

# Application for Credit Account



SIG Trading Limited (hereinafter referred to as "SIG", "we", "our" and "us")

COMPANY DETAILS	
COMPANY NAME / LEGAL ENTITY:	
TRADING NAME IF DIFFERENT:	
IS YOUR COMPANY A:	SOLE PROPRIETORSHIP <input type="checkbox"/>
	PARTNERSHIP <input type="checkbox"/>
	LTD COMPANY <input type="checkbox"/>
	OTHER (PLEASE SPECIFY BELOW) <input type="checkbox"/>
DATE OF INCORPORATION/ TIME TRADING:	
COMPANY REGISTRATION NO.:	
VAT REGISTRATION NO.:	
PARENT COMPANY NAME:	
PARENT COMPANY REGISTERED NUMBER:	
NATURE OF BUSINESS:	
NUMBER OF EMPLOYEES:	
STATEMENT / INVOICE ADDRESS:	
POSTCODE:	
TEL NO.:	
MOBILE NO.:	
EMAIL:	
ORDER ACKNOWLEDGEMENTS EMAIL:	
LENGTH OF TIME AT THIS ADDRESS:	
PREVIOUS ADDRESS, IF LESS THAN 3 YEARS AT PRESENT ADDRESS:	
POSTCODE:	
TRADING ADDRESS (IF DIFFERENT FROM ABOVE):	
POSTCODE:	

SOLE PROPRIETORS / PARTNERS / DIRECTORS DETAILS	
NAME:	DOB:
HOME ADDRESS:	
POSTCODE:	
TEL NO.:	
MOBILE NO.:	
PREVIOUS ADDRESS IF LESS THAN 3 YEARS AT PRESENT ADDRESS.:	
POSTCODE:	
NAME:	DOB:
HOME ADDRESS:	
POSTCODE:	
TEL NO.:	
MOBILE NO.:	
PREVIOUS ADDRESS IF LESS THAN 3 YEARS AT PRESENT ADDRESS.:	
POSTCODE:	
NAME:	DOB:
HOME ADDRESS:	
POSTCODE:	
TEL NO.:	
MOBILE NO.:	
PREVIOUS ADDRESS IF LESS THAN 3 YEARS AT PRESENT ADDRESS.:	
POSTCODE:	
HAVE ANY OF THE PRINCIPALS / DIRECTORS / PARTNERS / PROPRIETORS BEEN INVOLVED IN ANY KIND OF INSOLVENCY PROCESS (INCLUDING BUT NOT LIMITED TO IVA / CVA / ADMINISTRATION) OR HAD A COUNTY COURT JUDGMENT REGISTERED AGAINST THEM? IF YES THEN PLEASE GIVE DETAILS:	

BANK DETAILS	
BANK NAME:	
BANK ADDRESS:	
POSTCODE:	
SORT CODE:	
BANK ACCOUNT NO.:	

# Application for Credit Account



## CONTACT DETAILS FOR MARKETING PURPOSES

We would like to send you information about our products, services, benefits and offers. If you would like to be kept up to date, please tick the relevant areas of interest below, and your preferred method of contact, along with the contact details for the proposed recipient. You can choose more than one option and this is how we will keep in touch with you from now on.

EMAIL <input type="checkbox"/>	ROOFING <input type="checkbox"/>	INTERIORS <input type="checkbox"/>
PHONE <input type="checkbox"/>	INSULATION <input type="checkbox"/>	ALL <input type="checkbox"/>
MESSAGING (INC. SMS, MMS AND OTHER) <input type="checkbox"/>	CONSTRUCTION ACCESSORIES <input type="checkbox"/>	
POST <input type="checkbox"/>	MECHANICAL & ELECTRICAL <input type="checkbox"/>	

NAME:

ADDRESS, INCLUDING POSTCODE, IF DIFFERENT FROM STATEMENT/INVOICE ADDRESS:

POSTCODE:

TEL NO.:

MOBILE NO.:

EMAIL:

Your consent is voluntarily and you are under no obligation to consent. Even if you consent, you can subsequently withdraw consent at any time by contacting the relevant marketing department (although this will not affect any uses of your personal information prior to withdrawal). Please note that if you do not consent, or if you subsequently withdraw consent, we will be unable to send you more information about our products, services, benefits and promotions.

### Data Protection & Money Laundering (Fair Processing) Notice:

In order to process your application we will supply your personal information to credit reference agencies (CRAs) and they will give us information about you, such as about your financial history. We do this to assess creditworthiness and product suitability, check your identity, manage your account, trace and recover debts and prevent criminal activity. We will also continue to exchange information about you with CRAs on an ongoing basis, including about your settled accounts and any debts not fully repaid on time. CRAs will share your information with other organisations. The identities of the CRAs, and the ways in which they use and share personal information, are explained in more detail at <http://www.expenian.co.uk/crain/index.htm>

For further information about how we process and protect your personal information and how you may exercise your data protection rights, please see our Privacy Notice at <http://www.sigplc.com/--/media/Files/S/SIG-Corp/SIG%20Privacy%20Notice%20March%202019.pdf>

## CURRENT TRADING REFERENCES (PLEASE SUPPLY TWO TRADE REFERENCES)

NAME:	NAME:
ADDRESS:	ADDRESS:
POSTCODE:	POSTCODE:
TEL NO.:	TEL NO.:
MOBILE NO.:	MOBILE NO.:
EMAIL:	EMAIL:

**Declaration:** By signing and submitting this application you confirm you have read, understood and accept that our standard terms and conditions of sale attached shall apply to all sales made by us to you (as amended by us from time to time) to the exclusion of any other terms that you may seek to impose and that you have the full authority to act on behalf of, and bind, the applicant company in relation to the terms set out herein. In consideration of our agreement to supply goods to the applicant company on credit terms you, the undersigned, being directors/ partners/ proprietors and/or authorised representative(s) of the applicant company hereby irrevocably undertake on a joint and several basis to personally guarantee payment on demand of all the financial obligations due to us from the applicant company, including any financial obligations arising from any changes in credit limit made to the credit account granted by us from time to time.

SIGNED (for him/her/themselves, and on behalf of the applicant):	SIGNED (for him/her/themselves, and on behalf of the applicant):	SIGNED (for him/her/themselves, and on behalf of the applicant):
FULL NAME:	FULL NAME:	FULL NAME:
POSITION:	POSITION:	POSITION:
DATE:	DATE:	DATE:

## 1 INTERPRETATION

### 1.1 Definitions.

In these Conditions, the following definitions apply:

**Ancillary Design Services:** the provision of advice by the Seller to the Buyer relating to Goods and/or Contract Works where the Contract does not include Design Services.

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

**Buyer:** as specified in the Order.

**Buyer Specification:** specific Buyer requirements included in or appended to the Order.

**Call-off Order:** an Order for the Minimum Purchase Amount of Goods, as agreed in accordance with the provisions of clause 3.

**Completion:** the date by which practical completion of the Contract Works is to occur as specified in the Order or as otherwise adjusted pursuant to these Conditions.

**Construction Act:** Part II of the Housing Grants, Construction and Regeneration Act 1996, and the Local Democracy, Economic Development and Construction Act 2009 and any re-enactment thereof and/or amendment thereto.

**Contract:** the contract between the Seller and the Buyer for the supply of Goods, Design Services and/or Contract Works (as applicable) in accordance with these Conditions.

**Contract Price:** the price of the Goods, Design Services and/or Contract Works (as applicable) in accordance with clause 13.2, 13.3, 13.4 and 14.3 (as applicable).

**Contract Works:** the works to be carried out by the Seller where the Order requires the Seller to supply and install Goods at the Site and which may include Design Services in respect of the Goods to be supplied and installed.

**Credit Note:** a receipt given by the Seller to the Buyer in respect of returned Goods which can be offset against the cost of future purchases of Goods, Design Services and/or Contract Works by the Buyer but which, for the avoidance of doubt, cannot be converted into a payment from the Seller to the Buyer.

**Data Protection Legislation:** all relevant legislation, regulations and other legal requirements governing the processing of personal data in the United Kingdom.

**Defects Liability Period:** 6 months from the date of practical completion of the Contract Works in accordance with clause 18 or such period as is otherwise specified in the Order.

**Design Services:** the provision of advice by the Seller to the Buyer and/or the preparation by the Seller of, without limitation, designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets etc. excluding Ancillary Design Services.

**Final Contract Price:** the Contract Price as adjusted by:

- (a) the accepted amount of a Variation;
- (b) any other amount required by these Conditions to be added or deducted.

**Force Majeure Event:** has the meaning given to it in clause 23.1.

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

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights,

and all similar or equivalent rights or forms of protection in any part of the world.

**Longstop Date:** the date by which the Buyer must have taken delivery of and paid for all Goods ordered under a Call-off Order.

**Non-stock Items:** Goods which have been the subject of Design Services.

**Order:** the Buyer's order for the:

- (a) Design Services; and/or
- (b) supply of Goods; and/or
- (c) Contract Works including Design Services; and/or
- (d) Contract Works.

(including, for the avoidance of doubt, a Call-off Order), as set out in the Buyer's order form.

**Order Acknowledgment:** written confirmation of the contents of the Order issued to the Buyer by the Seller.

**Seller:** SIG Trading Limited, its successors or assigns.

**Seller's Catalogue:** a document prepared by or on behalf of the Seller which is in the public domain with the permission and consent of the Seller describing the Goods which the Seller in the ordinary course of the Seller's business can supply.

**Site:** the site of the Contract Works as set out in the Order (or such other location as the parties may agree).

**Valuation Date:** the date as specified in the Order and if not stated the dates falling at intervals of not less than one month, beginning one month after the Seller begins performance of the Contract Works.

**Variation:** the alteration or modification of the design, the quality or the quantity of the Contract Works in accordance with clause 12 of these Conditions.

## 2 BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Buyer to purchase Goods, instruct Design Services or instruct Contract Works (which may include Design Services) (whichever is applicable) in accordance with these Conditions.

2.2 The Contract shall only be formed when the Seller issues an Order Acknowledgement at which point and on which date the Contract shall come into existence.

2.3 Where there is a discrepancy or divergence between the Order and the Order Acknowledgement, the Order Acknowledgement shall prevail.

2.4 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.

2.5 Subject to clause 3.1 and save where the Seller has provided the Buyer with Design Services, any samples, drawings, descriptive matter or advertising issued by the Seller and any descriptions of the Goods contained in the Seller's Catalogue are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and the Seller's Catalogue shall not form part of the Contract.

2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## 3 GOODS

3.1 Save where the Seller has provided the Buyer with Design Services in respect of the Goods to be supplied under the Order, the Goods are described in the Seller's Catalogue current at the date of the Order as modified by any Buyer Specification.

3.2 Notwithstanding that the Seller may have provided Design Services in respect of and/or in addition to the Goods, to the extent that the

Goods are to be manufactured in accordance with a Buyer Specification, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Seller's use of the Buyer Specification. This clause 3.2 shall survive termination of the Contract.

- 3.3 The Seller, including, without limitation, its employees, sub-contractors, sub-consultants and/or agents are not authorised to make any representations concerning the Goods unless the Order requires the Seller to provide Design Services in respect of the Goods supplied (and in which case any representations shall be strictly limited to the Design Services provided to the Buyer by the Seller). Subject to clause 16.1, the Seller shall have no liability to the Buyer for any representations made to the Buyer by the Seller, its employees, sub-contractors, sub-consultants and/or agents, where the Seller did not provide Design Services relating to the Goods supplied.
- 3.4 The Seller is unable to advise the Buyer on the fitness of the Goods for any particular purpose, their storage or application. The Buyer is entirely responsible for satisfying itself that the Goods are fit for the intended use either by relying on their own expertise or by obtaining professional advice.
- 3.5 The Seller reserves the right to amend any specification of the Goods if required by any applicable statutory or regulatory requirements, codes of practice or industry best practice provided always that the Seller shall have no liability for any failure to amend any Buyer Specification. Dimensions and other physical properties of the Goods are subject to reasonable manufacturing tolerances.
- 3.6 The Seller shall with the Buyer's consent (such consent not to be unreasonably withheld or delayed) be permitted to substitute any Goods with goods of similar standard and quality where the Goods are no longer available following placement of the Order or where the Seller's Catalogue has been updated to include alternative goods to those contained within the Order at no additional cost to the Buyer.
- 3.7 Where the Buyer does not provide its consent in accordance with clause 3.6, in breach of clause 3.6 or otherwise, the Seller shall be entitled to terminate the Contract and shall (if the Buyer has paid for the Goods) issue the Buyer with a Credit Note within a reasonable period of time commensurate with the value of the Goods which will not be supplied under the Order and this shall be the Buyer's sole remedy in relation to such cancellation.
- 3.8 Where the Seller agrees to supply the Goods to the Buyer under a Call-off Order, the provisions of this clause 3.8 shall apply (in addition to the remainder of these Conditions) to such Call-off Order. In the event of any inconsistency between the provisions of this clause 3.8 and any other terms contained within these Conditions (to the extent that such inconsistency relates to the Call-off Order), the provisions of this clause 3.8 shall prevail.

3.8.1 A Call-off Order must comply with clause 2 and must specify the total quantity and type of Goods that the Buyer requires under the Call-off Order ("Minimum Purchase Amount").

3.8.2 The duration of a Call-off Order during which the Goods will be purchased and supplied shall be specified in the Order Acknowledgement and shall state a Longstop Date.

3.8.3 The Buyer shall purchase and take delivery of the full Minimum Purchase Amount prior to the Longstop Date applicable to the Call-off Order.

3.8.4 On the Longstop Date, if the Goods purchased by the Buyer under the Call-off Order ("Actual Purchase Amount") is less than the Minimum Purchase Amount leaving Goods outstanding under the Call-off Order ("Shortfall Goods") **then**, except to the extent the shortfall in purchases was caused by the Seller's default or, by a Force Majeure Event, the Buyer shall either (at the Seller's discretion):

(a) pay the Seller, on demand, the difference between the Minimum Purchase Amount and the Actual Purchase Amount and the Seller shall have the right to:

- i. destroy the Shortfall Goods without notice to the Buyer; or

ii. hold the Shortfall Goods on the Buyer's behalf and charge the Buyer for all costs and expenses incurred in doing the same, including without limitation, insurance and warehousing costs for a reasonable period of time; or

iii. deliver the Shortfall Goods to the Buyer at any one of its premises; or

(b) pay the Seller, on demand, such cancellation fee as the Seller considers reasonable (provided that such cancellation fee shall not exceed the amount pursuant to clause 3.8.4(a), on payment of which the Call-off Order shall be cancelled without further liability on the Seller

3.8.5 Risk and title to the Goods under a Call-off Order shall pass in accordance with the provisions of clause 8, save that where the Seller retains possession of the Shortfall Goods following the Longstop Date, risk in the Shortfall Goods shall remain with the Buyer.

## 4 DELIVERY OF GOODS

4.1 This clause 4 shall only apply where the Seller is supplying Goods. This clause does not apply where the Order requires (a) standalone Design Services or (b) Contract Works.

4.2 The Seller shall ensure that:

4.2.1 each delivery of the Goods is accompanied by a delivery note; and

4.2.2 if the Seller requires the Buyer to return any packaging material to the Seller, that fact is clearly stated on the delivery note. The Buyer shall make any such packaging materials available for collection at such times as the Seller shall reasonably request. Returns of packaging materials shall be at the Seller's expense.

4.3 The Seller shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location") at any time after the Seller notifies the Buyer that the Goods are ready for delivery. Delivery shall be as near as possible to the Delivery Location where the Seller believes that such place is suitable for unloading during the normal working hours of the Seller on a Business Day.

4.4 Where the Goods are delivered by the Seller, delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. The Buyer shall be solely responsible for the unloading of the Goods and the Seller shall not be liable for any damage that occurs (whether to the Goods, property (personal or otherwise) or adjacent land) during such unloading. In the event that the same exceeds a period of one hour then demurrage may be charged by the Seller to the Buyer.

4.5 Where the Goods are collected by the Buyer then delivery of the Goods shall be completed upon completion of the loading of the Goods. The Seller shall not be liable for any damage that occurs during the loading or unloading of the Goods (whether to the Goods, property (personal or otherwise) or adjacent land).

4.6 Any claims by the Buyer in respect of alleged shortage or damage to the Goods or loss of Goods in transit must be notified to the Seller within 24 hours of delivery and confirmed in writing within 3 calendar days of delivery taking place. Any evident damage to external packaging must be the subject of an endorsement on the Seller's delivery note at the time of delivery. No claim can be made by the Buyer if the delivery note relating to the Goods has been signed by the Buyer or his agent or employee without reference to the alleged damage, shortage or loss in transit.

4.7 Any dates quoted for delivery of the Goods are approximate only and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods.

4.8 If the Seller fails to deliver the Goods its liability shall be limited to the costs and reasonable expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Buyer's failure to provide the Seller with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.9 If the Buyer fails to accept or take delivery of the Goods within 7 Business Days of the Seller notifying the Buyer that the Goods are ready for delivery then: (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the later of the Business Day following the day on which the Seller notified the Buyer that the Goods were ready for delivery and expiry of the 7 Business Day period within this clause 4.9; and (b) the Seller shall store the Goods until delivery takes place and charge the Buyer on an indemnity basis for all related costs and expenses (including insurance).

4.10 If 28 calendar days after the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not accepted or taken delivery of the Goods, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer by way of a Credit Note for any excess over the price of the Goods or recover any shortfall below the price of the Goods as a debt.

4.11 The Seller may deliver the Goods by instalments. These Conditions shall apply to each instalment as if each instalment constituted a separate contract incorporating these Conditions notwithstanding that they are delivered pursuant to a single Order and each instalment shall be invoiced and paid for separately in accordance with these Conditions. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

4.12 The Seller shall be under no obligation to make any delivery of Goods to the Buyer if the Buyer is in breach of any of these Conditions.

## 5 TIME FOR DELIVERY AND COMPLETION OF THE CONTRACT WORKS

5.1 This clause 5 shall only apply where the Seller is carrying out Contract Works. This clause does not apply where the Order requires supply of Goods only and/or standalone Design Services.

5.2 Completion of the Contract Works shall be as specified in the Order or such other completion date as the Buyer may agree (time is not of the essence).

5.3 Completion of the Contract Works shall be extended by the Buyer for the period of time requested by the Seller in its written notice to the Seller if delay in practical completion of the Contract Works is caused by a Force Majeure Event and/or events and/or circumstances beyond the Seller's reasonable control, and the Seller shall notify the Buyer as soon as reasonably practicable upon it becoming reasonably apparent that the progress of the Contract Works is being or is likely to be delayed and such circumstances giving rise to an extension of time shall include delays of the Seller and the Seller's sub-contractors and/or carriers. The Seller's determination in respect of the extension to Completion which is to be granted by the Buyer shall be final and binding on the parties.

5.4 If the Seller fails to complete the Contract Works by Completion the Buyer shall issue a notice to that effect ("Non-Completion Notice"). If a new date of Completion is fixed after the issue of a Non-Completion Notice, such fixing shall cancel that Non-Completion Notice and the Buyer shall where necessary issue a further Non-Completion Notice.

5.5 Provided that:

5.5.1 the Buyer has issued a Non-Completion Notice for the Contract Works; and

5.5.2 the Buyer has notified the Seller before the due date for the Final Contract Price under clause 14 that he may require payment of, or may withhold or deduct, liquidated damages,

the Buyer may give notice to the Seller that he requires the Seller to pay liquidated damages at the rate of £NIL (unless otherwise specified in the Order), or a lesser rate stated in the notice, in which event the Buyer may recover the same as a debt and/or withhold or deduct liquidated damages at £NIL (unless otherwise specified in the Order), or a lesser rate stated in the notice, from sums due to the Seller.

5.6 It shall be a condition precedent to the Buyer's right to demand payment of or withhold or deduct liquidated damages pursuant to clause 5.5 that the Non-Completion Notice is served on the Seller within 1 Business Day of the Completion date.

## 6 QUALITY OF GOODS

6.1 This clause 6 shall only apply where the Seller is supplying Goods. This clause does not apply where the Order requires (a) standalone Design Services or (b) Contract Works.

6.2 The Seller warrants that on delivery, and for a period of 12 calendar months from the date of delivery ("Warranty Period"), the Goods shall: (a) be free from material defects; and (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

6.3 Subject to clause 6.4 if: (a) the Buyer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.2; (b) the Seller is given a reasonable opportunity of examining such Goods; and (c) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost, then the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.4 The Seller shall not be liable for the Goods' failure to comply with the warranty in clause 6.2 if: (a) the Buyer makes any further use of such Goods after giving a notice in accordance with clause 6.3; (b) the defect arises because the Buyer failed to follow the manufacturer's and/or 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; (c) the defect arises as a result of the Seller following any drawing or design supplied by the Buyer or Buyer Specification; (d) the Buyer alters or repairs such Goods without the written consent of the Seller; (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or (f) the Goods differ from the Buyer Specification or Seller's Catalogue as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or (g) the Buyer has not paid in full for the Goods.

6.5 Except as provided in this clause 6, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 6.2. This clause 6 shall apply to any repaired or replacement Goods supplied by the Seller under clause 6.3.

## 7 RETURNS

7.1 This clause 7 shall only apply where the Seller is supplying Goods. This clause does not apply where the Order requires (a) standalone Design Services or (b) Contract Works.

7.2 Subject to applicable statutory rights, Goods may only be returned at the Seller's discretion and with approval required prior to returning. Non-stock Items cannot be returned by the Buyer.

7.3 Subject to clause 7.2, the Seller shall issue a Credit Note in respect of Goods returned.

7.4 Goods returned at the Buyer's request not on the Seller's own vehicle shall be at the Buyer's risk regarding insurance for a value not less than the full invoice price.

7.5 Costs of collection and re-delivery of replacement items to the Delivery Location will be met by the Buyer unless attributable to a breach by the Seller of the Contract. Subject to clause 7.3, only Goods returned in saleable condition can be accepted for a Credit Note. The Seller reserves the right to levy a re-stocking and handling charge.

## 8 TITLE AND RISK

8.1 Where the Order requires the supply of Goods (which may include Design Services associated with those Goods), the risk in the Goods shall pass to the Buyer on completion of delivery to the Delivery Location where the Goods are delivered by the Seller. Where the Goods are collected by the Buyer, the risk in the Goods shall pass to the Buyer when the employees or agents of the Seller have completed loading to the satisfaction of the vehicle's driver.

8.2 Where the Order requires Contract Works, the risk in the Goods shall pass to the Buyer on incorporation of the Goods into the project of which the Contract Works forms all or part.

8.3 Title to the Goods shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for: (a) the Goods; (b) where applicable, the Design Services; (c) where applicable, the Contract Works and (d) any other goods that the Seller has supplied to the Buyer.

- 8.4 Until title to the Goods has passed to the Buyer, the Buyer shall: (a) hold the Goods on a fiduciary basis as the Seller's bailee; (b) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property; (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; (d) 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; (e) notify the Seller immediately if it becomes subject to any of the events listed in clause 19.1.3 to 19.1.6; and (f) give the Seller such information relating to the Goods as the Seller may require from time to time.
- 8.5 Without prejudice to clause 8.4, the Buyer may resell the Goods in the ordinary course of its business provided that any such sale of the Goods shall take place as the Seller's bailee and that the entire proceeds of sale are held in trust for the Seller and shall not be mixed with other monies or paid into any overdrawn bank account.
- 8.6 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 19.1.3 to 19.1.6, or the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product (or the project if part of the Contract Works), and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
- 9 DESIGN SERVICES**
- 9.1 The Seller shall use reasonable skill and care in the preparation and completion of any and all Design Services.
- 9.2 The Seller shall be entitled to rely upon any designs or other information contained in, or referred to in, documents prepared by or on behalf of the Buyer whether contained within the Order, including the Buyer Specification, or provided after the date of the Order ("Buyer's Design") and the Seller shall not be responsible for the Buyer's Design or the impact/effect of any defect, divergence or discrepancy caused by the Buyer's Design on the Design Services and/or the Contract Works.
- 9.3 Where the Seller is responsible for Design Services, including Design Services of all or part of the Contract Works, the Seller shall take out and maintain a professional indemnity insurance policy with limits of indemnity in an amount which the Seller considers appropriate (at the Seller's absolute discretion) from commencement of the Design Services or the Contract Works and ending 6 years from:
- 9.3.1 Where the Design Services forms part of the Contract Works: the earlier of practical completion of the Contract Works and termination of the Contract; or
- 9.3.2 Where the Design Services is not part of the Contract Works: the earlier of completion of the Design Services and termination of the Contract.
- 10 ANCILLARY DESIGN SERVICES**
- The Seller makes no representations or warranties whatsoever, and disclaims all liability or responsibility for any representation, warranty, statement, or information made or communicated (orally or in writing) to the Buyer in respect of any Ancillary Design Services.
- 11 BUYER'S OBLIGATIONS**
- 11.1 Where the Order requires supply of Goods and/or Design Services the Buyer shall:
- 11.1.1 ensure that the terms of the Order and Buyer's Specification are complete and accurate;
- 11.1.2 subject to clause 4.6, in the event that the Goods do not accord with the Order and/or the Buyer's Specification, the Buyer must notify the Seller within 24 hours from the date of delivery and be confirmed in writing to the Seller within 3 calendar days, failing which the Buyer will be deemed to have accepted the Goods; and
- 11.1.3 satisfy itself that any manufacturers information (including, but not limited to, data sheets) provided by the Seller is accurate and up to date and ensure that it remains up to date with the specifications of all Goods and requirements for their use.
- 11.2 Where the Order requires Contract Works the Buyer shall:
- 11.2.1 give the Seller access to the Site upon reasonable request by the Seller having regard to Completion. The Seller shall provide such roads and other means of access to the Site as may be expected of a qualified and experienced member of the Seller's profession undertaking Contract Works on works similar in scope, size, nature, timescale, complexity and character on a similar site or at a similar location to the Site;
- 11.2.2 where indicated in the Order, within the times stated in the Order or, if not so stated, upon reasonable request by the Seller, obtain all consents, rights over real estate, and approvals in connection with the regulations and bylaws of any local or other authority which shall be applicable to the Contract Works, including planning permission;
- 11.2.3 at the Buyer's expense operate for the purposes of the Contract Works any suitable lifting equipment belonging to the Buyer that may be available on the Site. The Buyer shall during such operation retain control of and be responsible for the safe working of the lifting equipment;
- 11.2.4 make available on the Site for use by the Seller for the purposes of the Contract Works such supplies of electricity, water, gas, air and other services as the Seller may reasonably require and which the Seller has notified the Buyer in writing in reasonable time having regard to Completion;
- 11.2.5 make available on the Site for use by the Seller welfare facilities as the Seller may reasonably require and which the Seller has notified the Buyer in writing in reasonable time having regard to Completion.
- 11.3 Where the order requires supply of Goods and/or Contract Work and the Buyer is located outside of the United Kingdom the Buyer shall:
- 11.3.1 obtain all import permits or licences required for any part of the Goods and/or Contract Works in a reasonable time having regard to (in the case of the Contract Works) Completion. The Buyer shall pay or reimburse the Seller all customs and import duties arising upon the importation of Goods;
- 11.3.2 satisfy itself that the Goods meet all local legislation, regulation and other requirements in the country in which it is intended that they are used or installed and the Seller shall have no liability to the Buyer or any third party in the event that the Goods do not comply with any such local requirements (whether legally binding or otherwise); and
- 11.3.3 indemnify the Seller for any costs, claims, damages, losses and/or expenses incurred by the Seller as a result of the Buyer's failure to comply with the above provisions clause 11.3.
- 12 CONTRACT WORKS**
- 12.1 This clause 12 shall only apply where the Seller is carrying out Contract Works. This clause does not apply where the Order requires supply of Goods only and/or standalone Design Services.
- 12.2 Where the Seller provides Design Services as part of the Contract Works the provisions of clause 9 shall apply.
- 12.3 The Seller warrants that it shall proceed regularly and diligently with the Contract Works.
- 12.4 The Seller shall carry out and complete the Contract Works in a good and workmanlike manner and in accordance with BS 8000-0:2014.
- 12.5 Failure on the part of the Seller to discover or foresee any condition, risk, contingency or circumstance, including ground conditions or defects, divergences or discrepancies in designs supplied by the Buyer and/or the Buyer's Specification shall entitle the Seller to additional payment and/or to an extension of time to Completion.
- 12.6 The Seller shall at no cost to the Buyer comply with:
- 12.6.1 all health and safety legislation relevant to the Contract Works and the manner in which they are being carried out; and
- 12.6.2 (where applicable) the Construction (Design and Management) Regulations 2015 ("CDM Regulations").

- 12.7 The Buyer may issue an instruction to the Seller in regard to the Contract Works and the Seller shall (subject to the Seller reasonably objecting to an instruction) as soon as reasonably practicable for the Seller comply with all instructions.
- 12.8 The Contract Price shall be adjusted if the performance of the Contract Works is materially delayed or disrupted due to a change in the scope, size, complexity or duration of the Contract Works, or, without limitation, any delay, disruption, omission or interference by the Buyer or the Buyer's employees, agents, subcontractors or contractors, provided that the Seller shall not be entitled to any adjustment of the Contract Price where delay or disruption arises from the Seller's default or negligence, or the default or negligence of the Seller's subcontractors or suppliers.
- 12.9 The amount to be paid in respect of any variation pursuant to clause 12.7 or any delay or disruption pursuant to clause 12.8 shall be agreed wherever possible before any such work is carried out or, in default of agreement, shall be valued at the rates specified in the Contract; where no rates are specified or such rates are not applicable to the work proposed to be undertaken, at such reasonable rates determined by the Seller and such determination shall be binding on the parties.
- 12.10 The Buyer shall procure that the Seller is jointly named on the Buyer's or main contractor's (as the case may be) All Risk insurance policy in respect of the works to which the Contract Works forms all or part and the Seller shall be under no obligation whatsoever to deliver Goods or commence Contract Works until the Buyer has provided the Seller with written confirmation by way of an insurance certificate or broker's letter that this clause 12.10 has been complied with.
- 13 CHARGES AND PAYMENT**
- 13.1 Save where the duration of the Design Services and/or Contract Works is to be equal to or exceed 45 calendar days, the following payment charges and payments shall apply to Goods, Design Services and Contract Works.
- 13.2 The Contract Price for Goods shall be the price set out in the Order or, if no price is stated, the price set out in the Seller's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods which shall be paid by the Buyer when it pays for the Goods.
- 13.3 Without prejudice to the provisions of clause 13.2 and unless a fixed price has been agreed in writing by a Director or authorised person of the Seller, the Contract Price for Goods under a Call-off Order shall be the price set out in the Seller's published price list for such Goods as at the date of the Contract plus any increase in the cost of any labour, material and transport cost incurred by the Seller since such date.
- 13.4 The price for the Design Services or Contract Works shall be the price set out in the Order, or if no price is set out, shall be valued at the rates specified in the Contract; where no rates are specified or such rates are not applicable to the work proposed to be undertaken, at such reasonable rates determined by the Seller and such determination shall be binding on the parties.
- 13.5 The Seller reserves the right to increase the price of the Goods by giving notice to the Buyer at any time before delivery to reflect any increase in the cost of the Goods to the Seller that is due to: (a) any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); (b) any request by the Buyer to change the delivery date(s), the number of deliveries, quantities or types of Goods ordered, or any specification, including the Buyer's Specification; or (c) any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Seller adequate or accurate information or instructions in respect of the Goods.
- 13.6 The Seller shall invoice the Buyer on or at any time after completion of delivery of the Goods or completion of the Design Services or Contract Works.
- 13.7 The Seller shall have the right to invoice the Buyer by e-mail. Where invoices are sent out using e-mail they will be deemed to have been received by the Buyer on the date when it was sent provided that the e-mail is transmitted between the hours of 9.00am and 5.00pm on a Business Day. If the invoice is sent by e-mail from the Seller to the Buyer outside of the above times then the Buyer will be deemed to have received the invoice on the next Business Day.
- 13.8 The Buyer shall pay each invoice submitted by the Seller: (a) by the end of the month following the month of issue of the invoice; and (b) in full and in cleared funds to a bank account nominated in writing by the Seller, and time for payment shall be of the essence of the Contract.
- 13.9 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods, Design Services or Contract Works at the same time as payment is due for the supply of the same.
- 13.10 Without limiting any other right or remedy of the Seller, if the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, the Seller shall have the right to charge interest on the overdue amount at a rate of 8% over the base rate of the Bank of England (calculated on a daily basis) which is current at the date of the payment by the Seller became due. The parties agree that this clause 13.10 is a substantial remedy for late payment of any sum payable under the Conditions in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 13.11 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer under any agreement between the Seller and the Buyer against any amount payable by the Seller to the Buyer under this agreement.
- 13.12 Failure by the Buyer to pay all outstanding amounts under this Contract by the due date shall entitle the Seller to demand payment of all outstanding balances under the Contract or any other contract or agreement between the parties whether due or not and to cancel forthwith any outstanding orders and credit facilities without prejudice to all other rights the Seller may have.
- 13.13 The Buyer must pay to the Seller all and any reasonable expenses and legal costs incurred by the Seller in taking any steps, including Court action but excluding adjudication, to enforce the Buyer's obligations under the Contract for the payment of any monies owed by the Buyer to the Seller.
- 14 PAYMENT FOR THE CONTRACT WORKS OR DESIGN SERVICES**
- 14.1 This clause 14 shall only apply where the Seller is carrying out Design Services or Contract Works and the duration of the Design Services or Contract Works is equal to or exceeds 45 calendar days.
- 14.2 The Buyer shall pay the Contract Price to the Seller in accordance with this clause 14.
- 14.3 The Contract Price shall be the price set out in the Order, or if no price is set out, shall be valued at the rates specified in the Contract; where no rates are specified or such rates are not applicable to the work proposed to be undertaken, at such reasonable rates determined by the Seller and such determination shall be binding on the parties.
- 14.4 No later than 5 Business Days after the due date for payment the Buyer shall provide a payment notice stating the sum that the Buyer considers to be or have become due at that date, the work or part thereof to which the payment relates and the basis on which that sum is calculated (the "Payment Notice").
- 14.5 The due date for payment shall be 5 Business Days after the Valuation Date.
- 14.6 If the Buyer intends to pay less than the sum stated as due in the Payment Notice, Buyer's Payment Notice or Seller's Payment Notice (as the case may be) the Buyer shall not later than 4 Business Days before the Final Date for Payment and/or Final Payment (as the case may be) give to the Seller notice of that intention specifying both the sum that the Buyer considers to be due to the Seller at the date the pay less notice is given and the basis on which that sum has been calculated (a "Pay Less Notice").
- 14.7 Subject to clause 14.14, the final date for payment shall be 5 Business Days after the due date (the "Final Date for Payment").
- 14.8 If the Buyer fails to properly pay the amount or any part thereof due to the Seller by the Final Date for Payment and/or Final Payment the

Buyer shall pay to the Seller in addition to the amount not properly paid, simple interest thereon for the period until such payment is made. The Buyer shall treat payment of such simple interest as a debt due to the Seller. The rate of interest payable shall be 8% over the base rate of the Bank of England (calculated on a daily basis) which is current at the date of the payment by the Seller became due. The parties agree that this clause 14.8 is a substantial remedy for late payment of any sum payable under the Conditions in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

- 14.9 Subject to a Pay Less Notice, each and every Payment Notice, including the Buyer's Payment Notice and Seller's Payment Notice (as the case may be), shall have effect in any proceedings under or arising out of or in connection with these Conditions as conclusive evidence that the Contract Works carried out to which that particular Payment Notice relates is in accordance with the Contract.
- 14.10 Within 12 calendar months after practical completion of the Contract Works the Seller shall send to the Buyer the Seller's proposed final account setting out the sum that the Seller considers to be or have become due upon practical completion, the work or part thereof to which the payment relates and the basis on which that sum is calculated along with all documents reasonably necessary for calculating the Final Contract Price ("the Seller's Payment Notice").
- 14.11 Not later than 2 calendar weeks after receipt of the Seller's Payment Notice the Buyer shall prepare and send to the Seller a statement of the calculation of the Final Contract Price setting out the sum that the Buyer considers to be or have become due upon practical completion, the work or part thereof to which the payment relates and the basis on which that sum is calculated ("the Buyer's Payment Notice").
- 14.12 If the Seller does not receive a Buyer's Payment Notice within 2 calendar weeks of submission of the Seller's Payment Notice pursuant to clause 14.11 the Final Contract Price shall be that set out in the Seller's Payment Notice and, subject to clause 14.6, shall be binding on both parties.
- 14.13 The due date for the Final Contract Price shall be the date when the Buyer's Payment Notice is received by the Seller or the date pursuant to clause 14.12, whichever is earlier.
- 14.14 The final date for payment of the Final Contract Price shall be 5 Business Days after the date pursuant to clause 14.13 ("Final Payment").
- 14.15 Where the Buyer fails to comply with clause 14.4, section 110B of the Construction Act shall apply.

## 15 CONFIDENTIAL INFORMATION

Neither party shall during and after termination of this Contract, without the prior written consent of the other party use or disclose to any other party any information of the other party which is identified as confidential or which is confidential by its nature. This clause 15 shall survive termination of the Contract.

## 16 LIMITATION OF LIABILITY: THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 16.1 Nothing in this Contract shall limit or exclude the Seller's liability for: (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); (e) defective products under the Consumer Protection Act 1987; (f) any other liability which cannot be excluded as a matter of law.
- 16.2 Subject to clause 16.1:
- 16.2.1 The Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
- (a) loss of profit,
  - (b) loss of chance;
  - (c) loss of business;
  - (d) loss of goodwill; or

(e) any indirect or consequential loss arising under or in connection with the Contract, and

16.2.2 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 10% of the Contract Price (or Final Contract Price in the event of Contract Works) and, where the Call-off Order is placed, liability shall in no circumstances exceed 10% of the price of the delivery in respect of which the alleged breach arose and not, for the avoidance of doubt, the full Contract Price of the Call-off Order.

16.3 Except as set out in the Contract, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

16.4 The Seller shall not be responsible to replace and/or rectify the Contract Works pursuant to clause 18.2 nor be liable for, without limitation, any costs, losses, damages and/or expenses whatsoever where the Buyer has failed to notify the Seller by written notice (excluding email) that there is a defect in materials, design or workmanship in respect of the Contract Works within 10 Business Days of the defect becoming apparent or where an suitably experienced member of the Buyer's profession would have become aware of the defect(s).

16.5 This clause 16 shall survive termination of the Contract.

16.6 The Seller shall have no liability in relation to any manufacturers or any third party information (including, unlimited to, any data sheets) passed on or otherwise supplied to the Buyer.

## 17 PRACTICAL COMPLETION

17.1 This clause 17 shall only apply where the Seller is carrying out Contract Works. This clause does not apply where the Order requires supply of Goods only and/or standalone Design Services.

17.2 Practical completion of the Contract Works shall take place when the Seller notifies the Buyer that it considers the Contract Works have been completed (the Seller acting reasonably).

## 18 DEFECTS

18.1 This clause 18 shall only apply where the Seller is carrying out Contract Works. This clause does not apply where the Order requires supply of Goods only and/or standalone Design Services.

18.2 The Seller shall replace and/or rectify without charge and within a reasonable period notified to the Buyer and agreed by the Seller following notification of the same any of the Contract Works which under proper use are found to be defective as to materials, design (if applicable) or workmanship and/or otherwise do not comply with the Contract as notified to the Seller by the Buyer in accordance with clause 16.4 at any time on or prior to the expiry of the Defects Liability Period.

## 19 TERMINATION

19.1 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the other party if:

19.1.1 the Buyer defaults in any of its payment obligations;

19.1.2 the Buyer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 10 calendar days after receipt of notice in writing of the breach;

19.1.3 any distress or execution is levied upon any assets of the Buyer;

19.1.4 a winding up petition is filed in relation to the Buyer, or where the Buyer is an individual, they become subject to a bankruptcy petition or order;

19.1.5 the Buyer makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a Court of competent jurisdiction for protection from its creditors or an administration or winding up order is



made or an administrator or receiver is appointed in relation to the Buyer;

19.1.6 the financial position of the Buyer deteriorates to such an extent that in the opinion of the Seller the capability of the Buyer adequately to fulfil its obligations in accordance with the Contract has been placed in jeopardy;

19.1.7 the Buyer suspends, or threatens to suspend, payment of its debts and/or threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or

19.1.8 the Buyer has failed to comply with clause 12.10 prior to the intended date of commencement of the Contract Works and the intended date of commencement of the Contract Works as set out in the Order Acknowledgement has passed.

19.2 Without prejudice to clause 19.2 and without limiting its other rights or remedies, the Seller may terminate the Contract by giving the Buyer 10 Business Days' written notice.

19.3 Without limiting its other rights or remedies, the Seller shall have the right to suspend all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if: (a) the Buyer fails to pay any amount due under this Contract on the due date for payment; or (b) the Buyer becomes subject to any of the events listed in clause 19.1.3 to 19.1.7, or the Seller reasonably believes that the Buyer is about to become subject to any of them.

## 20 CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason: (a) the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest; (b) the accrued rights and remedies of the Seller as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 21 SUSPENSION

21.1 If the Buyer fails to pay the sum notified in the Payment Notice to the Seller or a default notice (pursuant to section 110B of the Construction Act) under this Contract by the Final Date for Payment under clause 14 and the Buyer has not given a Pay Less Notice complying with clause 14 the Seller may suspend the performance of any or all of its Contract Works and other obligations under this Contract by giving not less than 2 calendar days' notice to the Buyer of its intention to do so and stating the ground or grounds on which it intends to suspend performance.

21.2 Without limiting its other rights or remedies, in the event of a suspension in accordance with this clause 21 the Buyer shall pay the Seller:

21.2.1 a reasonable amount in respect of costs and expenses reasonably incurred by the Seller as a result of any exercise of its right referred to in clause 21.1; and

21.2.2 (taking into account any sum paid under clause 21.2.1) any adjustment to the Contract Price due under clause 12.8.

21.3 Without limiting its other rights or remedies under the Contract, the Seller may immediately suspend performance under the Contract and any other contract or agreement between the parties (including Contract Works) where the Buyer's credit facility with the Seller has been suspended or paused by the Seller or where the Buyer has exceeded the credit limit applied to any such credit account. The Buyer's credit facility shall be determined by the Seller from time to time at the Seller's absolute discretion and may be suspended, withdrawn and/or reinstated at any time.

## 22 ADJUDICATION

Where this Contract is a 'construction contract' for the purposes of section 104 of the Construction Act either party may refer any dispute or difference arising under this agreement to adjudication. The adjudication procedures and the agreement for the appointment of an adjudicator shall be as set out in the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended). The nominating body shall be the Royal Institute of Chartered Surveyors (RICS) or any successor organisation.

## 23 GENERAL

### 23.1 Force majeure:

23.1.1 For the purposes of this Contract, "Force Majeure Event" means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage,

compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or by any failure of the Seller's suppliers or sub-contractors to supply or provide services to (or on behalf of) the Seller.

23.1.2 The Seller shall not be liable to the Buyer for any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

23.1.3 If the Force Majeure Event prevents the Seller from providing any of the Goods, Design Services or Contract Works for more than 14 calendar days, the Seller shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

### 23.2 Assignment and subcontracting:

23.2.1 The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

23.2.2 The Buyer shall not, without the prior written consent of the Seller (such consent at the Seller's discretion), assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

### 23.3 Data and Data Protection:

23.3.1 The Seller may use any information that the Buyer has provided to the Seller to enable a search to be made with credit reference agencies to assess the creditworthiness of the Buyer and to search against any personal credit records of all directors and/or proprietors of the Buyer (in respect of which the Buyer confirms that all necessary consents from the individuals have been obtained) where the Buyer has sought or has entered into credit terms with the Seller. Such searches may include a search against current or previous addresses in the last three years

23.3.2 For the purposes of credit referencing, fraud prevention and any money laundering regulations that may apply, the Seller may share the account information and trade history with other lenders, telecommunication companies and credit reference agencies. The Seller may from time to time review the account of the Buyer, and further searches of credit reference agencies and/or personal credit record searches may be undertaken by the Seller.

23.3.3 Each party shall, in relation to any personal data provided to it by the other process such personal data in accordance with Data Protection Legislation.

23.3.4 Under the Data Protection Act 2018 and the General Data Protection Regulations those individuals referred to at clause 23.3.1 above have the right to apply for a copy of the information about them held by the Seller, for which the Seller may charge a fee dependent on the complexity of the request, and have the right to correct any inaccuracies in any such information held by contacting [dataprotection@sigplc.co.uk](mailto:dataprotection@sigplc.co.uk)

### 23.4 Waiver and cumulative remedies:

23.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by the Seller in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

23.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

#### **23.5 Severance:**

23.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

23.5.2 Subject to clause 23.5.3, if any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

23.5.3 Without prejudice to clause 23.5.1 and clause 23.5.2, in the event that clause 16.2.2 is found to be invalid, illegal or unenforceable by a court or other competent authority clause 16.2.2 shall be deemed deleted from the Contract and replaced by the following new clause 16.2.2:

- (a) the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Contract Price (or Final Contract Price in the event of Contract Works) and, where the Call-off Order is placed, liability shall in no circumstances exceed the price of the delivery in respect of which the alleged breach arose and not, for the avoidance of doubt, the full Contract Price of the Call-off Order.

#### **23.6 No partnership**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

#### **23.7 Third parties**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

#### **23.8 Variation**

Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Seller.

#### **23.9 Governing law and jurisdiction**

This Contract and, subject to clause 22, any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.