

**STANDARD TERMS AND CONDITIONS OF ENGAGEMENT FOR DESIGN, SUPPLY AND INSTALLATION WORKS**

*Note: if You are a Consumer, You have certain statutory rights regarding defective Goods and workmanship and claims in respect of costs or losses caused by Our negligence or failure to carry out Our obligations. Nothing in these Conditions shall affect Your statutory rights.*

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 In these Conditions, unless the context otherwise requires, the following words or expressions that begin with capital letters shall have the following meanings given below:
- 1.1.1 **'Attendances'** means the facilities, plant and equipment referred to in the Quotation or the Order Acknowledgment to be provided by the Client free of charge for Us to use in connection with the Project;
- 1.1.2 **'Authorised Person'** means a person authorised by Us as named on the face of the Order Acknowledgment or the Quotation, or such other person as from time to time We shall notify You that We have appointed to perform such role;
- 1.1.3 **'Change in Law'** means when (after the date of the Quotation) any Statutory Requirement comes into effect or is changed, including but not limited to any new tax, duty or other impost or change in the rate of any tax, duty or other impost;
- 1.1.4 **'Completion'** means a state in which the Works are substantially complete except for items of incomplete works or defects that We would ordinarily include on a snagging list and do not otherwise prevent the beneficial use or enjoyment of the Works;
- 1.1.5 **'Conditions'** means these terms and conditions as may be varied by the Special Conditions;
- 1.1.5A **'Consumer'** means any natural person acting for purposes outside their trade, business or profession;
- 1.1.6 **'Contract'** means the contract for the carrying out of the Works by Us, comprising the Contract Documents;
- 1.1.7 **'Contract Documents'** means; these Conditions (as may be varied by any Special Conditions), the Quotation, the Order Acknowledgment and any other documents referred to or listed in the Quotation or the Order Acknowledgment;
- 1.1.8 **'Contract Period'** means the period or periods commencing on the Start Date and ending on a date or dates (as may be extended under clause 9 (Commencement and Completion) which is the number of days, weeks or months specified in the Quotation after the Start Date or if no such period is referred to in the Order Acknowledgment or the Quotation or the Contract Documents then such period of time as shall be fair and reasonable in the circumstances;
- 1.1.9 **'Contract Sum'** means the fees, charges and expenses You shall pay to Us for the Works (which is exclusive of VAT) and as set out in the Quotation or the Order Acknowledgment (and as supplemented and/or varied in accordance with these Conditions);
- 1.1.10 **'Date of Completion'** means the date on which (in Our reasonable opinion) We achieve Completion;
- 1.1.11 **'Dayworks Rate'** means the rate or rates set out in the Order Acknowledgment or the Quotation or if no such rates are referred to or set out then industry standard Dayworks rates current as at the date the relevant works are performed;
- 1.1.12 **'Defects'** means all and any defects, shrinkages and other faults in the Works or any part thereof, which are due to design, materials or workmanship not being in accordance with the Contract;
- 1.1.13 **'Insolvent'** means any one or more of the following: You are unable to pay Your debts as they fall due; You enter into an arrangement, compromise or composition in satisfaction of Your debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or without a declaration of solvency, pass a resolution or makes a determination to be wound up; or have a winding up order or bankruptcy order made against You; or have appointed to You or You appoint a liquidator or an administrator or administrative receiver or a compulsory manager or other similar officer in respect of any of Your assets; or You are the subject of any analogous arrangement, event or proceedings in any other jurisdiction;
- 1.1.14 **'Listed Items'** means materials or goods which may be stored off-site as listed in the Quotation or the Order Acknowledgment, the value of which may be included by Us in an interim application for payment or statement of account or invoice;
- 1.1.15 **'Named Supplier'** means any contractor, consultant or supplier You identify as being a contractor, consultant or supplier which We are obliged or encouraged by You or Your advisors or consultants to use in connection with the carrying out or completion of the Works;
- 1.1.16 **'Necessary Consents'** means without limitation any and all consents, conditions, restrictions, registrations, approvals, notices, permits and licences necessary in order to enable Us to commence, carry out and complete the Works;
- 1.1.17 **'Normal Working Hours'** means the hours of work on Site as described in the Contract Documents or if no hours are so described then the hours of work shall be Monday to Friday (8am to 4.30pm) excluding statutory bank holidays and national construction industry holidays;
- 1.1.18 **'Order Acknowledgment'** means the order acknowledgment form that We may issue to You in connection with the Contract; 1.1.19 **'Other Contractors'** means the main contractor, sub-contractors or such other contractor appointed or to be appointed in relation to the Project;
- 1.1.20 **'Payment Date'** means seven (7) days after the due date for payment of an amount due to Us under the Contract;
- 1.1.21 **'Project'** means the works, project or development on or around the Site of which the Works form part as briefly described in the Quotation or the Order Acknowledgment;
- 1.1.22 **'Quotation'** means the quotation issued by Us describing (amongst other things) the nature and scope of the Works to be performed, the Contract Sum, the Site Standards and any Special Conditions;
- 1.1.23 **'Site'** means the location of the Project or the place at which the Works are to be completed as described in the Order Acknowledgment or the Quotation or the Contract Documents;
- 1.1.24 **'Site Standards'** means the required standards, access requirements and facilities to be made available at the Site for use by Us as set out in the Quotation or the Order Acknowledgment or the Contract Documents;
- 1.1.25 **'Special Conditions'** means any special conditions that may amend these Conditions and which are specified in the Quotation or the Order Acknowledgment;
- 1.1.26 **'Start Date'** means the date or dates on which We may commence performance of the Works, which shall be a date or dates which is ten (10) Working Days after the date of Your acceptance of the Quotation, unless otherwise stated in the Order Acknowledgment or the Quotation;
- 1.1.27 **'Statutory Requirements'** means any relevant Acts of Parliament, any instrument, rule, order or permission made under any Act of Parliament or any regulation or bye-law of any local authority or if any statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the same are or will be connected including without limitation any statutory provisions and any decision of a relevant authority or organisation thereunder which control the right to develop the Site, or other requirement from any relevant authority relating to pollution or protection of the environment and/or human health and safety and/or planning or any EU legislation, regulation or directive relating to the Works;
- 1.1.28 **'Variation'** means a variation, modification, omission, addition or other alteration in the nature or scope or duration of the Works or the timing of the Start Date;
- 1.1.29 **'Warranty'** means Our liability to You for defective Works as set out in Clause 3.1 (Warranty);

- 1.1.30 **'Warranty Period'** means a period expiring twelve (12) months after the Date of Completion, or twelve (12) months after the date of termination of Our engagement under the Contract, whichever is the earlier;
- 1.1.31 **'We', 'Us', 'Our', 'Ours' or 'Chameleon'** means CHAMELEON BUSINESS INTERIORS LIMITED (company number 03683347) whose registered office is at 2 Humber Quays, Island Wharf, Wellington Street West, Hull, HU1 2BN;
- 1.1.32 **'Working Day'** means any day which is not a Saturday, Sunday or statutory bank holiday or national construction industry holiday; 1.1.33 **'Works'** means the design, supply and/or installation of materials and goods and any works which We are to perform as set out in the Quotation or the Order Acknowledgment or the Contract Documents (as may be varied in accordance with these Conditions); and 1.1.34 **'Works Period'** means the period commencing on the Start Date and ending on Completion; and
- 1.1.35 **'You', 'Your', 'Yours' or 'the Client'** means the party so described in the Quotation or (if different) in the Order of Acknowledgment as being Our client and a party to the Contract and if the Client is two or more persons such persons shall be acting and liable jointly and severally and We may accept and rely on any decisions, instructions or approvals given by any persons employed, engaged or authorised by You.

- 1.2 In these Conditions, unless the context otherwise requires:
- 1.2.1 clause and paragraph headings in these Conditions are for ease of reference and for convenience only and shall not affect the construction of these Conditions;
- 1.2.2 references to a paragraph or clause are references to a paragraph or clause of these Conditions;
- 1.2.3 references to 'includes' and 'including' shall be construed without limitation;
- 1.2.4 words importing the singular meaning shall include the plural meaning and vice versa and any term importing gender shall include any gender and references to a 'person' shall, where the context so requires, include individuals, bodies corporate, unincorporated associations, partnerships, a firm or any entity having legal capacity;
- 1.2.5 references to a party or the parties are references to a party or the parties to the Contract and references to a party shall include its successors in title and permitted assigns; and
- 1.2.6 the words 'other' and 'otherwise' are not to be construed as being limited by any words preceding them.

## 2 BASIS OF THE CONTRACT

- 2.1 The Contract shall govern Our contractual relationship with You to the exclusion of any other terms and conditions of Yours (including but not limited to any terms and conditions of Yours even if incorporated or referred to in the Contract Documents). These Conditions shall apply in preference to and supersede any terms and conditions referred to, offered or relied upon by You. You agree that these Conditions shall govern all present and future contractual relations between Us and You until further notice is given by Us to You or as otherwise expressly excluded by Us.
- 2.2 You must ensure that the terms of any order (including any design or specification prepared by You or on Your behalf) is complete and accurate and that You give to Us any and all necessary information relating to the Works within a sufficient time to enable Us to perform Our obligations in connection with the Contract.
- 2.3 The Contract may only be varied in writing, signed by the Authorised Person. Any other purported variation shall be of no effect. Except as
- 2.4 expressly provided in these Conditions, nothing in the Contract shall confer any right pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not a party to it.
- 2.5 In the event of any conflict, discrepancy or ambiguity between the Contract Documents, then the deemed order of priority shall be as follows (top of the list ranking the highest):
- 2.5.1 the Order Acknowledgment;
- 2.5.2 the Quotation;
- 2.5.3 the Special Conditions (if any);
- 2.5.4 these Conditions; and
- 2.5.5 any other documents referred to in the Quotation or the Order Acknowledgment.
- 2.6 Where there is any conflict, ambiguity or discrepancy within any of the Contract Documents, We shall inform You as to which of the discrepant items is to be adopted and You shall instruct Us to remove any such conflict, ambiguity or discrepancy. Such instruction shall be treated as a Variation and carried out, valued and paid for in accordance with clause 7.2.

## 3 OUR OBLIGATIONS AND WARRANTY

- 3.1 Subject always to the remaining provisions of this clause 3, We will carry out the Works using reasonable skill and care and in accordance with the Contract. If any Works are not performed in accordance with the Contract, We will make good, remedy or repair any Defects that arise within the Warranty Period and within a reasonable period of time from written notification or, at Our discretion, reduce the Contract Sum in respect of the relevant Works. Any Defects are to be notified by You to Us in writing by email to: [projectadministrator@c-b-i.co.uk](mailto:projectadministrator@c-b-i.co.uk). Upon receipt of notification, We will arrange a site inspection and advise You in writing of any appropriate remedial work proposed. You will ensure that We have unimpeded access to the Site or any other relevant premises at such times as We may reasonably require in order to make good, remedy or repair any such Defects for which We are liable under this clause. Except as expressly set out in these Conditions, all other warranties, stipulations and undertakings as to the quality and fitness for purpose of the Works whether express or implied by statute or common law are excluded to the fullest extent permitted by law.
- 3.2 The warranty given in this clause 3 shall not apply and We shall not be liable to You to the extent that:
- 3.3 3.3.1 You make, cause or allow to be made any alterations, modifications, opening up, testing or repairs to the Works without Our prior written consent; or
- 3.3.2 any Defect arises in the Works from any inaccuracy or inadequacy of any design or any information, drawing or specification prepared or supplied by You or any other third party (other than Our own sub-contractors and suppliers but excluding any Named Suppliers); or
- 3.3.3 any Defect arises from any materials or goods that You or any other third party (other than Our own sub-contractors and suppliers but excluding any Named Suppliers) has specified that We must use which are unsuitable or inappropriate for the Works; or
- 3.3.4 any Defects in the materials or goods supplied in connection with the Contract which arise from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Our instructions or maintenance requirements or industry standards, misuse or alteration or repair of the materials or goods, or storage of such materials or goods in unsuitable conditions PROVIDED always that this clause shall not apply to the extent caused by any act, omission or default on Our part; or
- 3.3.5 We are not given reasonable opportunity (and in any event not less than one (1) week's prior written notice) to attend any meetings or inspections relating to the Works where investigative works, or works to open up, uncover, test or

- inspect the Works are carried out that could result in Our opinion, in the Works being damaged or destroyed in whole or in part (except where it may be urgent and necessary in the interests of health and safety); or
- 3.3.6 We carry out any part of the Works on Your instructions and those instructions have been given against Our advice. We shall not be obliged to have warned You of any potential adverse consequences of not proceeding with Our advice; or
- 3.3.7 You fail to give Us a reasonable opportunity to make good, repair or remedy any Defects (except where it may be urgent and necessary in the interests of health and safety); or
- 3.3.8 You fail to comply with Your obligations in connection with the Contract.
- 3.5 Notwithstanding any other provision of the Contract, We shall not be responsible for or liable to You or any third party for any works or services performed or supplied or for any products or materials provided by any Named Suppliers to the fullest extent permitted by law.
- 3.6 Any advice or recommendation given by Us or Our employees or agents to You as to the storage, application or use of the Works which is not confirmed in writing by Us is followed or acted upon entirely at Your own risk and You acknowledge that You do not rely on, and waive any claim for breach of, any such unconfirmed representation (unless such representation is made fraudulently).
- 3.7 You are not permitted to make copies of any of Our documents without Our prior written consent. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice, drawing, illustration, material, statement of warranty or other document or information or statement issued by Us or any of Our sub-contractors, employees or agents (whether before or after the Contract comes into existence) shall be subject to these Conditions and correction without any liability on Our part. These documents are provided for guidance only and statements included in these documents (in the absence of fraud on Our part) shall not constitute representations by Us and We shall not be bound by them.

#### **YOUR OBLIGATIONS**

- 4** You will co-operate fully with Us in relation to all matters connected with the Works.
- 4.1 Unless otherwise expressly stated in the Contract Documents, You shall be responsible for all the setting out of the Works and the
- 4.2 areas of working on the Site.
- 4.3 You will provide to Us (without charge) all sufficient and accurate information in Your possession or known to you or available to you upon reasonable enquiry required by Us in a timely fashion to enable the proper performance of the Works by Us so as not to delay or disrupt the performance of Our obligations under the Contract or pose any threat or danger to persons or property, including (but not limited to) site investigations and ground conditions reports or surveys. We shall be entitled to rely on the accuracy and sufficiency of all information provided to Us by You and to make assumptions on the basis of such information, when carrying out the Works. We will not be liable to You if the Works fail to satisfy Your requirements as a result. The Works will be carried out solely on the basis of Our interpretation of the information You give to Us. You warrant that the use by Us of any information You supply to Us will not infringe the rights of any third party.
- 4.4 You shall be responsible for ensuring that the Site complies with the Site Standards and that We have uninterrupted and unrestricted access to the Site and use of the Attendances for the full duration of the Works Period and to use the Site for all purposes in connection with the Contract. You shall ensure that the areas in which We need to work are set out and ready, adequate and suitable at such times as We require during the Works Period so as not to delay or disrupt the progress of the Works. From the date we commence performance of the Works on Site until Completion, You shall be responsible for securing the Site and providing safe storage for any plant, equipment, tools and goods and materials to be used in connection with the Works (whether or not for incorporation into the Works).
- 4.5 You shall obtain and pay for at Your own cost all Necessary Consents required to enable Us to carry out and complete Our obligations in connection with the Contract and provide Us with copies of any such Necessary Consents on request.
- 4.6 To the extent applicable to the Project, you will observe and perform all obligations You have or may have in connection with any Statutory Requirements (including but not limited to the Construction (Design and Management) Regulations 2015).
- 4.7 If any of Our delivery, collection or work vehicles are kept waiting for an unreasonable time or are obliged to return without completing delivery, You shall pay to Us any and all additional costs, losses and expenses (together with Our overheads and profit thereon having regard to the rates and prices in the Contract or if no such rates and prices are applicable, then on a fair and reasonable basis) that We accrue, suffer or incur as a result.
- 4.8 Unless otherwise expressly stated in the Contract Documents, You shall provide Us with (at Your expense) a suitable running water and power supply, toilet, washing and welfare facilities, secure storage space on Site at such times and in such a manner as We may from time to time reasonably require in order that We may perform Our obligations under the Contract.
- 4.9 You agree to have due regard to all information supplied by Us relating to the use of the Works necessary to ensure the Works will be safe and do not pose a risk to the health and/or safety of any person at all times when the Works are being set, used, cleaned or maintained by any person.
- 4.10 Unless otherwise expressly stated in the Quotation or the Order Acknowledgment, You shall be responsible for storing, transporting and disposing of any waste that arises from the Works via a central skip or other collection point on Site. We may perform this obligation for You but will be entitled to charge You Our costs, charges and expenses in doing so (together with a reasonable amount in respect of Our overheads and profit having regard to the rates and prices in the Contract or if no such rates and prices are applicable, then on a fair and reasonable basis).
- 4.11 You warrant that any works performed, designs provided or products or materials supplied by any Named Suppliers shall be fit for the purpose for which they are intended to be used by Us in connection with the Works and that such works or designs shall be performed and such products and materials supplied in accordance with and as reasonably required by Our programme for the carrying out and completion of the Works.
- 4.12 You agree to indemnify Us in respect of any and all claims, consequences, losses, costs, damages and expenses suffered or incurred by Us arising from any act, omission, negligence or default by You or anyone for whom You are responsible or any breach by You of any of Your obligations in connection with the Contract.
- 4.13 You grant to Us an irrevocable copyright licence to use and reproduce any copyright material You (or your consultants, employees, servants or agents) provide to Us in connection with the Contract for any and all purposes relating to the Contract. If We prepare or provide You with any designs, drawings, dimensions, specifications or setting out of the Works, such information is to be treated as a guide only and We do not warrant its accuracy or sufficiency.

#### **5 PAYMENT**

- 5.1 You shall pay to Us the Contract Sum (together with all other sums or amounts that are or may become due to Us in connection with the Contract) by instalments as set out in the Contract Documents or if no instalments are specified, then We shall be entitled to apply for interim payments at monthly intervals. We may submit Our first application for payment on or after the Start Date unless a deposit is required from You in the Contract Documents, in which case We may submit Our first application for payment seven (7) days before the Start Date.

- 5.2 Where no instalments are set out in the Contract Documents, the amounts stated as due in each of Our applications for payment or invoices shall be calculated by agreement between You and Us or, in the absence of agreement, shall be calculated and based on Our assessment of the value of; (i) the Listed items; (ii) the goods or materials delivered to Site for incorporation into the Works; and (iii) that element of the Works performed up to the date of the relevant application for payment or Invoice and having regard to the rates and prices in the Contract Documents or, if no relevant rates and prices exist, such amounts as shall be fair and reasonable in the circumstances. In addition, We shall also be entitled to include in each application for payment or interim invoice any other amounts to which We are entitled to be paid pursuant to the Contract and any expenses or disbursements incurred on Your behalf. Unless stated otherwise in the Quotation or Order Acknowledgment, the due date for payment of each amount due to Us in connection with the Contract shall be the date We submit Our relevant application for payment or invoice, whichever is the earlier. Not later than five (5) days after the date on which any payment becomes due, You must give written notice to Us specifying the amount (if any) of the payment made or proposed to be made, specifying to what the payment relates and the basis on which the amount was calculated. If You do not give Us written notice within such time, then You will pay in full the amount stated as being due in Our application for payment or invoice.
- 5.3
- 5.4 Not later than on the day before any final date for payment, You may give Us notice that You intend to pay less than the sum notified pursuant to clause 5.4. Any such notice shall specify the sum that You consider to be due on the date the notice is served and the basis on which that sum is calculated.
- 5.5 The final date for payment shall be the Payment Date.
- 5.6 On or after the Date of Completion of the Works, We shall be entitled to submit a final account or invoice to You for payment of the Contract Sum (less any amounts already paid on account of the Contract Sum) together with any other amounts which You may be obliged to pay to Us in connection with the Contract.
- 5.7 You agree to pay Our applications for payment and invoices in full and without any deduction, contra-charge, withholding or set-off. We shall be entitled to be paid the full amount of each application for payment or invoice, notwithstanding the Works have not been carried out or completed.
- 5.8 We will charge interest on any late payments in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. If We incur third party costs, such as tracing or debt collection agency costs, or seeks to take legal proceedings or adjudication to enforce Our rights as a result of Your breach of Contract, including but not limited to, recovery of any sums due, You will indemnify Us against any and all costs (including legal costs and expenses), losses, damages and expenses that We accrue, suffer or incur as a result.
- 5.9
- 5.10 All amounts and prices stated in the Contract are exclusive of VAT. You must pay to Us all Value Added Tax ("VAT") due and properly chargeable (as at the date of each relevant invoice or application for payment) in respect of the Works.
- 5.11 Within fourteen (14) days of a receipt of a request to do so, You will procure the execution and delivery to Us of a guarantee provided by a third party of suitable financial standing (the identity of whom is subject to Our approval) in a form reasonably required by Us in respect of Your obligations to pay to Us any and all monies which may become due to Us under the Contract.

## 6 PRICING ASSUMPTIONS

- 6.1 Unless otherwise expressly stated in the Quotation or Order Acknowledgment, the Contract Sum has been calculated on the basis of the following conditions (the 'Pricing Assumptions'):
- 6.1.1 You accept Our Quotation not later than one (1) month after the date of the Quotation;
- 6.1.2 the Works are capable of being started on the Start Date;
- 6.1.3 during the Works Period and at all other times reasonably required to enable Us to comply with Our obligations under the Contract, We will have uninterrupted and unrestricted access to the Site and the areas in which We need to work; all labour and materials necessary to enable Us to carry out and complete the Works shall be generally available in the market at commercially reasonable rates and not at materially higher rates than what was available at the time We prepared Our Quotation;
- 6.1.4
- 6.1.5 all preparatory works to be performed by You or any other third party are completed before the Works are ready to be performed by Us and, thereafter, all such other works to be performed by third parties proceeds with all reasonable speed so as not to delay or disrupt the performance by Us of Our obligations under the Contract;
- 6.1.6 the Works will not need to be performed outside the Normal Working Hours;
- 6.1.7 the Site conforms to the required Site Standards;
- 6.1.8 the sub-surface, ground, physical conditions and condition of any existing buildings, services or structures at or around the Site are and continue to be as We had envisaged them to be on the date We prepared the Quotation;
- 6.1.9 You have and will fully, effectively, punctually and faithfully perform all of Your obligations and duties in connection with the Contract (including the prompt provision of complete and accurate information, designs and documents relating to the Works); and
- 6.1.10 any temporary arrangements, hoardings, temporary escape routes and housekeeping required in relation to the Works are provided by You.
- 6.2 If there is any change to any of the Pricing Assumptions or any of them prove to be incorrect then You shall pay to Us any and all additional costs, losses and expenses (together with Our overheads and profit having regard to the Dayworks Rate or such other rates and prices in the Contract or if no such rates and process are applicable, then on a fair and reasonable basis) that We may accrue, incur or suffer as a result (including but not restricted to the supply of any necessary Works, waiting and travelling time and additional visits to Site). If any monies due to Us under or in connection with the Contract are calculated having regard to the Dayworks Rate, then, for the purposes of the Contract, one day shall comprise eight and a half (8.5) man hours (including all reasonable breaks and rest periods).
- 6.3

## VARIATIONS

- 7
- 7.1 You may not instruct any Variation to the Works without Our prior written consent. In the event We carry out a Variation (whether instructed or not), Our additional costs, expenses and charges (together with a reasonable amount to account for overheads and profit) will be calculated by Us having regard to the Dayworks Rate or such other rates and prices set out in the Quotation or the Order Acknowledgment and PROVIDED ALWAYS that and notwithstanding any other provision in the Contract, nothing in the Contract shall operate to reduce the Contract Sum.
- 7.2 We may (at Our discretion) issue a variation order acknowledgment to You confirming the nature and scope of the Variation and the terms governing the Variation. In the event of any conflict, ambiguity or discrepancy within or between the terms of Our variation order acknowledgment and any addendum or variation instruction issued by You in writing or orally, then the terms of Our variation order acknowledgment shall prevail.
- 7.3 If any amounts or items of work are referred to in the Contract as provisional sums or prime cost sums then the amounts referred to against such works are not fixed lump sums. Such works shall be treated as a Variation and carried out, value and paid for in accordance with clause 7.1.

## **8 OWNERSHIP AND RISK**

- 8.1 Ownership of any materials or goods to be incorporated into the Works shall not pass to You until We have been paid all amounts due to Us under the Contract and any other contract or agreement We have entered into with You. Risk in such materials or goods shall pass to You upon delivery by Us to the Site, or if earlier, on receipt of payment by You of an amount to which such materials or goods relate.
- 8.2 Until ownership in materials or goods passes to You, You shall keep such materials or goods as Our fiduciary agent, bailee and trustee for Us and We may recover and/or resell such materials or goods and enter the Site or any other premises where such materials or goods are located for this purpose so as to discharge any overdue payment.
- 8.3 We shall have a general lien (together with a power of sale) on all materials or goods, property or documents forming part of the Works or prepared by Us or on Our behalf (including but not limited to any and all test certificates and other documentation that We may be obliged to issue by law on completion, testing or commissioning of the Works or any part of them) until payment is made in full and in cleared funds of all amounts due to Us under the Contract and any other contact between the You and Us and We shall be entitled on the expiration of fourteen (14) days' notice to dispose of such materials or goods, property or documents as We think fit and apply any proceeds towards such debt.
- 8.4 All drawings, plans, specifications, method statements and related documents submitted by Us in connection with the Contract remain Our property with all rights reserved. In the event the Contract is terminated or, alternatively, following Completion, all drawings, plans, specifications and method statements and related documents are to be returned to Us without delay. You are not permitted to make copies of such documents without Our prior written consent.

## **9 COMMENCEMENT AND COMPLETION**

- 9.1 Unless otherwise stated in the Quotation or Order Acknowledgment, any times given for performance of the Works are given in good faith but are approximate only and shall not be of the essence of the Contract. We will use Our reasonable endeavours to achieve Completion within the Contract Period.
- 9.2 We will not be liable to You under any circumstances whatsoever or be in breach of Contract by reason of delay or failure to perform any of Our obligations or to achieve Completion within the Contract Period if the delay or failure was due to any cause beyond Our reasonable control (including but not limited to where You instruct any Variation) or any delay to the Start Date or Completion is caused by any act, omission or default by You or any of Your servants, agents or employees or any of the Named Suppliers. In such circumstances We shall be entitled to an extension of time to complete the Works by such period as shall be fair and reasonable in the circumstances. However, We will endeavour to give You as much notice as possible of any changes in or delays to the regular progress of the Works.
- 9.3 If You extend, delay or disrupt the performance of the Works (including but not limited to where You instruct any Variation) or fail to allow Us to perform the Works at all times during the Contract Period, You shall re-imburse Us any and all losses, costs (including but not limited to additional overheads and profit, the cost of storage and all labour and materials used), damages, charges and expenses accrued, suffered or incurred by Us as a result of such extension, delay or disruption.
- 9.4 The Works shall be considered complete on notification by Us to You that in Our reasonable opinion the Works have achieved Completion. The Works will be considered to have achieved Completion notwithstanding any minor defects and/or omissions which are capable of being made good without materially interfering with the beneficial use and enjoyment of the Works and which it would be reasonable to include in a schedule of snagging items. If not contested in writing by You within seven (7) days of receipt of Our notification, then Completion shall for all purposes of the Contract shall be deemed to have taken place on the date so notified.
- 9.5 If You take possession of any part or the whole of the Works prior to Completion then Completion shall be deemed to have taken place in respect of the whole of the Works, the Warranty Period shall be deemed to have commenced on the date of Completion and any liability to pay liquidated damages under clause 9.6 shall cease.
- 9.6 Except to the extent delayed by the circumstances referred to in clause 9.2, in the event that We fail to achieve Completion within the Contract Period (as may be extended), We shall be liable to pay to You liquidated damages for delay. The agreed amount of liquidated damages shall be set out in the Quotation or the Order Acknowledgment or if no such amount is set out in the Quotation or the Order Acknowledgment then the amount shall be one hundred and fifty pounds (£150) per week or part thereof. You acknowledge and agree that the liquidated damages that You may be entitled to claim under this clause shall be Your exclusive and exhaustive right and remedy against Us in respect of any and all costs, losses, damages and expenses that You may suffer or incur in connection with any delay to the commencement, carrying out or completion of the Works. As a condition precedent to Your entitlement to claim or deduct liquidated damages, You must notify Us in writing of Your intention to do so not later than seven (7) days after You first becoming aware of the existence of a claim or a prudent employer ought to have become aware having experience of projects of a similar size, scale and complexity to the Project.

## **10 INSURANCES AND LOSS OR DAMAGE TO WORKS AND EXISTING BUILDINGS**

- 10.1 The Works (including materials and goods intended to be incorporated into the Works) and all structures, buildings, property and things belonging to You or any third parties whether known to You or not which are on the Site or adjacent to the Site, including materials and items required to be recovered for You shall be at Your sole risk as regards any loss, theft or accidental or malicious damage caused by fire, lightning explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft or other aerial devices, or articles dropped therefrom, riot and civil commotion, acts or threats of terrorism and including any loss or damage caused by ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly of nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.
- 10.2 You shall indemnify Us in respect of any loss, theft or damage which is at Your risk under clause 10.1 above. If such theft, loss or damage occurs, You shall notify us and We shall then carry out and complete the Works and the completion of such Works shall be treated as if it had been an instruction by You to proceed with a Variation under clause 7.2.
- 10.3 Notwithstanding and without prejudice to Your liability to indemnify Us under clause 10.2 above, You shall take out and maintain insurance in the joint names of You and Us for the full re-instatement cost of the Works and the relevant existing buildings and structures on and under the Site.

## **11 SIGNAGE**

- 11.1 We shall be entitled to write or affix Our name or marketing signboard on the Site in a way that is reasonably conspicuous and You authorise Us to make known the fact that We are retained by You in connection with the Project.

## 12 SUSPENSION

- 12.1 Upon the occurrence of any circumstance beyond Our control which is such as to prevent or significantly impede the performance by Us of the Works, which for the avoidance of any doubt, shall include (without limitation) any suspension of performance of any part of the Project, We may without prejudice to any other right or remedy suspend the performance of all or any part of the Works in respect of all or such parts of the Project or the Works as are affected. You agree to pay all of Our costs, losses (including, but not limited to, loss of profit), damages and expenses accrued, suffered or incurred by reason of such suspension and (if applicable) any re-mobilisation.
- 12.2 We may suspend performance of part or all of Our obligations under the Contract immediately on notice to You if You fail to pay in full and in cleared funds any payment due by the relevant final date for payment under the Contract or any other contract or agreement we have entered into with You (whether before or after the date of the Contract). You will allow Us a reasonable period of time to re-mobilise after any period of suspension and You agree to pay all of Our costs, losses, damages and expenses accrued, suffered or incurred by reason of such suspension and (if applicable) any re-mobilisation.

## 13 TERMINATION

- 13.1 We may terminate Our engagement under the Contract immediately on notice to You if any one or more of the following applies:
- 13.1.1 You fail to pay in full and in cleared funds any payment due by the relevant final date for payment (time for payment being of the essence of the Contract); or
  - 13.1.2 You (or anyone for whom You are responsible) prevent Us from being able to carry out the Works without any material delay or disruption during the Contract Period; or
  - 13.1.3 We have reason to suspect that You are or may become in the near future Insolvent; or
  - 13.1.4 You fail to provide Us with proper and timely instructions, decisions or approvals to enable Us to comply with Our obligations under the Contract; or
  - 13.1.5 You are in breach of any of Your obligations under the Contract.
- 13.2 If We purport to terminate Our engagement under the Contract under clause 13.1 but no ground for termination under clause 13.1 has arisen, or any such ground that had arisen had been waived by Us, We shall be deemed to have decided to terminate, and to have terminated Our engagement under the Contract under clause 13.4.
- 13.3 You shall indemnify Us in respect of any and all losses, costs, damages and expenses We accrue, suffer or incur arising from any permitted suspension under clause 12 or termination of Our engagement under clause 13.1 of these Conditions (including but not limited to any loss of profit on unfinished works, any abortive work and the cost of Our own management time).
- 13.4 We may terminate Our engagement under the Contract at any time and for any reason by giving You not less than seven (7) days' prior written notice. We shall not be liable to You under any circumstances whatsoever in respect of any costs, losses, damages or expenses suffered or incurred by You arising from such termination.
- 13.5 Termination of Our engagement under the Contract shall not in any way affect, modify or limit Our accrued rights and remedies available in connection with the Contract as at the date of termination.
- 13.6 In the event You commit a repudiatory breach of the Contract, then in addition to and without prejudice to all other rights and remedies available to Us, You shall be liable to pay to Us the Contract Sum in full without set-off, deduction or withholding.

### YOUR ATTENTION IS PARTICULARLY DRAWN TO THE CLAUSE BELOW

## 14 EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 14.1 Nothing in this Contract shall exclude or limit Our liability for death or personal injury caused by Our negligence or fraudulent misrepresentation or in respect of any other matters for which liability cannot be limited or excluded by law and all the provisions of the Contract shall be construed subject to this clause.
- 14.2 We shall not be liable to You under any circumstances whatsoever by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this Contract, for any indirect, special or consequential loss or damage (whether for loss of profit, loss of production, loss of use, loss of revenue, loss of contract, goodwill or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by Our negligence, or of Our employees or agents) which arise out of or in connection with the Works or the performance or non performance by Us of Our obligations under the Contract, except as expressly set out in the Warranty.
- 14.3 Except and to the extent We are insured and recover monies under any of Our policies of insurance, Our entire aggregate maximum liability to You in contract, tort, negligence, breach of statutory duty, misrepresentation or otherwise and under any circumstances whatsoever arising in connection with the performance or non-performance of Our obligations in connection with the Contract shall be limited to an amount equivalent to the Contract Sum.
- 14.4 We expressly do not warrant any work, products, or materials provided or performed by any other third party, except any of Our own sub-contractors and suppliers (but excluding any Named Suppliers) and subject always to clause 3 (Warranty).
- 14.5 You agree that no claim, legal action or proceedings may be brought personally against any of Our individual employees, directors, consultants or other officers for any costs, losses, damages or expenses arising from or in connection with any negligence, acts or omissions or any other breach of contract, statutory duty or tortious liability. Notwithstanding any other provision contained in these Conditions, any of our employees, directors, consultants or other officers shall be entitled to rely on this clause and any other provision or limitation or exclusion in these Conditions in defence of any claim, legal action or proceedings brought by You or any other third party.
- 14.6 We shall take all reasonable steps to avoid damage to the Site but no responsibility will be accepted by Us in respect of damage to any property, fixtures, fittings in, on, under or around the Site caused by Our employees, agents or sub-contractors when performing the Works, except in circumstances where such damage has been caused by Our negligence or to the extent We recover monies in respect of such damage under any of Our policies of insurance.
- 14.7 Without prejudice to any other exclusion or limitation or liability, damages, loss, expense or costs Our liability for any claim or claims under the Contract shall be further limited to such sum as it would be just and equitable for Us to pay having regard to the extent of Our responsibility for the loss or damage giving rise to such claim or claims ('the Loss and Damage') and on the assumption that: 14.7.1 all Other Contractors, sub-contractors, project managers, consultants or advisors engaged in connection with the Project have provided contractual undertakings in terms no less onerous than as set out in the Contract to You in respect of the carrying out of their obligations; and
- 14.7.2 there are no exclusions or limitations of liability, nor joint insurance or co-insurance provisions between You and any other party referred to in this clause and any such other party who is responsible to any extent for the Loss and Damage is contractually liable to You for the Loss and Damage; and

- 14.7.3 all such Other Contractors, sub-contractors, project managers, consultants or advisors have paid to You such sums as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Loss and Damage.

## **15 ASSIGNMENT/SUB-LETTING**

- 15.1 We may assign any of Our rights or benefits under the Contract to any third party without Your consent being required. We may also sub-let part or all of the Works to any third party without Your consent.
- 15.2 You shall not be entitled to assign, transfer or charge any of your rights or benefits under the Contract to any third party under any circumstances whatsoever.

## **16 NOTICES**

- 16.1 Any notice issued or given by You to Us may only be served by post (Royal Mail special delivery) or personal delivery to Our registered office address. All notices must be marked for the attention of the Authorised Person. Any notice not given or sent in accordance with this clause shall be of no effect.
- 16.2 Any notice issued or given by Us to You may be served by post, personal delivery, email, fax or any other effective means. Subject to clause 16.4, in the absence of evidence of earlier receipt a notice is deemed to be received:
- 16.3
- 16.3.1 if delivered personally when left at the relevant party's office address;
- 16.3.2 if sent by post two (2) Working Days after posting it; and
- 16.3.3 if sent by fax or email on completion of its transmission.
- 16.4 In the case of a notice given pursuant to clause 16.3, where this occurs:
- 16.4.1 after 5pm on a Working Day; or
- 16.4.2 on a day which is not a Working Day
- THEN the date of service shall be deemed to be the next Working Day.

## **17 ADJUDICATION**

- 17.1 Without prejudice to either parties' rights to commence or continue with court proceedings under clause 20, if any dispute or difference arises relating to Our entitlement to payment under or in connection with the Contract either party may at any time refer it to adjudication in accordance with the Technology and Construction Solicitors' Association Adjudication Rules current at the date of referral except that:
- 17.1.1 in all circumstances the adjudicator shall decide the dispute only on the basis of the parties' legal rights; and
- 17.1.2 the adjudicator may not decide on his own substantive jurisdiction; and
- 17.1.3 if the dispute or difference to be referred to adjudication under the Contract raises issues which are substantially the same as or connected with issues raised in a related dispute under another contract to which We are a party which has already been referred for determination to an adjudicator, We and You hereby agree that the dispute or difference under the Contract shall be referred to the adjudicator appointed to determine the related dispute.

## **18 SEVERANCE**

- 18.1 If any term or condition of these Conditions is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable by law it shall be severed and deemed to be deleted from these Conditions and the validity and enforceability of the remainder of these Conditions shall not be affected or impaired in any way and shall remain in full force and effect. If any provision of these Conditions is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification as may be necessary to make it valid.

## **19 BRIBERY ACT COMPLIANCE**

- 19.1 You shall (and shall procure that any of your suppliers, employees, servants and agents, together 'Associated Persons') comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption practices (including the Bribery Act 2010) and associated guidance (together 'the Requirements'); and comply with Our Anti-bribery Policy ('the Policy') as we may update the same from time to time, a copy of which is available for inspection at our registered office at all times upon request. You shall have and maintain in place throughout the term of the Contract your own policy and procedures including adequate procedures to ensure compliance with the Requirements and the Policy and shall enforce them whenever appropriate and You shall be directly liable to Us in the event of any breach of this clause by You or any Associated Person and You shall indemnify Us from and against any and all costs, losses, damages and expenses consequent upon such breach howsoever arising.

## **20 GOVERNING LAW AND JURISDICTION**

- 20.1 The Contract shall be governed and construed in accordance with English law and the English courts shall have exclusive jurisdiction (except for the purposes of enforcement of an English court judgment or order in another jurisdiction) with regard to all matters arising from or connected with it.