

Terms & Conditions

1 INTERPRETATION

- 1.1 "Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business or if the site of the Project is in Scotland, a day other than a Saturday, Sunday or public holiday in Scotland when banks in Scotland are open for business.
- 1.2 "Conditions" means these terms and conditions as amended from time to time in accordance with clause 16.8.
- 1.3 "Contract" means the contract between the Seller and the Customer for the supply of, as applicable, the Goods, the Services and the Installation Works, in accordance with these Conditions.
- 1.4 "Customer" means the person, firm or company who purchases, as applicable, the Goods, the Services and the Installation Works from the Seller.
- 1.5 "Delivery Address" means the delivery address specified in the Quotation or as otherwise agreed by the Seller and Customer in writing.
- 1.6 "Goods" means the goods, if any, to be supplied by the Seller pursuant to the Contract having been set out in the Quotation and the subject of an Order which has been accepted by the Seller in accordance with clause 2.1.
- 1.7 "Insolvent" means insolvent within the meaning of section 113 of the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009).
- 1.8 "Installation Works" means the installation works, if any, to be carried out by the Seller pursuant to the Contract having been set out in the Quotation and the subject of an Order which has been accepted by the Seller in accordance with clause 2.1.
- 1.9 "Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.10 "Material" means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided by or on behalf of the Seller in connection with the Contract and, as applicable, the Goods, the Services and the Installation Works, and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them.
- 1.11 "Order" means an order by the Customer, in response to a Quotation, for the supply of some or all of the Goods and/or Services and/or the carrying out of the Installation Works, as set out in the Customer's purchase order form or the Customer's written acceptance of the whole or part of the Quotation, as the case may be.
- 1.12 "Permitted Uses" means the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, building information modelling and repair of, as applicable, the Goods and the Installation Works.
- 1.13 "Price" means the price payable for the Goods, Services and, if applicable, the Installation Works, as set out in the Quotation, as may be amended by the Seller from time to time in accordance with these Conditions and the Quotation.
- 1.14 "Project" means the project identified in the Quotation.
- 1.15 "Quotation" means the Seller's quotation for the Goods and the Services and, if applicable, the Installation Works.
- 1.16 "Seller" means Scot Frame Timber Engineering Ltd.
- 1.17 "Services" means the services to be supplied by the Seller pursuant to the Contract having been set out in the Quotation and the subject of an Order which has been accepted by the Seller in accordance with clause 2.1.
- 1.18 "Specification" means the specification prepared by the Seller for the Goods and Services and, if applicable, the Installation Works, appended to the Quotation.

2 FORMATION OF CONTRACT

- 2.1 Acceptance of each Order is entirely at the discretion of the Seller and each Order shall only be deemed to be accepted when the Seller issues written acceptance of such Order. The first Order raised in response to the Quotation constitutes an offer by the Customer to purchase the Goods and/or the Services and/or the Installation Works identified in such Order and on the date that the Seller issues written acceptance of such first Order, the Contract shall come into existence. Each subsequent Order raised in response to the Quotation constitutes an offer by the Customer to vary the Contract to include the purchase of the Goods and/or the Services and/or the Installation Works identified in such subsequent Order and on the date that the Seller issues written acceptance of such subsequent Order, the Contract and the Price shall be so varied. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Quotation shall not constitute an offer and, unless previously withdrawn or amended by the Seller, it is valid for the period stated therein or, where no such period is stated, for 90 days after the date of issue.
- 2.3 Any typographical, clerical or manifest error or omission in any sales literature, Quotation, Specification, price list, invoice or other document issued by the Seller shall be subject to correction without liability on the part of the Seller. Any samples, drawings, descriptive matter or advertising issued by the Seller and any descriptions or illustrations of the Goods, Services or, if applicable, Installation Works contained in the Seller's sales literature are issued or published for the sole purpose of giving an approximate idea of the Goods, Services and/or Installation Works described in them. They shall not form part of the Contract nor have any contractual force.

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3 SPECIFICATION

- 3.1 The Seller reserves the right to change, alter or amend the Specification and will use all reasonable endeavors to ensure the Customer is aware of the need for amendment of the Specification. In all cases the Seller shall seek to ensure similar quality of any amended items. The Seller reserves the right to amend the Price if the Customer's design, when an Order is placed, is materially different to that which was set out in the Quotation.
- 3.2 Materials purchased by the Seller in response to the Customer's non-standard requirements cannot be accepted for return by the Seller. Standard products supplied to the Customer may be returned at the discretion of the Seller but may be subject to a restocking charge.
- 3.3 The Seller shall only be obliged to enter into collateral warranties if agreed in writing by the parties prior to the Seller's written acceptance of the Customer's first Order. Any such collateral warranties shall be in the Seller's standard form, a blank copy of which is available upon request, and the Seller reserves the right to charge a fee for the provision of each such warranty.

4 DELIVERY, SUPPLY & PERFORMANCE

- 4.1 Any time or date for delivery of the Goods, supply of the Services or, if applicable, performance of the Installation Works, by the Seller is given in good faith, but is an estimate only and time shall not be of the essence in that regard. The Seller shall have no liability for any liabilities, costs, expenses, damages or losses incurred by the Customer as a consequence of any delay or failure to deliver the Goods, supply the Services or, if applicable, perform the Installation Works. A failure by the Seller to make a delivery on a due date shall not entitle the Customer to refuse a delivery tendered after such date. It is the Customer's obligation to ensure vehicular access is available to and from the Delivery Address. The Seller accepts no responsibility for failure to deliver in the event that reasonable access is not available at the time of delivery or if neither the Customer nor his agent is at the Delivery Address to receive delivery. Notwithstanding the terms of clause 6 below, a supplemental delivery charge shall be made in the event that re-delivery is required as a consequence of the Customer's failure either to provide reasonable access or to receive delivery on the delivery date notified by the Seller.
- 4.2 It is a material condition of the Contract that the Customer shall put the Seller in possession of full and final design information by a mutually agreed date prior to commencement of both the manufacture of the Goods and the performance of the Services. In the event that such information has not been provided to the Seller by the agreed date, the Customer shall be liable to the Seller for all increased and additional costs incurred by the Seller as a consequence and the Seller shall have no liability whatsoever for any delay occasioned as a consequence.
- 4.3 It is the responsibility of the Customer, by his authorised agent, to check and receive deliveries at the Delivery Address. Receipt of any of the Goods constitutes proof of their delivery and the Customer shall be deemed to have received such Goods upon their delivery to the Delivery Address. The individual accepting delivery of some or all of the Goods at the Delivery Address shall be understood to be the authorised agent acting for and on behalf of the Customer.
- 4.4 Where the Customer is unable to accept delivery of all or any of the Goods on the delivery date notified by the Seller, it shall arrange and pay for suitable storage, maintenance and insurance of such Goods. If the Seller has sufficient and appropriate facilities for those purposes, it may store such Goods at the Customer's risk and expense pending re-delivery within a reasonable period of time.
- 4.5 Details of damage in transit must be reported in writing to the Seller within 24 hours of delivery failing which the Seller shall have no liability in respect of such damage.
- 4.6 It is the responsibility of the Customer to arrange for all Goods to be unloaded promptly at the Delivery Address. The Seller shall have no liability for any damage sustained during unloading of the Goods.
- 4.7 Where the Seller is to carry out Installation Works pursuant to the Contract, it is the responsibility of the Customer to ensure that the Seller is provided with reasonable and unhindered access to the site of the Project to enable the Installation Works to be commenced on the date specified in the Quotation and subsequently to be carried out and completed by the Seller. The Customer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from a delay to the commencement, carrying out or completion of the Installation Works which is caused by the Customer's failure to comply with its obligations under this clause 4.7.

5 TITLE, RISK AND PAYMENT

- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2 Title to the Goods shall not pass to the Customer until the Seller receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums. Until title to the Goods has passed to the Customer, the Customer shall:
 - 5.2.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Seller's property;
 - 5.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 5.2.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Seller's behalf from the date of delivery; and
 - 5.2.4 notify the Seller immediately if it becomes Insolvent.
- 5.3 At any time before title to the Goods passes to the Customer, the Seller may require the Customer to deliver up such of the Goods as are in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where such Goods are stored in order to recover them.
- 5.4 The Seller shall raise invoices to the Customer for the instalment amounts and at the times stated in the Quotation. Payment of each invoice shall become due upon presentation and the final date for payment of each invoice shall be 7 days after the date of the invoice. The Seller shall be under no obligation to commence, as applicable, the supply of the Goods and/or the Services and/or the performance of the Installation Works to which the invoice relates until the invoice

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has been paid in full. In the event that the Customer fails to make payment of an invoice by the final date for payment, any discounts agreed and set out in the Quotation shall be disallowed and the Seller shall be entitled to delay accordingly any programmed dates for the supply of the Goods and/or the Services and/or the performance of the Installation Works.

- 5.5 Payments of invoices shall be made in full and will be subject to nil retention. Time for payment shall be of the essence of the Contract.
- 5.6 Without prejudice to any other remedy available to the Seller, where the Customer fails to make a payment by the final date for payment, the Seller reserves the right to withdraw any certificates lodged with the relevant authority in support of any planning permission or building warranty applications until such times as payment has been made in full.
- 5.7 If the Customer fails to make a payment due to the Seller under the Contract by the final date for payment, then, without limiting the Seller's other remedies, the Customer shall pay interest on the overdue sum from the final date for payment until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.7 will accrue each day at 8% per annum above the Bank of England's base rate from time to time, but at 8% per annum for any period when that base rate is below 0%.
- 5.8 The Price shall be subject to further variation in respect of any additional costs arising by virtue of any statute, regulations or orders issued by a Government department or any other duly constituted authority, including any statutory changes in taxation of vehicle fuel.

6 CUSTOMER'S OBLIGATIONS

- 6.1 In addition to its obligations set out elsewhere in these Conditions, the Customer shall:
 - 6.1.1 provide the Seller with such information and materials as the Seller may reasonably require in order to perform its obligations under the Contract, and ensure that such information is complete, sufficient and accurate in all material respects;
 - 6.1.2 co-operate with the Seller in all matters relating to the Goods, the Services and, if applicable, the Installation Works;
 - 6.1.3 obtain and maintain all necessary licences, permissions and consents which may be required for the Goods, the Services and, if applicable, the Installation Works before the date on which the Seller is to commence its obligations under the Contract;
 - 6.1.4 comply with all applicable laws, including health and safety laws;
 - 6.1.5 comply with any additional obligations as set out in the Quotation and/or Specification;
 - 6.1.6 if the Contract obliges the Seller to carry out and complete Installation Works:
 - 6.1.6.1 keep all materials, equipment, documents and other property of the Seller ("**Seller Materials**") at the site of the Installation Works in safe custody at its own risk and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation; and
 - 6.1.6.2 provide the Seller, its employees, agents, consultants and sub-contractors, with access to the site of the Installation Works, office accommodation and other facilities as reasonably required by the Seller to carry out and complete the Installation Works;
- 6.2 If the Seller's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
 - 6.2.1 without limiting or affecting any other right or remedy available to it, the Seller shall have the right to suspend performance of its obligations under the Contract until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Seller's performance of any of its obligations;
 - 6.2.2 the Seller shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Seller's delay or failure to perform any of its obligations as set out in this clause 6.2; and
 - 6.2.3 the Customer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Customer Default.

7 FORCE MAJEURE

- 7.1 The Seller shall have no liability for any delay in performing, or failure to perform, any of its obligations under the Contract due to Force Majeure. Following notification by the Seller to the Customer of such cause, the Seller shall be allowed a reasonable extension of time for the performance of its obligations.
- 7.2 For the purpose of this clause 7, "Force Majeure" means:
 - 7.2.1 fire, explosion, collapse of buildings or accident;
 - 7.2.2 flood, drought, earthquake, lightning, act of God or other natural disaster;
 - 7.2.3 act of terrorism, war, civil war, rebellion, civil commotion or riot, sabotage, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - 7.2.4 nuclear, chemical or biological contamination or sonic boom;
 - 7.2.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - 7.2.6 strike, industrial action, lockout or similar labour or trade dispute;
 - 7.2.7 epidemic or pandemic;
 - 7.2.8 non-performance by suppliers or sub-contractors;
 - 7.2.9 shortage or labour or materials;
 - 7.2.10 interruption or failure of utility service; or
 - 7.2.11 events or circumstances outside the reasonable control of the Seller.
- 7.3 If the period of delay or non-performance continues for three months, either party may terminate the Contract by giving 7 days' written notice to the other party.

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8 REMEDY

- 8.1 Subject to clause 8.2, if:
- 8.1.1 the Customer gives notice in writing to the Seller during the period of 6 months from the date of, as applicable, delivery of the Goods, completion of the Services or completion of the Installation Works that some or all of the Goods, Services or Installation Works do not comply with the Contract or are defective in design, material, workmanship and/or installation;
 - 8.1.2 the Customer gives the notice pursuant to clause 8.1.1 within a reasonable time following discovery of the non-compliance or defect; and
 - 8.1.3 the non-compliance or defect is in the Goods:
 - 8.1.3.1 the Seller is given a reasonable opportunity to examine such Goods; and
 - 8.1.3.2 the Customer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Customer's cost,
- the Seller shall, at its option, repair or replace the non-compliant or defective Goods or reperform the non-compliant or defective Services or Installation Works or refund or credit the price of the non-compliant or defective Goods, Services or Installation Works in full.
- 8.2 The Seller shall not be liable for the non-compliant or defective Goods, Services or Installation Works if:
- 8.2.1 the non-compliance or defect arises as a result of the Seller following any drawing, design or specification supplied by the Customer; or
 - 8.2.2 the non-compliance or defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions; or
 - 8.2.3 the Goods, Services or Installation Works differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or
 - 8.2.4 the non-compliance or defect is in the Goods and:
 - 8.2.4.1 the Customer alters or repairs such Goods without the written consent of the Seller; or
 - 8.2.4.2 the Customer makes any further use of such Goods after giving a notice in accordance with clause 8.1.1; or
 - 8.2.4.3 the non-compliance or defect arises because the Customer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same.
- 8.3 Except as provided in clause 8.1, the Seller shall have no liability to the Customer in respect of any defects in the Goods, Services or Installation Works or their failure to comply with the Contract.
- 8.4 Clauses 8.1 to 8.3 (inclusive) above shall apply to any Goods repaired or replaced and to any Services or Installation Works reperformed by the Seller.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights in or arising out of or in connection with or relating to the Material shall be owned by the Seller.
- 9.2 The Seller grants to the Customer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of the Material for any purpose relating to the Goods, the Services and, if applicable, the Installation Works, including any of the Permitted Uses.
- 9.3 The licence granted pursuant to clause 9.2 above allows the Customer to use the Material in connection with any extension of the Installation Works, but not to reproduce the Intellectual Property Rights contained in the Material in any such extension.
- 9.4 The Seller shall have no liability either for use of the Material for any purpose other than that for which it was prepared and/or provided or to the extent that the Material infringes a third party's Intellectual Property Rights as a result of the Seller having followed a design or instruction issued by the Customer.
- 9.5 The licence granted pursuant to clause 9.2 above carries the right to grant sub-licences and is transferable to third parties with the Seller's prior consent.

10 CONFIDENTIALITY

- 10.1 Both the Seller and the Customer shall each keep confidential and shall not, except as permitted by clause 10.2 without the prior consent in writing of the other disclose to any third party any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications between them relating to the Goods, Services, Installation Works (if applicable) and the Contract.
- 10.2 Each party may disclose the other party's confidential information:
- 10.2.1 to its employees, officers, representatives, contractors, sub-contractors and advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, sub-contractors and advisers to whom it discloses the other party's confidential information comply with this clause 10; and
 - 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11 LIMITATION OF LIABILITY

- 11.1 Without prejudice to clauses 8.1 to 8.4 (inclusive) above, the Seller's liability shall be limited as set out in clause 11.3 below. The restrictions on the Seller's liability in clause 11.3 below apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 11.2.1 death or personal injury caused by negligence;

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- 11.2.2 fraud or fraudulent misrepresentation;
 - 11.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - 11.2.4 defective products under the Consumer Protection Act 1987.
- 11.3 Subject to clause 11.2:
- 11.3.1 the Seller's total liability to the Customer shall not exceed the Price; and
 - 11.3.2 the Seller's liability for the following types of loss is wholly excluded:
 - 11.3.2.1 loss of profits;
 - 11.3.2.2 loss of sales or business;
 - 11.3.2.3 loss of agreements or contracts;
 - 11.3.2.4 loss of anticipated savings;
 - 11.3.2.5 loss of use or corruption of software, data or information;
 - 11.3.2.6 loss of or damage to goodwill; and
 - 11.3.2.7 indirect or consequential loss.
 - 11.3.3 Clauses 8.1 to 8.4 (inclusive) and 11.1 to 11.3 (inclusive) above shall survive termination of the Contract.

12 DATA PROTECTION

- 12.1 For the purposes of this clause, (a) "Data Protection Laws" means any laws and regulations relating to the use or processing of personal data including: (i) retained EU law version of the General Data Protection Regulation (EU) 2016/679 ("UK GDPR") (ii) the Data Protection Act 2018 ("DPA"), (iii) any laws and regulations implementing the Privacy and Electronic Communications (EC Directive) 2009/136/EC and the Privacy and Electronic Communications Regulations 2003 (SI 2009/2426) and (iv) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the UK GDPR; in each case, as updated, amended or replaced from time to time; and (b) the terms "Data Subject", "Personal Data", "processing", "processor" and "controller" shall have the meanings set out in the UK GDPR.
- 12.2 Each party shall comply with the provisions and obligations imposed on it by the Data Protection Laws when processing Personal Data in connection with these Terms. Such processing shall continue for so long as these Terms is in force and shall be in respect of the following:
- 12.2.1 Categories of data: Contacts within each of the parties and the ultimate customer details;
 - 12.2.2 Types of personal data: names, addresses, email addresses, telephone numbers and other contact details;
 - 12.2.3 Purpose and nature of processing: (i) manage the Contracts between the parties including ordering, fulfilment and billing and (ii) fulfilment of such Contracts by delivering goods to the ultimate customer on behalf of the Customer.
- 12.3 To the extent a party processes any Personal Data on behalf of the other party, the processing party shall: (a) comply with the provisions and obligations imposed on a processor by the UK GDPR, including the stipulations set out in Article 28(3)(a)-(h) which form a part of, and are incorporated into, these Terms as if they were set out in full, and the reference to "documented instructions" in Article 28(3)(a) shall include the provisions of these Terms; and (b) not disclose any Personal Data to any Data Subject or to a third party other than at the written request of the other party or as expressly provided for in these Terms.
- 12.4 You agree we may engage third party providers including any advisers, contractors, or auditors to Process Personal Data ("Sub-Processors"). We shall ensure our contract with each Sub-Processor shall impose obligations in relation to the Processing of Personal Data on the Sub-Processor are materially equivalent to the obligations to which we are subject to under these Terms in relation to the Processing of Personal Data.
- 12.5 If either party receives any complaint, notice or communication which relates to the processing of Personal Data by the other party or to either party's compliance with the Data Protection Laws, or if any Personal Data processed in connection with these Terms is subject to a personal data breach (as defined in the UK GDPR), it shall immediately notify the other party and provide the other party with reasonable co-operation and assistance in relation to any such complaint, notice, communication or personal data breach.

13 TERMINATION

- 13.1 If either party becomes Insolvent, the other party may, without affecting its other legal rights and remedies, terminate the Contract with immediate effect by giving written notice to the Insolvent party.
- 13.2 Without affecting its other legal rights and remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Customer, if:
- 13.2.1 the Customer fails to pay any amount due under the Contract by the final date for payment and that failure continues for a further seven days after receiving a written notice from the Seller demanding payment;
 - 13.2.2 the Customer is in breach of any of its obligations under the Contract and that breach continues for a further seven days after receiving a written notice from the Seller requiring the breach to be remedied; or
 - 13.2.3 the Customer causes the Goods, Services or, if applicable, the Installation Works, to be delayed for more than 7 consecutive days.
- 13.3 Either party may terminate the Contract with immediate effect by giving written notice to the other party if the performance of either party's obligations under the Contract is suspended for a continuous period of three months by reason of Force Majeure.
- 13.4 Upon termination of the Contract, the Seller may raise a final invoice for the value of the Goods supplied and the Services (and, if applicable, the Installation Works) performed up to the date of termination, together with the cost of all goods, materials, plant and equipment purchased by the Seller for incorporation into the Goods and, if applicable, the Installation Works, less amounts previously paid by the Customer. Clause 5 shall apply to such invoice.
- 13.5 If the Contract is terminated pursuant to clause 13.2 or clause 13.3 or due to the Customer becoming Insolvent or if the Contract becomes frustrated or otherwise impossible to perform, the Seller shall also be entitled to recover from the

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Customer any losses, expenses, costs or damages that the Seller suffers or incurs as a result of the termination, frustration or impossibility of performance (including, but not limited to, loss of profit).

14 GOVERNING LAW AND JURISDICTION

- 14.1 Subject to clause 14.3 below, the Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 14.2 Subject to clause 14.4 below, the Seller and the Customer irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 14.3 Where the site of the Project is in Scotland, the Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with Scots law.
- 14.4 Where the site of the Project is in Scotland, the Seller and the Customer irrevocably agree that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

15 DISPUTES (ENGLAND AND WALES)

- 15.1 Notwithstanding any other provision of the Contract either the Seller or the Customer may refer a dispute arising under the Contract to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations 1998 or, if the site of the Project is in Scotland, under Part I of the Scheme for Construction Contracts (Scotland) Regulations 1998.

16 GENERAL

- 16.1 The Seller may at any time assign, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer shall not assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 16.2 Any notice required to be given to a party under the Contract shall be in writing and shall be deemed to be properly given if sent by pre-paid first class post or other next working day delivery service to its registered office address (if a company) or its principal place of business (in any other case). Notices so posted before 5:00pm on a Business Day shall be deemed served on the morning of the second Business Day following the day of posting. Notices so posted after 5:00pm or posted on a day which is not a Business Day shall be deemed to have been posted on the next Business Day before 5:00pm.
- 16.3 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 16.3, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 16.4 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.6 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- 16.7 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.8 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).