

HALSALL STANDARD CONDITIONS OF PURCHASE

1. Definitions

1.1 In these Standard Conditions of Purchase (hereinafter referred to as the “**Conditions**”), the following words and phrases shall have the precise meanings set out below:-

1.1.1 “**Act of Prevention**” means any one of the following:-

1.1.1.1 a breach of the Supply Contract by the Purchaser;

1.1.1.2 any other act or omission of the Purchaser or any supplier or sub-contractor employed by the Purchaser for the purposes of the Works (other than the Supplier), or of the Employer or anyone employed by the Employer (in addition to the Purchaser), for the purposes of the Works;

1.1.1.3 the giving of any Suspension Order by the Purchaser in accordance with Clause 13, except where given by reason of the Supplier’s default; and

1.1.1.4 the giving of any Variation Order by the Purchaser in accordance with Clause 15, except where given by reason of the Supplier’s default;

1.1.2 “**Authorised Site Personnel**” means the Purchaser’s site manager at the Site to which the Equipment is to be delivered or any other person notified by the Purchaser to the Supplier from time to time in writing;

1.1.3 “**Claim**” means any claim or application for an increase in the Price, for payment of money (including damages), or for an extension of time:-

1.1.3.1 under, arising out of, or in any way in connection with, the Supply Contract;

1.1.3.2 arising out of, or in any way in connection with, the performance of the Supplier’s obligations under the Supply Contract; or

1.1.3.3 otherwise at law or in equity including:-

(i) by statute;

(ii) in tort for negligence or otherwise, including misrepresentation; or

(iii) for restitution;

1.1.4 “**Contract**” means the agreement entered or to be entered into by the Purchaser with the Employer pursuant to which the Purchaser is or will be required to carry out and complete the Works including but not limited to the supply/delivery of the Equipment;

1.1.5 “**Contract Conditions**” means the terms and/or conditions of the Contract pursuant to which the Purchaser is or will be bound to carry out and complete the Works;

1.1.6 “**Contract Documents**” means the documents which specify the purpose, scope and/or design and/or other technical (including performance) criteria for the Works;

1.1.7 “**Date for Delivery**” means the date stated in the Order by which the Supplier is obliged to supply/deliver the Equipment subject to any adjustment in accordance with Clause 12 and the giving of any Suspension Order by the Purchaser in accordance with Clause 13;

1.1.8 “**Day**” means any calendar day, including Saturdays and Sundays but excluding Public Holidays;

1.1.9 “**Defects Liability Period**” means the period commencing on the date of delivery of the Equipment to the Site (or on the date of collection of the Equipment from the Supplier’s premises), and ending on the expiry of 12 months from the date of practical completion of the Works (into which the Equipment has been installed or otherwise incorporated), as certified by or on behalf of the Employer under the Contract, or on the expiry of such other period which may be determined under the Contract;

1.1.10 “**Employer**” means the party with whom the Purchaser has entered or intends to enter into an agreement for the carrying out and completion of the Works;

1.1.11 “**Equipment**” means the equipment, materials, plant and/or goods to be supplied/delivered to the Site by the Supplier;

1.1.12 “**Order**” means the order into which these Conditions are incorporated;

1.1.13 “**Price**” means the price stated in the Order, including any adjustments made to the same pursuant to the Conditions, for which the Supplier has agreed to supply/deliver the Equipment;

1.1.14 “**Purchaser**” means the company named in the Order;

1.1.15 “**Site**” means the place or location stated in the Order;

1.1.16 “**Specification**” means the documents which have been provided to the Supplier by or on behalf of the Purchaser or the Employer and which describe the purpose, scope, design and/or any technical or performance criteria of the Equipment to be supplied/delivered to the Site by the Supplier;

- 1.1.17 “**Supplier**” means the company, partnership or individual with whom the Purchaser has contracted for the supply/delivery of the Equipment;
- 1.1.18 “**Supply Contract**” means the agreement between the Purchaser and the Supplier incorporating the Order, the Conditions, the Specification and the Supply Contract Pricing Document but excluding any terms and/or conditions of contract referred to in any quotation or written acknowledgement given by the Supplier;
- 1.1.19 “**Supply Contract Pricing Document**” means the Supplier’s Supply Contract Price Analysis, or such other equivalent document, showing how the Price has been calculated and containing the Supplier’s rates and/or prices;
- 1.1.20 “**Variation**” means any alteration to the type or extent of the Equipment which is an amendment, omission or addition thereto (other than any amendment, omission or addition which is necessary for the Equipment to comply with the Specification or otherwise the Supply Contract);
- 1.1.21 “**Working Day**” means any calendar day except Saturdays, Sundays and Public Holidays; and
- 1.1.22 “**Works**” means the works to be carried out and completed by the Purchaser pursuant to the Contract, including but not limited to, the supply/delivery of the Equipment.

2. Basis of Supply Contract

- 2.1 The Supplier shall not later than 7 Days of its receipt of the Order sign and return the Order to the Purchaser to signify its acceptance of the same and the Conditions. Any performance or partial performance by the Supplier of any of its obligations under the Supply Contract shall constitute acceptance of the Order and the Conditions.
- 2.2 Unless any other terms and/or conditions are expressly accepted by the Purchaser in writing and are appended to or are referred to in the Order they shall be deemed to be excluded from the Supply Contract.

3. Interpretation

- 3.1 In these Conditions:-
- 3.1.1 references to Clauses are references to the Clauses of these Conditions;
- 3.1.2 headings are for convenience only and do not affect interpretation;
- 3.1.3 references herein to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it; and
- 3.1.4 where action is required to be undertaken within a specified period of Days after or from a specified date, the period will begin immediately after that date. Where the period would include a Public Holiday that Day will be excluded.

4. The Supplier’s Obligations

- 4.1 The Supplier shall supply/deliver the Equipment fully in accordance with the requirements of the Order, the Conditions, the Specification and any reasonable directions and instructions issued by the Purchaser. The Supplier shall also comply with the Contract Conditions and the Contract Documents insofar as they relate to the supply/delivery of the Equipment.
- 4.2 The Supplier has had a reasonable opportunity to inspect the Contract Conditions and the Contract Documents (except the prices of the Purchaser contained therein), insofar as they relate to the supply/delivery of the Equipment and the performance of any other obligations of the Supplier under the Supply Contract.
- 4.3 The Supplier acknowledges that it is aware of the obligations, risks and liabilities of the Purchaser under the Contract. Save where expressly provided otherwise in the Supply Contract, the Supplier shall at all times:-
- 4.3.1 observe and comply with all the Contract obligations on the Purchaser insofar as they are relevant to the supply/delivery of the Equipment and/or the performance of the Supplier’s obligations under the Supply Contract; and
- 4.3.2 not do or omit to do anything which may prejudice or lead to the diminution or loss of any rights, entitlements or other benefits of the Purchaser arising under the Contract nor cause contribute or otherwise give rise to any breach by the Purchaser of any of its obligations, warranties, indemnities, duties, risks, responsibilities and/or undertakings under or otherwise arising in connection with the Contract insofar as the same relate to or affect the supply/delivery of the Equipment (including the existence of, and the remedying of, any defects or faults therein), or any other matter which is the responsibility of the Supplier under the Supply Contract.
- 4.4 The Supplier agrees that it will perform its obligations under the Supply Contract in a way so as to enable the Purchaser to discharge its obligations under the Contract and acknowledges that if the Supplier is in breach of Clause 4.3.1 and/or Clause 4.3.2, such breach may result in the Purchaser committing a breach of the Contract and/or other contracts made by the Purchaser in connection with the Works and may occasion further damages, loss and/or expense to the Purchaser in connection with the Works.

4.5 The Purchaser and the Supplier hereby acknowledge that any such damages, loss and expense are hereby agreed to be within their contemplation as being probable results of any such breach or default by the Supplier and the Supplier shall indemnify the Purchaser against any and all results of any such breach or default.

5. Priority of Documents

5.1 In the event of any conflict between the Order, the Conditions, the Specification, the Supply Contract Pricing Document, the Contract Conditions and the Contract Documents, the order of priority of documents shall be as follows:-

5.1.1 Order;

5.1.2 Conditions;

5.1.3 Specification;

5.1.4 Supply Contract Pricing Document; and

5.1.5 Contract Conditions and Contract Documents.

6. Design, Quality, Quantity and Performance of the Equipment

6.1 It is a condition of the Supply Contract that the Equipment delivered to the Site by or on behalf of the Supplier, or made available by the Supplier for collection from its premises by or on behalf of the Purchaser, shall:-

6.1.1 Correspond as to description, quality and condition(s) with the particulars stated or referred to in the Specification;

6.1.2 Conform with any sample, pattern, drawing or design of the Supplier which is approved in writing by the Purchaser, or with any sample, pattern, drawing or design supplied to the Supplier by or on behalf of the Purchaser or the Employer;

6.1.3 Be of sound materials and workmanship;

6.1.4 Comply with the Specification and meet any standard or comply with any other technical (including performance) requirement(s) stated or referred to in the Specification, contained in any document referred to in the Specification or otherwise communicated to the Supplier;

6.1.5 Be fit for any purpose expressly or impliedly made known to the Supplier or otherwise for their ordinary purpose;

6.1.6 Comply with the relevant requirements of common law and any statute, statutory rule or order or other regulation having the force of law which may be in operation on the date of the supply/delivery of the Equipment;

6.1.7 Be to the satisfaction of the Purchaser and the Employer; and

6.1.8 Where applicable, be at least equal to the quality or standard of any appropriate British Standard or European Directive current at the date of the Order.

6.2 Where the Supplier is obliged by the Supply Contract to design the whole or any part of the Equipment, the following provisions shall apply:-

6.2.1 The Supplier shall carry out and complete the design using all the reasonable skill, care and diligence of an appropriately qualified designer experienced in designing equipment similar in size, scope and complexity as the Equipment;

6.2.2 The Supplier shall be deemed to have made reasonable allowance in the Price for the co-ordination of all parts comprising its design and for the co-ordination of its design(s) with the design(s) prepared by or on behalf of the Purchaser or the Employer which interfaces with the Supplier's design(s);

6.2.3 The Supplier confirms that the Price is fully inclusive of all design costs including the provision of such drawings, specifications and other design documents as the Purchaser may from time to time request;

6.2.4 Any approval or acceptance by the Purchaser of any drawing, calculation or sample prepared by or on behalf of the Supplier shall not relieve the Supplier from any responsibility or liability for its design; and

6.2.5 Where the Supplier has used or intends to use and/or has incorporated or intends to incorporate any design documentation and/or information provided by or on behalf of the Purchaser or the Employer, the Supplier shall assume full responsibility for such design as if the Supplier had prepared the same. For the avoidance of doubt, this Clause 6.2.5 shall be without prejudice to Clause 15 and the Supplier's entitlement (if any) in respect of any Variation Order given by the Purchaser thereunder.

7. Date for Supply/Delivery of Equipment

- 7.1 Unless otherwise agreed by the Purchaser in writing, the Equipment shall be delivered to the Site, or made available by the Supplier for collection from its premises by or on behalf of the Purchaser, during normal business hours, by no later than the Date for Delivery (subject to any adjustment of the Date for Delivery in accordance with Clause 12 and the giving of any Suspension Order by the Purchaser in accordance with Clause 13). The Purchaser shall not be responsible for any Equipment delivered to an incorrect address or supplied to third parties.
- 7.2 The Supplier is required to advise the Purchaser forthwith of any holiday closures and/or restrictions on the manufacture, fabrication or delivery process that could have an adverse impact upon the Date for Delivery.
- 7.3 If the Equipment is not delivered to the Site by or on behalf of the Supplier (or is not made available by the Supplier for collection from its premises by or on behalf of the Purchaser) by the Date for Delivery, the Purchaser may, without having any liability to the Supplier, cancel in whole or in part the Supply Contract and shall be entitled to purchase replacement Equipment from an alternative source. Any additional cost incurred as a result of the cancellation of the Supply Contract under this Clause 7.3 shall be paid by the Supplier to the Purchaser.
- 7.4 The Supplier shall deliver with each batch of Equipment such written information as may be reasonably necessary for the proper handling, use, processing, installation, storage and maintenance of the Equipment without risk or damage or injury to persons or property.

8. Vesting of Equipment and Risk

- 8.1 The Supplier warrants that it has full title in the Equipment and that it will transfer the same to the Purchaser. The Equipment shall become the property of the Purchaser after the Purchaser has accepted it at the Site. Where the Purchaser collects the Equipment from the Supplier's premises it shall become the property of the Purchaser after it has been safely loaded onto the Purchaser's vehicle.
- 8.2 Any delivery note must be signed by the Authorised Site Personnel. The signature of the Authorised Site Personnel on a delivery note shall be evidence that the Equipment has been delivered (or collected) but not evidence that the Equipment delivered (or collected) is in accordance with the Specification or that the quantities stated upon the delivery note are correct.
- 8.3 Risk of loss of or damage to the Equipment shall not pass from the Supplier to the Purchaser until it has been safely unloaded at the Site by or on behalf of the Supplier or where it is collected by or on behalf of the Purchaser from the Supplier's premises it has been safely loaded onto the Purchaser's vehicle. Where the Equipment is delivered by or on behalf of the Supplier to the Site, the Supplier shall insure the Equipment in transit until its delivery to the Site for all risks for an amount equal to 100% of its value. The Supplier shall hold any proceeds of such insurance on trust for the Purchaser if the Equipment is lost, damaged or destroyed in transit.

9. Inspection and Testing

- 9.1 The Equipment shall be new unless the Purchaser has otherwise agreed in writing.
- 9.2 The Purchaser or his nominee shall have access to any premises at any reasonable time before delivery (or collection) to inspect and test the Equipment and shall also have the right to inspect and test the Equipment before acceptance at the Site (or prior to its collection from the Supplier's premises).
- 9.3 Such tests shall include any inspection as the Purchaser may reasonably think fit and shall not be limited to quality assurance testing controls and inspections. Notwithstanding any inspection or test made by the Purchaser, the Supplier shall, where appropriate, inspect and test the Equipment at its own expense before it is delivered to the Site (or collected from the Supplier's premises). The Supplier shall give at least 7 Days' notice to the Purchaser of its intention to carry out such inspection or test and the Purchaser or its nominee shall be entitled to attend.

10. Supplier's Default

- 10.1 Where all or any part of a batch of Equipment fails to comply with the Specification or with any requirement contained in any document referred to therein or elsewhere in the Supply Contract relating to quality, quantity, materials, workmanship and/or design, the Purchaser may, acting reasonably, reject either all of the batch of Equipment or part of such batch of Equipment.
- 10.2 At the Purchaser's option, any Equipment which is rejected shall be either replaced by the Supplier within 7 Days (or within such other reasonable period) or the Purchaser may cancel, without liability to the Supplier, the Supply Contract relating to such rejected Equipment and shall be entitled to a full refund of the price relating to such rejected Equipment if the Purchaser has paid for them.
- 10.3 Rejected Equipment may, at the Purchaser's option, be made available for collection by the Supplier and shall be collected within 14 Days (or within such other reasonable period) of the Supplier being notified of its rejection and if not collected within 14 Days (or within such other reasonable period), shall be sold by the Purchaser for the price attainable

by the Purchaser and credit shall be given by the Supplier for the amount the Purchaser receives for the rejected Equipment. The cost of any storage by the Purchaser and/or collection of the rejected Equipment shall be borne by the Supplier.

- 10.4 In lieu of exercising its right to reject all or part of the batch of Equipment under Clause 10.1, the Purchaser may require the Supplier (within 7 Days of receiving a notice in writing from the Purchaser or within such other reasonable period as the Purchaser may stipulate in its written notice), to remedy the non-compliance of the Equipment or alternatively, to replace that part or those parts of the Equipment which causes the Equipment as a whole to be so non-compliant.
- 10.5 If, within 7 Days (or within such other reasonable period as the Purchaser may stipulate under Clause 10.4) of receiving the Purchaser's notice, the Supplier fails to remedy the non-compliance or replace that part or those parts of the Equipment in question within 7 Days (or within such other reasonable period as may be stipulated in the Purchaser's Clause 10.4 notice), the Supplier fails to take reasonable steps to commence such remedial works as may be necessary or fails to take reasonable steps to replace that part or those parts of the Equipment in question, the Purchaser may on expiry of whatever period is stipulated in its Clause 10.4 notice, employ its own labour and/or another supplier to perform such remedial works as may be required, or replace that part or those parts of the Equipment in question, and shall be entitled to recover from the Supplier as a debt (or set-off from any sum which may be due or which may become due to the Supplier), all costs it suffers as a consequence.

11. Damages for Delay

- 11.1 If the Supplier does not deliver the Equipment to the Site, or make it available for collection from its premises by or on behalf of the Purchaser by the Date for Delivery, the Supplier shall indemnify the Purchaser against all damages, loss, cost and expense (including liquidated damages under the Contract), incurred by the Purchaser as a consequence.

12. Extension of Time

- 12.1 If the Supplier is, or is likely to be, delayed:-
- 12.1.1 Prior to the Date for Delivery by an Act of Prevention in a manner which the Supplier believes will prevent it from supplying/delivering the Equipment by the Date for Delivery; or
- 12.1.2 After the Date for Delivery by an Act of Prevention in a manner which the Supplier believes will delay it in supplying/delivering the Equipment,
- the Supplier may apply for an extension of time.
- 12.2 Where any cause whatsoever will or is likely to delay the Supplier in supplying/delivering the Equipment, the Supplier must:-
- 12.2.1 As soon as reasonably possible and in any event within 5 Working Days after becoming aware or after the Supplier ought reasonably to have become aware of such cause alert the Purchaser in writing of the delay or potential delay;
- 12.2.2 The Supplier's written notice to the Purchaser under Clause 12.2.1 shall set out insofar as is reasonably practicable:-
- 12.2.2.1 details of the delay or potential delay including its cause;
- 12.2.2.2 how the delay or potential delay will affect the ability of the Supplier to supply/deliver the Equipment by the Date for Delivery;
- 12.2.2.3 the measures which are available and which the Supplier proposes to implement to overcome the delay or potential delay; and
- 12.2.2.4 the measures which have, in fact, been implemented and are currently being implemented by the Supplier to overcome the delay or potential delay.
- 12.2.3 Where the Supplier wishes to apply for an extension of time:-
- 12.2.3.1 then, at the same time as giving written notice in accordance with Clause 12.2.1, the Supplier shall submit a written application to the Purchaser for an extension of the Date for Delivery which:-
- (i) gives detailed particulars of the delay and the occurrence causing the delay or potential delay;
- (ii) states the number of Days' extension of time being applied for together with the basis of calculating that period, including evidence that it will be delayed in supplying/delivering the Equipment in the manner set out in Clause 12.3.3.
- 12.3 It is a condition precedent to the Supplier's entitlement to an extension of time that:-
- 12.3.1 The Supplier must give the written notices and submit the written application required by Clause 12.2.3.1 when required by that clause;
- 12.3.2 The cause of the delay was beyond the reasonable control of the Supplier; and
- 12.3.3 The Supplier must actually have been, or be likely to be, delayed:-

12.3.3.1 prior to the Date for Delivery by an Act of Prevention in a manner which will prevent it from supplying/delivering the Equipment before the Date for Delivery, unless the Date for Delivery is extended; or

12.3.3.2 after the Date for Delivery by an Act of Prevention in a manner which will delay it in supplying/delivering the Equipment.

12.4 Subject to Clause 12.6, if the conditions precedent in Clause 12.3 have been satisfied, the Date for Delivery will be extended by a reasonable period determined by the Purchaser and notified to the Supplier in writing within 35 Days of the Supplier's written application under Clause 12.2.3.1.

12.5 Except where and/or to the extent that the Purchaser is responsible for the delay by reason of any act, omission or default on its part, or for which the Purchaser is otherwise responsible, the Supplier shall not be entitled to an extension of time in respect of the delay caused to the supply/delivery of the Equipment which is greater than the extension of time awarded to the Purchaser under the Contract for the corresponding delay caused to the Works.

12.6 The Purchaser shall be entitled to reduce any extension of time it would otherwise have granted to the Supplier under Clause 12.4 to the extent that the Supplier:-

12.6.1 Contributed to the delay; and/or

12.6.2 Failed to take all reasonable steps necessary both to preclude the cause of the delay and/or to avoid or minimise the consequences of the delay.

13. Suspension

13.1 The Purchaser may instruct the Supplier to suspend and then re-commence the supply/delivery of the Equipment which instruction shall be final and binding on the Supplier (hereinafter referred to as a "**Suspension Order**"). If the suspension arises as a result of:-

13.1.1 The Supplier's non-performance of any of its obligations under the Supply Contract;

13.1.2 The need to protect or keep safe any person or property; or

13.1.3 The need to comply with an order of a court,

the Supplier shall have no right to be paid any costs, expenses or damages arising from the suspension.

13.2 If the suspension under Clause 13.1 arises from a cause other than one set out in Clauses 13.1.1 to 13.1.3, the Suspension Order shall entitle the Supplier to be paid by the Purchaser the reasonable extra costs properly incurred by the Supplier as a result of the suspension. The Supplier must take all steps possible to mitigate its extra costs. This will be the Supplier's only entitlement to payment of money arising from a Suspension Order.

13.3 The Supplier shall not be entitled to an extension of time under Clause 13.4 if the suspension arises from any failure by the Supplier to perform any of its obligations under the Supply Contract.

14. Price and Payment

14.1 The Price is that stated in the Order.

14.2 The Supplier shall submit to the Purchaser within 7 Days following the supply/delivery of that part or those parts of the Equipment that is or are required to be supplied/delivered before the relevant stage payment becomes payable, an invoice for the corresponding stage payment.

14.3 Subject to any right of abatement or set-off it may have, the Purchaser shall pay the Supplier the amount of the relevant stage payment that is payable not later than 45 Days after its receipt of the Supplier's invoice under Clause 14.2.

14.4 If the Employer, or any other person on whom the Employer depends for making payment in connection with the Contract, shall become insolvent, the Purchaser shall not be obliged to make any further payment to the Supplier of any sum which is due or may become due to the Supplier unless and until the Purchaser has received payment in respect thereof from the Employer and then only to the extent of such receipt. The term "insolvent" shall have the meaning given to it by Section 113 of the Housing Grants, Construction and Regeneration Act 1996.

14.5 The making of any stage payment by the Purchaser to the Supplier shall not constitute or be deemed to constitute acceptance on the part of the Purchaser that the Equipment supplied/delivered by the Supplier complies with the Specification or is otherwise in accordance with the Supply Contract.

14.6 If the Purchaser fails to make payment to the Supplier in accordance with Clause 14.3 it shall pay the Supplier, in addition to the principal amount not paid, simple interest thereon for the period from the date for payment to the date payment is made. The rate of interest shall be 2% over the Base Rate of the Bank of England current at the date of the Purchaser's default. The Supplier acknowledges that such rate is a substantial remedy for late payment (as defined in the Late Payment of Commercial Debts (Interest) Act 1998).

15 Variations

- 15.1 The Purchaser may, without invalidating the Supply Contract, order a Variation in the form of an addition to or omission from or other change to or from the Equipment by a written document titled "**Variation Order**".
- 15.2 The Purchaser shall not be obliged to make payment to the Supplier for carrying out any Variation which requires the Supplier to supply/deliver additional or different Equipment unless the Purchaser has issued a Variation Order.
- 15.3 If any Variation Order issued by the Purchaser omits any part(s) of the Equipment to be supplied/delivered by the Supplier under the Supply Contract, the Purchaser may thereafter procure the supply/delivery of the omitted Equipment either itself or by engaging an alternative supplier and, for the avoidance of doubt, the Supplier shall not be entitled to make any claim in respect of any such omission including for any loss of profit or loss of opportunity.
- 15.4 Where any Variation Order omits any part(s) of the Equipment, the Purchaser shall be entitled to adjust the Date for Delivery by making earlier the Date for Delivery by an appropriate amount of time commensurate with the scale of the omission.
- 15.5 A Variation Order may be issued by the Purchaser in respect of the Equipment:-
- 15.5.1 Any time prior to the supply/delivery of all the Equipment; and
- 15.5.2 After the supply/delivery of all the Equipment provided that, for the avoidance of doubt, the Supplier shall be required to comply with such Variation Order in accordance with the time specified therein and not by the Date for Delivery.
- 15.6 Subject to Clause 12.3.2 and Clause 16.1, the Price shall be adjusted for all Variations carried out by the Supplier by:-
- 15.6.1 An amount determined by using any rates or prices contained in the Supply Contract Pricing Document which may be applicable to the Variation; or
- 15.6.2 A reasonable amount to be agreed between the Parties or, in default of such agreement, determined by the Purchaser on a fair and reasonable basis.
- 15.7 The rates and prices contained in the Sub-Contract Pricing Document are deemed to include all labour, materials, overheads and profit required to perform any work the subject of the Variation Order and to comply with the Supplier's obligations under the Supply Contract.
- 15.8 Where the Purchaser so requests the Supplier shall, within such time as the Purchaser may specify (acting reasonably), and in any event so as not to delay or disrupt the supply/delivery of the Equipment, provide the Purchaser with all information regarding the proposed Variation. Such information shall be as the Purchaser may reasonably require and shall include, if so requested, a firm price of the increase in, or reduction of, the Price together with details of any affect on the Supplier's ability to supply/deliver the Equipment by the Date for Delivery.

16. Defects Liability

- 16.1 If at any time prior to the expiry of the Defects Liability Period the Purchaser decides that any Equipment supplied/delivered by the Supplier is defective or not in accordance with the Supply Contract or that the Equipment which has been supplied/delivered does not fulfil the requirements of the Supply Contract (hereinafter referred to as a "**Defect**"), the Supplier shall as soon as reasonably practicable of receiving a notice in writing from the Purchaser to do so, make good the Defect. The Purchaser shall have the right to assign to the Employer the benefit of this warranty.
- 16.2 The Supplier shall indemnify the Purchaser against the cost of any work done by or on behalf of the Purchaser, or of any damage which the Supplier is liable to rectify, resulting from Defects in the Equipment and against all other costs, losses, expenses and liabilities incurred by the Purchaser as a result of Defects in the Equipment. If the Supplier does not fulfil its obligations under Clause 16.1 within a reasonable time of the Purchaser giving the Supplier notice so to do, the Purchaser may carry out such obligations but without prejudice to any other right of the Purchaser arising from the Defects so remedied.
- 16.3 The Purchaser and the Supplier agree that the Order shall be treated as if it had been executed as a deed (whether executed by the Supplier or not), and the Supplier agrees that it shall remain liable to the Purchaser in respect of any Defect which arises in the Equipment after the expiry of the Defects Liability Period up to a maximum of 12 years from practical completion of the Works.

17. Final Payment Claim

- 17.1 Within 28 Days of the supply/delivery of all the Equipment, the Supplier must give the Purchaser a final Claim (hereinafter referred to as the "**Final Claim**"). The Final Claim must include all amounts which the Supplier requests from the Purchaser under the Supply Contract or otherwise in respect of any fact, matter or thing arising out of or in connection with the Supply Contract or the Equipment which occurred prior to the supply/delivery of all the Equipment.
- 17.2 The date for payment of any amount due to the Supplier in respect of its Final Claim under this Clause 17 shall be 45 Days of the expiry of the Defects Liability Period.
- 17.3 After the date for submitting the Final Claim has passed, the Supplier releases (and, for the avoidance of doubt, shall be deemed to have released) the Purchaser from any Claim in respect of any fact, matter or thing arising out of or in

connection with the Supply Contract or the Equipment which occurred prior to the date of supply/delivery of all the Equipment except where:-

17.3.1 It has given the Purchaser a Final Claim within the time required; and

17.3.2 The Claim is included in the Final Claim.

The Final Claim is in addition to the other notices that the Supplier must give to the Purchaser under the Supply Contract in order to preserve its entitlements thereunder.

18. Assignment and Sub-letting

18.1 The Supplier shall not assign the Supply Contract. The Supplier may sub-let any of its obligations under the Supply Contract if the Purchaser so agrees in writing (such consent not to be unreasonably withheld or delayed) and shall supply such copies of its sub-contract(s) as the Purchaser may require.

18.2 The Purchaser's agreement to the sub-letting of any of the Supplier's obligations under the Supply Contract shall not relieve the Supplier of any of its obligations under the Supply Contract.

19. Indemnity and Insurance

19.1 The Supplier shall indemnify the Purchaser against any loss, damage, liability, cost or claim suffered by or brought against the Purchaser arising from the Equipment supplied/delivered by the Supplier under the Supply Contract whether in respect of injuries to or death of any person including employees of the Supplier or of loss of or damage to any property or in the performance by the Supplier of its obligations under the Supply Contract or resulting from any Defect in the Equipment provided that such loss, damage, liability, cost or claim does not arise from any negligence on the part of the Purchaser, its employees, servants or agents.

19.2 The Supplier shall at all times during the performance of its obligations under the Supply Contract maintain adequate policies of insurance in respect of damage to or loss of (whether in whole or in part) the Equipment whilst the property thereof rests with the Supplier, any injury or death of any person (including employees of the Supplier and the Purchaser), and loss of or damage arising from the performance of the Supplier's obligations under the Supply Contract for the minimum amounts notified by the Purchaser to the Supplier on an each and every claim basis. The Supplier shall produce to the Purchaser when requested to do so the relevant policies of insurance and the receipts for current premiums.

19.3 The Supplier confirms that it has in place professional indemnity insurance and/or product liability insurance in relation to the Equipment for the minimum amount(s) the Supplier is required to effect and maintain by the Supply Contract on an each and every claim basis and that such insurance shall be maintained for a period of 12 years from practical completion of the Works.

20. Determination of Supplier's Employment

20.1 The Purchaser may at will, and for any reason whatsoever, determine the employment of the Supplier under the Supply Contract by giving the Supplier not less than 14 Days' prior written notice of its intention to do so.

20.2 In the event that the employment of the Supplier under the Supply Contract is determined under Clause 20.1, the Purchaser shall be liable to the Supplier for all sums that may be due or may accrue due in respect of the Equipment made available for collection from its premises or delivered to the Site up to the expiry of that 14 Day period. The Purchaser shall have no further liability to the Supplier whether for loss of profit or for any other loss the Supplier may incur as a result of the determination.

20.3 The Purchaser may by notice in writing forthwith determine the employment of the Supplier under the Supply Contract without any liability to the Supplier if the Supplier:-

20.3.1 Without reasonable cause suspends the supply/delivery of the Equipment before the Date for Delivery and fails to resume the supply/delivery within 7 Days of receiving a written request to do so from the Purchaser;

20.3.3 Refuses to or persistently neglects after receiving written notice from the Purchaser to remove defective work or improper Equipment as a result of which the Works are materially affected;

20.3.4 Supplies or delivers to the Site Equipment that fails to satisfy any of the conditions of the Supply Contract relating to specification, quality, quantity and workmanship and/or design (in these circumstances, the Purchaser shall be entitled to reject the Equipment supplied or delivered to the Site by or on behalf of the Supplier); or

20.3.5 Becomes insolvent which term shall have the meaning given to it by Section 113 of the Housing, Construction and Regeneration Act 1996.

20.4 In the event of the Supplier's employment being determined in accordance with Clause 20.3, the Purchaser shall not be obliged to make any further payment to the Supplier until the supply/delivery of all the Equipment has been procured from an alternative supplier and, not later than 3 months thereafter, the Purchaser has ascertained and notified the

Supplier in writing of the final amount due from the Purchaser to the Supplier under the Supply Contract, or from the Supplier to the Purchaser, as the case may be.

- 20.5 The Purchaser may employ another supplier to supply/deliver any Equipment the Supplier had not supplied/delivered by the date of determination of its employment under the Supply Contract and recover from the Supplier all additional costs and/or damages incurred by the Purchaser as a consequence of such employment and the determination.

21. Confidentiality

- 21.1 The Supplier shall not disclose any information provided to it by the Purchaser to any third person save for the purposes of making a declaration to its insurers or obtaining legal or other professional advice on the terms of the Supply Contract, including the Conditions. The Supplier shall not for the purposes of publication take nor permit to be taken any visual records nor make any other publication in connection with the Works unless written permission has first been obtained from the Purchaser.

22. Copyright

- 22.1 Copyright in any design produced by or on behalf of the Supplier shall remain vested in the Supplier but the Supplier shall grant to the Employer and the Purchaser a royalty free, irrevocable, non-exclusive licence to use and to reproduce all documents, drawings and other works produced in relation to the Equipment, for any purpose whatsoever connected with the Works and such licence shall continue notwithstanding any determination of the Supplier's employment under the Supply Contract. The Employer and the Purchaser shall each have a licence to copy and use any documents, drawings and other works for any purpose in connection with the Works. Such licences shall be transferrable to third parties and shall carry the right to grant sub-licences.
- 22.2 The Supplier shall indemnify and hold harmless the Employer and the Purchaser from and against all losses in relation to any claims made or brought by any person for or on account of infringement by any person of any intellectual property rights in respect of which the Supplier is obliged to grant a licence or allow the granting of sub-licences hereunder.

23. Third Party Rights

- 23.1 Any person who is not a party to the Supply Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Supply Contract provided always that this shall not affect any right or remedy of such person which exists or is available apart from that Act.

24. Entire Agreement

- 24.1 Unless expressly provided otherwise herein, the Supply Contract constitutes the entire agreement between the Parties in connection with the subject matter hereof and supersedes all prior representations, communications, negotiations, arrangements, understandings and agreements (whether oral, written or by electronic transfer) concerning the same.

25. Severability

- 25.1 If for any reason any of the Conditions shall be held to be invalid, unlawful or unenforceable to any extent, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining Conditions nor affect the validity, legality or enforceability of the remaining part of the Condition in question.

26. Effective Date

- 26.1 Subject to Clause 26.2, the Supply Contract shall take effect (hereinafter referred to as the "**Effective Date**"), on the date on which the Purchaser issues the Order to the Supplier.
- 26.2 If the Supplier has carried out any of its obligations under the Supply Contract prior to the Effective Date (as defined in Clause 26.1), the same shall be deemed to have been carried out pursuant to and subject to the Supply Contract and these Conditions.

27. Amendments

- 27.1 No amendment to or modification of the Order or of the Conditions shall be valid or binding on either Party unless it is made in writing, refers expressly to this Clause 27.1 and is executed by the Parties concerned or by their duly authorised representatives.

28. Jurisdiction

- 28.1 The construction, validity and performance of the Parties' respective obligations under the Supply Contract shall be governed by and construed in accordance with English law and the Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.