- 2.3 The Order shall only be deemed to be accepted when we issue written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on our behalf which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by us and any descriptions of the Goods or illustrations or descriptions of the Works contained in our catalogues, website or brochures are issued or published for the sole purpose of giving an approximate idea of the Works and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 These Terms apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any quotation given by us shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.8 All of these Terms shall apply to the supply of both Goods and Works except where application to one or the other is specified.

3 **DESCRIPTION**

- 3.1 The quantity and description of the Goods or Works or both shall be as set out in the Specification.
- 3.2 The Works shall not include the following, unless otherwise agreed in writing:
- 3.2.1 working outside our normal working hours set out in clause 10.1.2.2 below.
 - 3.2.2 temporary site services.
 - 3.2.3 collateral warranties.
 - 3.2.4 capital contribution costs associated with new or upgraded incoming utilities.
 - 3.2.5 stripping out or removing and disposing of any original services, or modifications or upgrading works to original services.
 - 3.2.6 installation or alteration of any incoming or secondary electricity, gas or water meters.
 - 3.2.7 drainage grease traps
 - 3.2.8 smoke extraction systems
 - 3.2.9 life safety systems.
 - 3.2.10 the production of any building log books.
 - 3.2.11 electrical power works and electrical power wiring.
 - 3.2.12 any building work items other than drilling holes of 25mm diameter or less, including creating holes through walls, floors, roofing, worktops, inserting fire stopping, chasing, boxing in, making good and decoration.
 - 3.2.13 maintenance or servicing (either during or outside the warranty period).
- 3.3 You shall ensure that the Specification is complete and accurate.
- 3.4 Any dimensions in the Specification are approximate unless stated otherwise.
- 3.5 We have the right to make any changes to the Goods or Works which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Works, and we shall notify you in any such event.

4 **GOODS**

- 4.1 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by you, or any process is applied to the Goods by us in accordance with specifications supplied by you, you shall indemnify us 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 professional costs and expenses) suffered or incurred by us in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with our use of the Specification. This Condition 4.1 shall survive termination of the Contract.

- 4.2 We shall deliver the Goods to the Site or, if different, to such other location as the parties may agree (**Delivery Location**) at any time after we notify you that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by an Event Beyond Our Control or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If we fail to deliver the Goods, our liability shall be limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by an Event Beyond Our Control, your failure to provide us with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If you fail to accept or take delivery of the Goods within 20 Business Days of us notifying you that the Goods are ready, then except where such failure or delay is caused by an Event Beyond Our Control or by our failure to comply with our obligations under the Contract in respect of the Goods:
- 4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the 6th Business Day following the day on which we notified you that the Goods were ready; and
- 4.6.2 we shall store the Goods until delivery takes place, and charge you for all related costs and expenses (including insurance).
- 4.7 If 40 Business Days after we notified you that the Goods were ready for delivery you have not accepted delivery of them, we may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to you for any excess over the price of the Goods or charge you for any shortfall below the price of the Goods.
- 4.8 You shall not be entitled to reject the Goods if we deliver up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from you that the wrong quantity of Goods was delivered.
- 4.9 We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.
- 4.10 In respect of all Goods we shall provide to you upon request a copy of the warranties provided to us by the supplier (**Warranties**) and shall use our reasonable endeavours to transfer to you the benefit of the Warranties. Where we are able to transfer the Warranties to you then you agree that we shall have no further liability to you in respect of those Goods (other than as to title) and that Condition 4.11 will not apply to those Goods and that you will bring any claim against the supplier under the Warranties.
- 4.11 We warrant that on delivery, and for the Warranty Period, the Goods shall:
- 4.11.1 conform in all material respects with their description and any applicable Specification;
- 4.11.2 be free from material defects in design, material and workmanship;
- 4.11.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 4.11.4 be reasonably fit for any reasonable purpose held out by us.

5 **TITLE AND RISK IN GOODS**

- 5.1 The risk in the Goods shall pass to you on completion of delivery to Site or the Delivery Location as appropriate.
- 5.2 Title to the Goods shall not pass to you until we have received payment in full (in cash or cleared funds) for:
- 5.2.1 the Goods; and
- 5.2.2 any other goods that we have supplied to you in respect of which payment has become due.
- 5.3 Until title to the Goods has passed to you, you shall:
- 5.3.1 hold the Goods on a fiduciary basis as our bailee;
- 5.3.2 store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
- 5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 5.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery;
- 5.3.5 notify us immediately if you become subject to any of the events listed in Condition 13.1.2 to Condition 13.1.13; and
- 5.3.6 give us such information relating to the Goods as we may require from time to time,

but you may resell or use the Goods in the ordinary course of its business.

- 5.4 If, before title to the Goods passes to you, you becomes subject to any of the events listed in Condition 13.1.2 to Condition 13.1.13, or we reasonably believe that any such event is about to happen and notify you accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy we may have, we may at any time require you to deliver up the Goods and, if you fail to do so promptly, enter any of your premises or of any third party where the Goods are stored in order to recover them.
- 5.5 All Our Materials are our exclusive property.

6 **SUPPLY OF WORKS**

- 6.1 We shall provide the Works to you in accordance with the Specification in all material respects.
- 6.2 We shall use all reasonable endeavours to meet any performance dates for the Works specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Works.
- 6.3 We shall not be liable for any delay in meeting any performance dates for the Works specified in the Specification where such delay is attributable to:
- 6.3.1 your breach any of your obligations set out in Condition 8.1;
 - 6.3.2 adverse weather conditions;
 - 6.3.3 any of the matters set out in Condition 16.1;
 - 6.3.4 your instructions or requests for Additional Work;
 - 6.3.5 the delay of any third party outside our control;
 - 6.3.6 suspension by us under Condition 8.3 or Condition 10.8.
- 6.4 We warrant to you that on practical completion of the Works and for the Warranty Period the Works shall:
- 6.4.1 be provided using reasonable care and skill;
 - 6.4.2 conform in all material respects with their description and any applicable Specification; and
 - 6.4.3 be free from material defects in design, material and workmanship.
- 6.5 If you request that we provide Additional Works then on the earlier of us confirming in writing that we will undertake such Additional Works or us undertaking the Additional Works:
- 6.5.1 The Specification shall be treated as amended accordingly; and
 - 6.5.2 Unless otherwise agreed in writing the cost of such Additional Works shall be calculated in accordance with Condition 10.1 below.

7 **BREACH OF WARRANTY OF QUALITY OF GOODS OR SERVICES**

- 7.1 Subject to Condition 7.2, if:
- 7.1.1 you give notice in writing during the Warranty Period that some or all of the Goods do not comply with the warranty set out in Condition 4.11 or the Works do not comply with Condition 6.4;
 - 7.1.2 we are given a reasonable opportunity of examining such Goods or Works; and
 - 7.1.3 you (if asked to do so by us) return such Goods to our place of business at your cost,
- we shall, at our option, repair or replace the defective Works or Goods, or refund the price of the defective Goods or Works in full.
- 7.2 We shall not be liable for the Goods' failure to comply with the warranty in Condition 4.11 or the Works' failure to comply with Condition 6.4 if:
- 7.2.1 you make any further use of such Goods or Works after giving a notice in accordance with Condition 7.1;
 - 7.2.2 the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or Works or (if there are none) good trade practice;
 - 7.2.3 the defect arises as a result of us following any drawing, design, Specification or instruction issued by you or on your behalf;
 - 7.2.4 you alter or repair such Goods or Works without our written consent;
 - 7.2.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working Terms;
 - 7.2.6 the Goods or Works differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 7.3 Except as provided in this Condition 7, we shall have no liability to you in respect of the Goods' failure to comply with the warranty set out in Condition 4.11 or the Works failure to comply with the warranty set out in Condition 6.4.

7.4 The terms of these Terms shall apply to any repaired or replacement Goods or Works supplied by us under Condition 7.1.

8 YOUR OBLIGATIONS

8.1 You shall:

8.1.1 ensure that the terms of the Order and the Specification are complete and accurate;

8.1.2 co-operate fully with us in all matters relating to the Works;

8.1.3 provide us, our employees, agents, consultants and subcontractors, with access to the Site and the Delivery Location and other facilities as reasonably required by us to supply the Goods and to provide the Works (including access to welfare facilities, storage, lighting and a power supply at no cost to us);

8.1.4 provide us with such information and materials as we may reasonably require to supply the Works and to deliver the Goods, and ensure that such information is accurate in all material respects;

8.1.5 prepare the Site for the safe and efficient supply of the Works;

8.1.6 prepare the Delivery Location for the safe and efficient delivery of the Goods;

8.1.7 obtain and maintain all necessary licences, Permissions and consents which may be required for the Works before the date on which the Works are to start (save where the Specification includes that we are responsible for obtaining a specific Permission or Permissions);

8.1.8 immediately provide us with written notice if the time when the Works can be carried out is likely to be delayed;

8.1.9 be liable for and shall indemnify us against any expense liability loss claim or proceedings whatsoever in respect of personal injury or death of any person arising out of or in the course of or caused by the carrying out of the Works at the Site except to the extent that the same is due to our act or neglect;

8.1.10 keep and maintain all our materials, equipment, documents and other property (**Our Materials**) at your premises in safe custody at your own risk, maintain them in good condition until returned to us, and not dispose of or use them other than in accordance with our written instructions or authorisation.

8.1.11 notify us of the existence of buried or fragile services and overhead cables.

8.2 In the event that the project which includes or comprises the Works is notifiable under the CDM Regulations you shall ensure that a principal contractor and CDM co-ordinator are appointed. You must keep us updated regarding their identities.

8.3 If our performance of any of our obligations in respect of the Works is prevented or delayed by any act or omission by you or failure by you to perform any of your obligations (**Your Default**):

8.3.1 we shall, without limiting our other rights or remedies, have the right to suspend performance of the Works until you remedy Your Default, and to rely on Your Default to relieve us from the performance of any of our obligations to the extent Your Default prevents or delays our performance of any of our obligations;

8.3.2 we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this Condition 8.1.10; and

8.3.3 you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from Your Default.

9 PERMISSIONS

9.1 Save in the event that we have expressly included the obtaining of the relevant Permission in the quotation; you are responsible for obtaining all Permissions. You are deemed to authorise us to commence the Works as if all the Permissions have been obtained.

9.2 If we have expressly undertaken to obtain Permission in the quotation, we will use reasonable endeavours to attempt to obtain that Permission and you must give us all assistance that we request in a timely manner. If the Permission is not forthcoming after a reasonable time and through no fault of either party and in our opinion is necessary for the Works to proceed then the Contract will be treated as at an end and we shall be entitled to payment for the Works carried out in accordance with Condition 14.

10 CHARGES AND PAYMENT

10.1 Unless otherwise expressly agreed by us in writing or set out in our quotation or acknowledgment of order, the price for Goods and/or Works shall be:

10.1.1 in respect of Goods, the price set out in our price list as at the date of delivery.

10.1.2 in respect of Works, the charges shall be on a time and materials basis as follows:

10.1.2.1 the charges shall be calculated in accordance with our standard daily fee rates, as set out in our daily rates schedule from time to time;

- 10.1.2.2 our standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 6.00 pm worked on Business Days;
- 10.1.2.3 we shall be entitled to charge an overtime rate of 150 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom we engage on the Works outside the hours referred to in Condition 10.1.2.2; and
- 10.1.2.4 we shall be entitled to charge you for any expenses reasonably incurred by the individuals whom we engage in connection with the Works including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by us for the performance of the Works, and for the cost of any materials.
- 10.2 You will reimburse to us the cost of any equipment or parts damaged by buried services not notified to us in writing pursuant to Condition 8.1.11.
- 10.3 We reserve the right to increase the price of the Goods, by giving notice to you at any time before delivery, to reflect any increase in the cost of the Goods to us that is due to:
- 10.3.1 any factor beyond our the control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 10.3.2 any request by you to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 10.3.3 any delay caused by any instructions of you in respect of the Goods or failure of you to give us adequate or accurate information or instructions in respect of the Goods.
- 10.4 In respect of Goods, we shall invoice you on or at any time after completion of delivery.
- 10.5 Unless otherwise expressly agreed by us in writing or set out in our quotation or acknowledgment of order, in respect of Works, we shall invoice you monthly in arrears.
- 10.6 You shall pay each invoice submitted by us:
- 10.6.1 within 30 days of the date of the invoice; and
- 10.6.2 in full and in cleared funds to a bank account nominated in writing by us, and time for payment shall be of the essence of the Contract.
- 10.7 All amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Works or Goods at the same time as payment is due for the supply of the Works or Goods.
- 10.8 If you fail to make any payment due to us under the Contract by the due date for payment, then:
- 10.8.1 you shall pay interest on the overdue amount at the rate of 12% per annum above HSBC Bank'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. You shall pay the interest together with the overdue amount.
- 10.8.2 We may suspend the supply of the Works and further deliveries of the Goods and/or terminate the Contract in accordance with Condition 13.2.
- 10.9 You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.
- 10.10 You shall pay on demand and on a full indemnity basis all costs and expenses which we may from time to time incur in connection with:
- 10.10.1 enforcing the payment of any sum due to us under this agreement (including costs relating to any instruction of a debt collection agency); and/or
- 10.10.2 successfully defending a claim brought by you relating to this agreement.

11 **CONFIDENTIALITY**

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in

this Condition as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This Condition 11 shall survive termination of the Contract.

12 LIMITATION OF LIABILITY: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 12.1 You acknowledge that it is reasonable for us to limit our liability to you as:
- 12.1.1 it is not commercially sensible to accept unlimited liability especially given the nature and complexity of the Goods and the Works;
 - 12.1.2 in the interests of keeping the price to a reasonable level we cannot be liable for every risk normally associated with the Goods and the Works.
- 12.2 Nothing in these Terms shall limit or exclude our liability for:
- 12.2.1 death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors;
 - 12.2.2 fraud or fraudulent misrepresentation;
 - 12.2.3 breach of the terms implied by section 2 of the Supply of Goods and Works Act 1982 (title and quiet possession);
 - 12.2.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 12.2.5 defective products under the Consumer Protection Act 1987.
- 12.3 Subject to Condition 12.2:
- 12.3.1 we shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise:
 - 12.3.1.1 for any damage caused by your failure to comply with your obligations set out in Condition 8.1; and
 - 12.3.1.2 for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 12.3.2 our total liability to you 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 the total charges made by us in relation to the Contract for the Goods, the Works and (if any) the Additional Works.
- 12.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Works Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.5 Subject to the other provisions of these Terms we shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or supply of the Works (even if caused by our negligence), nor shall any delay entitle you to end or rescind the Contract unless such delay exceeds 90 days.
- 12.6 To the extent not already excluded by these Terms, our maximum liability for physical damage to tangible personal or real property shall not exceed £10,000.00 per event or series of events inclusive of the costs and expenses of you.
- 12.7 This Condition 12 shall survive termination of the Contract.

13 TERMINATION

- 13.1 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if:
- 13.1.1 you commit a material breach of your obligations under this Contract and (if such breach is remediable) fail to remedy that breach within 7 days after receipt of notice in writing to do so;
 - 13.1.2 you suspend, or threaten to suspend, payment of your debts or are unable to pay your debts as they fall due or admit your inability to pay your debts or (being a company or limited liability partnership) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) you are deemed either unable to pay your 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) you have any partner to whom any of the foregoing apply;
 - 13.1.3 you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or makes a proposal for or enters into any compromise or arrangement with your creditors;

- 13.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up (being a company) other than for the sole purpose of a scheme for your solvent amalgamation with one or more other companies or your solvent reconstruction;
 - 13.1.5 you (being an individual) are the subject of a bankruptcy petition or order;
 - 13.1.6 a creditor or encumbrancer of yours 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 your assets and such attachment or process is not discharged within 14 days;
 - 13.1.7 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 you (being a company);
 - 13.1.8 the holder of a qualifying charge over your assets (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 13.1.9 a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;
 - 13.1.10 any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in Condition 13.1.2 to Condition 13.1.9 (inclusive);
 - 13.1.11 you suspend, threaten to suspend, cease or threaten to cease to carry on, all or substantially the whole of your business;
 - 13.1.12 your financial position deteriorates to such an extent that, in our opinion, your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy; or
 - 13.1.13 you (being an individual) die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing your own affairs or become a patient under any mental health legislation.
- 13.2 if you fail to pay any amount due under this Contract on the due date for payment, you become subject to any of the events listed in Condition 13.1.2 to Condition 13.1.13, or we reasonably believe that you are about to become subject to any of them, then without limiting our other rights or remedies, we may:
- 13.2.1 immediately suspend the supply of Works or all further deliveries of Goods under the Contract or any other contract between you and us; and/or
 - 13.2.2 whether or not we have previously exercised our right under Condition 13.2.1, terminate the Contract with immediate effect by giving written notice to you.

14 CONSEQUENCES OF TERMINATION

ON TERMINATION OF THE CONTRACT FOR ANY REASON:

- 14.1.1 you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Goods and/or Works supplied but for which no invoice has yet been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
- 14.1.2 you shall return all of the Goods and Our Materials which have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 14.1.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 14.1.4 Terms which expressly or by implication have effect after termination shall continue in full force and effect.

15 EXPERT DETERMINATION

- 15.1 In the event of any dispute regarding the amount due to us as a consequence of any dispute or difference arising out of or in connection with the Specification, manufacture, quality or condition of the Works or Goods then we may instruct a Chartered Engineer (**Expert**) in writing to certify the amount which in his opinion is due to us.
- 15.2 Save as otherwise provided, in certifying the amount due to us, the Expert:
 - 15.2.1 shall produce a written certificate;
 - 15.2.2 shall act impartially;
 - 15.2.3 shall ensure that the certification takes place with due expedition;
 - 15.2.4 may inspect or require the inspection of any document, site, property, product or process as he considers just or appropriate;
 - 15.2.5 to the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate;

- 15.2.6 if the parties do not co-operate with the Expert then he may draw such conclusions from that lack of cooperation as it deems appropriate; and
- 15.2.7 shall act as an expert and not as an arbitrator.
- 15.3 The certificate shall be binding on the parties until the dispute or difference is finally determined by legal proceedings or by agreement.
- 15.4 The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination shall be paid by another party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs.
- 15.5 The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties equally or in such other proportions as the Expert shall direct.
- 15.6 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
- 15.7 Each party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching his determination.
- 15.8 If any sum is payable as a consequence of the Expert's certificate it shall be paid without set off or counterclaim save for liquidated and ascertained sums and the payee shall be entitled to summary judgment in respect of any sum found to be payable as a consequence of the certificate.
- 16 EVENTS BEYOND OUR CONTROL**
- 16.1 For the purposes of this Contract, **Event Beyond Our Control** means an event beyond our reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of we or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 16.2 We shall not be liable to you as a result of any delay or failure to perform our obligations under this Contract as a result of an Event Beyond Our Control.
- 16.3 If the Event Beyond Our Control prevents us from providing any of the Works and/or Goods for more than 8 weeks, we shall, without limiting our other rights or remedies, have the right to terminate this Contract immediately by giving written notice to you.
- 17 GENERAL**
- 17.1 Assignment and other dealings.
- 17.1.1 We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of our rights under the Contract and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party.
- 17.1.2 You shall not, without our prior written consent, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of your rights or obligations under the Contract.
- 17.2 Notices.
- 17.2.1 Any notice or other communication given to a party under or in connection with this 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 Condition, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier or fax.
- 17.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 12.2(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, one Business Day after transmission.
- 17.2.3 The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action
- 17.3 Severance.
- 17.3.1 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 Condition shall not affect the validity and enforceability of the rest of the Contract.
- 17.3.2 If 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.

- 17.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its 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.
- 17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 17.7 **Variation.** Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and Terms shall be effective unless it is agreed in writing and signed by us.
- 17.8 **Governing law.** This agreement 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.
- 17.9 **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).