

Terms and conditions of sale

1. Definitions and Interpretation

1.1 In these Conditions the following words have the following meanings:

"ABC" means Avon Barrier Corporation Limited, a company registered in England and Wales under company number 08860774.

"CIS Regulations" means the Finance Act 2004 and any regulations made under Section 74 of the Finance Act; the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) as amended and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2007, 2015 and 2016 (SIs 2007/672, 2015/429 and 2016/348) and any other statute or subordinate legislation relating to the construction industry scheme as modified from time to time or replaced whether before or after the date of the Contract.

"Commencement Date" means the later of the date of commencement of the Works as specified in the Confirmation of Order and the date on which Works are commenced.

"Completion Date" means the date when ABC certifies the Works as complete in accordance with these Conditions.

"Conditions" means these terms and conditions as amended from time to time in accordance with Clause 12.

"Confirmation of Order" has the meaning given to it in Clause 3.2.

"Contract" means a contract between ABC and the Customer for the supply by ABC of Products and/or carrying out by ABC of Works, in accordance with these Conditions.

"Contract Documents" means the following:

- (a) the Order;
- (b) the Confirmation of Order;
- (c) these Conditions;
- (d) the Quotation; and
- (e) such other documents as are expressly referred to in the Order as forming part of the Contract,

provided always that in the event of any inconsistency between the terms of such documents the contents of such documents shall prevail and over-ride each other in the following order of priority: Confirmation of Order; these Conditions; Order; Quotation.

"Contract Price" means the price payable by the Customer for the Products and/or Works as set out in the Confirmation of Order net of all trade, cash and other discounts and exclusive of value added tax, as may be adjusted by written agreement of ABC and the Customer from time to time.

"Customer" the person or firm who purchases the Products and/or Works from ABC.

"Data Protection Legislation" means the Data Protection Act 1988 and the GDPR and any national implementing laws, regulations and secondary legislation as amended or updated from time to time in the UK (unless and until the GDPR is no longer directly applicable in the UK, in which case it shall mean any successor legislation to the GDPR or the Data Protection Act 1998).

"Defect" means any defect, excessive shrinkage or other fault to or in the Works or the Products which ABC, in its sole discretion, considers can be rectified through rectification works, technical advice, adjustment or setting.

"Defects Fixing Period" means the period specified in clause 27, commencing on the Completion Date, during which period ABC agrees to rectify Defects in accordance with the Contract.

"**Force Majeure Event**" means an event or circumstance beyond a party's reasonable control, including act of God, war, riot, strike, lockout, trade, dispute or labour disturbance, accident, breakdown of plant or machinery, failure of transportation, fire, flood or storm.

"**GDPR**" General Data Protection Regulation ((EU) 2016/679).

"**Order**" means the Customer's order for the Products and/or Works, as set out (i) in the Customer's purchase order form or other written request, (ii) in the Customer's written acceptance of a Quotation, or (iii) overleaf, as the case may be.

"**Product(s)**" means the product(s) (or any part of them) stated in the Confirmation of Order.

"**Project**" has the meaning given to it (or the project described) in the Confirmation of Order.

"**Quotation**" means the quotation provided by ABC to the Customer in respect of the supply of Products and/or Works, as may be varied by agreement in writing between the Customer and ABC from time to time.

"**Site**" means the site specified in the Order.

"**Statutory Requirements**" means all general or local Acts of Parliament and the regulations and byelaws of any local or other statutory authority which may be applicable to the Works and the rules and regulations of all public bodies and companies whose property or rights are or may be affected in any way by the Works.

"**Statutory Scheme**" means the Scheme for Construction Contracts Statutory Instrument 1998 (SI 1998/649), as amended (SI 2011/1715).

"**Time for Completion**" means the time for completion of the Works as stated in the Confirmation of Order or Quotation (as the case may be), or such later period as may be agreed from time to time under Clause 12 of Part A.

"**Variation**" means the addition, variation, removal or substitution of any work or services in the Works including the manner and timing of the performance of the Works.

"**Working Day**" means a day (other than a Saturday or Sunday) on which clearing banks are open for business in the City of London.

"**Works**" means the works which ABC is appointed to carry out as specified in the Quotation, Order or Confirmation of Order (as the case may be) or as may be agreed under Clause 12 of Part A.

1.2 In these Conditions, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (b) a reference to a statute or statutory provision includes any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it whether such statute or statutory provision comes into force before or after the date of the Contract;
- (c) a reference to:
 - (i) any party includes its successors in title and permitted assigns;
 - (ii) a clause or sub-clause is to a clause or sub-clause of these Conditions.

Part A

2. Unless otherwise specified in the Contract Documents or otherwise agreed in writing by ABC and the Customer:

- (a) the provisions of this Part A shall apply to all Contracts entered into between ABC and the Customer and to all Products supplied and Works carried out and other services provided by ABC in relation to the Project whether or not such Works or services are carried out before or after the date of the Order; and
- (b) the provisions of Part B of these Conditions shall also apply where installation and or other construction works are also being provided as part of the Works.

3. Basis of Contract

- 3.1 The Order constitutes an offer by the Customer to purchase Products and/or Works in accordance with these Conditions.
- 3.2 The Order shall only be deemed to be accepted when ABC issues written acceptance of the Order (**Confirmation of Order**) at which point and on which date the Contract shall come into existence.
- 3.3 Any samples, drawings, descriptive matter or advertising issued by ABC and any illustrations or descriptions of services contained in ABC's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the services and/or goods described in them. They shall not form part of the Contract or have any contractual force.
- 3.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.5 Any quotation given by ABC shall not constitute an offer, and is only valid for a period of one month from its date of issue.
- 3.6 All of these Conditions shall apply to the supply of both Products and Works except where application to one or the other is specified.

4. The Products

- 4.1 The Products are described in ABC's catalogue (as modified by any applicable specification of the Products in the Contract Documentation).
- 4.2 To the extent that the Products are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify ABC 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 costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by ABC arising out of or in connection with any claim made against ABC for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with ABC's use of the specification. This Clause 4.2 shall survive termination of the Contract.
- 4.3 ABC reserves the right to amend the Products specification if required by any applicable statutory or regulatory requirement, and ABC shall notify the Customer in any such event.

5. Quality of Products

- 5.1 ABC warrants that on delivery and for a period of 12 months from the date of delivery or such other period as provided in the Confirmation of Order ("**Product Warranty Period**"), the Products shall:
 - (a) conform in all material respects with their description and any applicable specification expressly set out in the Confirmation of Order;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

- (d) where the Confirmation of Order expressly states that they have been crash-tested, be manufactured in all material respects in accordance with the crash-tested design for such a Product; and
- (e) where the Confirmation of Order expressly states that they have been tested to a particular standard, be manufactured in all material respects in accordance with that standard.

ABC provides no further warranty as to the fitness for purpose of any Product and the Customer acknowledges that it is relying on its own knowledge, skill and judgment in deciding which Products to purchase and whether the Products are fit for the purpose and application for which they will or are anticipated to be used.

5.2 Subject to Clause 5.3, ABC shall, at its option and in its sole discretion, repair or replace any Product with a defect, or refund the Contract Price of the defective Products in full, if:

- (a) the Customer gives notice in writing during the Products Warranty Period and within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in Clause 5.1;
- (b) ABC is given a reasonable opportunity of examining the Products; and
- (c) the Customer (if asked to do so by ABC) returns such Products to ABC's place of business at the Customer's cost (provided that if the relevant Products cannot reasonably be returned to ABC, ABC shall at the Customer's cost attend the Site to repair or replace the Products).

5.3 ABC shall not be liable for Products' failure to comply with the warranty in Clause 5.1 if:

- (a) the defect arises because the Customer failed to follow ABC's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
- (b) the defect arises as a result of ABC following any drawing, design or specification supplied by the Customer;
- (c) the Customer alters or repairs such Products without the written consent of ABC;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (e) the Products differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this Clause 5, ABC shall have no liability to the Customer in respect of any Product's failure to comply with the warranty set out in Clause 5.1.

6. Price and payment

6.1 The Contract Price shall be inclusive of all costs and charges of packaging, insurance, transport of the Products. Where the Contract Documents refer to terms such as F.O.B and C. & F. which bear defined meanings in the then current edition of Incoterms, those defined meanings will apply unless expressly stated otherwise in the Contract Documents.

6.2 ABC reserves the right to increase the Contract Price, by giving notice to the Customer at any time before delivery of the Products or carrying out of the Works, to reflect any increase in the cost incurred by ABC that is due to:

- (a) any factor beyond the control of ABC (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the specification for or scope of the Works, or any agreed Variation;
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give ABC adequate or accurate information or instructions in respect of the Products or the Works; or
- (d) any failure by the Customer to comply with its obligations under the Contract.

6.3 The Customer shall pay the Contract Price to ABC in accordance with the payment terms set out in these Conditions or as may be set out in the Confirmation of Order in cleared funds to a bank account nominated in writing by ABC.

6.4 Where the Contract provides for Products only, the due date for payment will be the date of delivery of the Products. Unless expressly stated otherwise in the Confirmation of Order, ABC may submit an invoice to the Customer on or at any time after the date of delivery (or deemed delivery) of the Products and the final date for payment of the invoice will be 30 days after the date of the invoice.

6.5 Where the Contract provides for Works in addition to Products, ABC may submit a payment request or invoice at any time after the Commencement Date and the due date for payment will be 15 days after submission of that payment request or invoice. Payment requests may be submitted by ABC fortnightly thereafter. Not later than 5 days after the due date of any payment, ABC may notify the Customer of the amount it considers to be due and the basis on which that amount is calculated. The final date for payment is 15 days after the due date. Any pay less notice must be served by the Customer not later than 7 days before the final date for payment.

6.6 All amounts payable by the Customer 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 ABC to the Customer, the Customer shall, on receipt of a valid VAT invoice from ABC, pay to ABC such additional amounts in respect of VAT as are chargeable on the supply of the Works or Products at the same time as payment is due for the supply of the Works or Products.

6.7 If the Customer fails to make a payment due to ABC under the Contract by the final date for payment, then, without limiting ABC's remedies under Clause 15 (Termination), the Customer shall pay interest on the overdue sum from the final date for payment until payment of the overdue sum, whether before or after judgment. Interest under this Clause 6.7 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

6.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. Delivery

7.1 This Clause 7 shall apply only where delivery by ABC is included in the Quotation or Confirmation of Order.

7.2 ABC shall deliver the Products and other materials relating to the Works to the Site on the date or dates to be agreed between the parties provided always that any date(s) quoted or agreed for delivery are approximate only and the time of delivery is not of the essence. ABC shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or any failure on the part of the Customer, including the Customer's failure to provide ABC with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

7.3 ABC reserves the right to deliver the Products in more than one delivery.

7.4 If ABC fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products. ABC shall have no liability for any failure to deliver the Products to extent that such failure is caused by a Force Majeure Event or any failure on the part of the Customer, including a failure to provide ABC with adequate delivery instructions for the Products or any relevant instruction related to the supply of the Products.

7.5 If the Customer fails to accept delivery of the Products within 5 Working Days of ABC notifying the Customer that the Products are ready, then except where such failure or delay is caused by a Force Majeure Event or by ABC's failure to comply with its obligations under the Contract in respect of the Products:

(a) Delivery of the Products shall be deemed to have been completed at 9.00 am on the fifth Working Day following the day on which ABC notified the Customer that the Products were ready (whereupon an invoice may be submitted under Clause 6.4); and

(b) ABC shall store the Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

7.6 Signature of any delivery note by the Customer, or his agents or carrier, shall be conclusive proof of delivery and the Customer's acceptance of the Products. Products should be checked prior to acceptance, and any damaged or missing items should be detailed on the delivery note and notified by the Customer to ABC in writing on the same day that the Products have been delivered.

7.6 Unless otherwise agreed between the parties in writing, the Customer shall be responsible for unloading the Products from the delivery vehicle and removal of the Products to safe, dry storage.

7.7 Delivery to any restricted area of the Site is not included in the Contract Price unless otherwise stated in the Quotation or Confirmation of Order.

7.8 In the event the Customer requests a delay in delivery of Products at the Site, payment will remain due for the consignment on the earlier of the requested delivery date or date on which the Products become available for collection or delivery, as the case may be.

8. Data Protection

8.1 Both parties will comply with all applicable requirements of Data Protection Legislation.

9. Title and risk

9.1 The risk in the Products shall pass to the Customer on completion of delivery.

9.2 Title, ownership, property and beneficial interest in all materials to be supplied as part of the Works and Products shall not pass to the Customer until ABC receives payment for such materials and Products (and any other goods that ABC has supplied to the Customer in respect of which payment has become due) in full in cash or cleared funds, whereupon title, ownership, property and beneficial interest shall pass to the Customer.

9.3 Until title to the Products and materials to be supplied as part of the Works has passed to the Customer, the Customer shall:

- (a) store the Products and materials separately from all other goods held by the Customer so that they remain readily identifiable as ABC's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products or materials;
- (c) maintain the Products and materials in satisfactory condition and keep them insured against all risks for their full price on ABC's behalf from the date of delivery; and
- (d) notify ABC immediately if it becomes subject to any of the events giving ABC a right to terminate the Contract under Clause 15.1(b) to (d).

9.4 Subject to Clause 9.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before ABC receives payment for the Products. However, if the Customer resells the Products before that time:

- (a) it does so as principal and not as ABC's agent; and
- (b) title to the Products shall pass from ABC to the Customer immediately before the time at which resale by the Customer occurs.

9.5 If before title to the Products passes to the Customer the Customer becomes subject to any of the events giving rise to a termination right under Clause 15, then without limiting any other right or remedy ABC may have:

- (a) the Customer's right to resell Products or use them in the ordinary course of its business ceases immediately; and
- (b) ABC may at that time:

- (i) require the Customer to deliver up all Products and materials supplied as part of the Works in its possession which have not been resold, or irrevocably incorporated into another product; and
- (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products and materials are stored in order to recover them.

10. Export Licences, Duties, etc.

10.1 The payment of all export and import duties, taxes, charges and assessments and the obtaining of any necessary export and import licences in respect of the Products is the sole responsibility of the Customer and ABC shall have no responsibility whatsoever to the Customer in respect of Products exported without the necessary export and import licences.

10.2 ABC will provide the following documents with each sale of Products:

- (a) commercial invoice;
- (b) packing list;
- (c) one copy of the generic operating manual; and
- (d) a UK Certificate of Origin for export sales (if requested).

10.3 For all export shipments the documents will be stamped by the local chamber of commerce or equivalent entity. If the Customer requires any documents to be stamped by other authorities additional charges will apply.

11. Site Preparation and Installation

11.1 The Customer shall, at its cost, supply any services required to be supplied by it as set out in the Quotation or Confirmation of Order or as may be required pursuant to Clause 28, prior to the commencement of the Works.

11.2 The Customer shall provide ABC with such access to such part or parts of the Site at such times and for such periods as may be reasonably necessary to enable ABC to carry out its obligations under the Contract.

12. Variations

12.1 The Customer may issue a written request for a Variation by way of a notice.

12.2 If any request made under Clause 12.1:

- (a) shall require ABC to undertake work not provided for in, or to be reasonably inferred from, the Contract Documents; or
- (b) shall impose any additional obligation or restriction on ABC or shall require the omission of any work or of any obligation or restriction,

and provided that such instruction has not arisen from, and compliance with it does not reveal, any negligence, omission or default of the Customer or any of its servants, agents, sub-contractors, suppliers or other persons engaged by the Customer, ABC shall decide whether to accept such Variation, and shall inform the Customer by written notice within 14 days of receiving the Variation request of its decision. Such notice shall include:

- (a) the value of any adjustment to the Contract Price that may result from the Variation; and
- (b) the length of any extension of time to the Time for Completion to which ABC shall be entitled.

12.3 The Customer shall then confirm, amend or retract its Variation request within 7 days of receipt of the notice from ABC.

12.4 If the Customer cancels an order for Products and/or Works recorded in a Confirmation of Order at any time, then a cancellation charge shall be payable by the Customer equal to the higher of:

- (a) any monies already paid by the Customer to ABC; or
- (b) 20% of the Contract Price; or

- (c) the aggregate of (i) such percentage of the part of the Contract Price relating to Products as is equal to ABC's reasonable estimate of the percentage completion of those Products (in terms of manufacturing) as at the time of cancellation and (ii) such percentage of the part of the Contract Price relating to Works (if any) as is equal to ABC's reasonable estimate of the percentage completion of those Works as at the time of cancellation.

For the avoidance of doubt, Products (or parts of Products) which are the subject of a cancelled order shall remain owned by ABC (and shall immediately be returned by the Customer to ABC if held by it). Cancellation charges will be payable immediately upon receipt of an appropriate invoice from ABC.

13. Limitations on Liability

13.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

13.2 Subject to clause 13.1 and clause 13.3:

- (a) ABC's total liability for damage to property caused by the negligence of its employees in connection with this agreement shall be limited to £100,000 for any one event or series of connected events;
- (b) ABC's total liability to the Customer for all other loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract, shall not exceed an amount equal to the higher of (i) 110% of the Contract Price and (ii) such amount as ABC is able to recover in respect of the relevant claim under any applicable insurance policy.

13.3 ABC shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill or any indirect or consequential loss arising under or in connection with this agreement, provided always that the following types of loss and specific losses are not excluded:

- (a) sums paid by the Customer to ABC pursuant to the agreement, in respect of any Products or Works not provided by ABC in accordance with the Contract;
- (b) additional costs of procuring and implementing replacements for, or alternatives to, Products or Works not provided by ABC in accordance with the Contract; and
- (c) losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of ABC. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, ABC's personnel, regulators and customers of the Customer.

13.4 ABC has given commitments as to compliance of the Products and Works with these Conditions. In view of these commitments, terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.5 ABC may not benefit from the limitations and exclusions set out in this Clause 13 in respect of any liability arising from its deliberate default.

ABC shall not be liable for any costs incurred by the Customer for any repairs made by or on behalf of the Customer without ABC's prior written approval.

ABC shall not be liable for any claim relating to the Products or the Works unless the Customer shall have given ABC notice in writing of the claim (giving reasonable details of the claim and the grounds for it), within the period of two years after the date on which the Customer became, or ought reasonably to have become, aware of the event or circumstances giving rise to the claim.

This Clause 13 shall survive termination of the Contract.

14. Force majeure

14.1 If a party is or will be prevented from performing any of its obligations under the Contract by a Force Majeure Event, it shall give notice to the other party of the event or circumstances constituting the Force Majeure Event and shall specify the obligations, the performance of which is or will be prevented.

14.2 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event.

15. Termination

15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.2 Without affecting any other right or remedy available to it, ABC may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract by the final date for payment.

15.3 Without affecting any other right or remedy available to it, ABC may suspend, on 7 days' written notice giving grounds of suspension, any or all of its obligations under the Contract if the Customer fails to pay any amount due under the Contract by the final date for payment, or if the Customer becomes subject to any of the events listed in Clauses 15.1(b) to (d), or ABC reasonably believes that the Customer is about to become subject to any of them.

15.4 On termination of the Contract:

- (a) the Customer shall immediately pay to ABC all of ABC's outstanding unpaid invoices and interest and, in respect of Works and Products supplied but for which no invoice has been submitted, ABC shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
- (b) the Customer shall return to ABC all Products which have not been fully paid for and all materials, equipment, documents and other property of ABC at the Customer's premises. If the Customer fails to do so, then ABC may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

15.5 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

15.6 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

16. Construction Industry Scheme

16.1 ABC is a "sub-contractor" for the purposes of the CIS Regulations and is registered to receive gross payments.

17. Assignment

17.1 ABC may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

17.2 The Customer shall not assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any manner with any or all of its rights or obligations under the Contract without the prior written consent of ABC.

18. Entire Agreement

18.1 The Contract constitutes the entire agreement and understanding between the parties and supersedes and extinguishes all prior agreements, understandings or arrangements (whether oral or written) in respect of its subject matter.

18.2 Each party acknowledges that:

- (a) upon entering into the Contract, it does not rely, and has not relied, upon any representation (whether negligent or innocent), statement, warranty or other term made or agreed to by any person (whether a party to the Contract or not) that is not set out in the Contract; and
- (b) nothing in this Clause 18 shall limit or exclude liability for fraud.

19. Third Party Rights

19.1 Unless expressly stated otherwise, no term of the Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

20. Invalidity

20.1 To the extent that any provision of the Contract is or is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, it shall be deemed to be modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed to be deleted from the Contract. Any modification or deletion of a provision shall not affect the validity or enforceability of the remainder of the Contract nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

21. Non-waiver

21.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under the Contract or otherwise.

22. Notices

22.1 Any notice to a party under the Contract shall be in writing, signed by or on behalf of the party giving it and shall be served on a party if delivered personally or sent by prepaid first class post, prepaid recorded delivery, or airmail to the address of the party set out in the Confirmation of Order, or by email to any email address expressly stated as being for notice purposes in connection with the Contract in any Contract Document, or as otherwise notified in writing from time to time.

22.2 Except as referred to in Clause 22.3 a notice shall be deemed to have been served:

- (a) at the time of delivery if delivered personally;

- (b) at the time of transmission in the case of email, provided that if this time falls outside business hours in the place of receipt, then when business hours resume. In this case business hours means 9.00am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt;
- (c) two (2) Working Days after posting in the case of an address in the United Kingdom; and
- (d) five (5) Working Days after posting by airmail in the case of an address outside the United Kingdom.

22.3 The deemed service provisions set out in sub-clause 22.2(c) (and (d) do not apply to a notice served by post, if there is a disruption of postal services which affects the delivery of the notice.

23. No partnership or agency

23.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

24. Confidentiality

24.1 Each party undertakes that it shall not at any time during the Contract and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 24.2. Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 24; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract. Without limiting the foregoing, the Customer will not use any confidential information of ABC to entice away any of ABC's officers or employees.

25. Governing Law and jurisdiction

25.1 Unless otherwise agreed between the parties in writing, the Contract and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by English law.

25.2 The parties irrevocably agree that the English courts shall have non-exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with the Contract, its subject matter or formation.

PART B

26. The provisions of this Part B shall apply in addition to the provisions of Part A above in respect of any Contract under which ABC is to carry out installation or other construction work in addition to the supply of Products as part of the Works, whether as specified in the Quotation, Order or Confirmation of Order (as the case may be) or as subsequently agreed in writing between the Customer and ABC.

27. Defects Fixing Period

27.1 The Defects Fixing Period shall run for a period of 12 months or such other period as may be specified in the Confirmation of Order or agreed in writing between ABC and the Customer.

27.2 ABC shall remedy all Defects notified by the Customer in writing during the Defects Fixing Period, provided that ABC, in its sole discretion, agrees that any such notified issues constitute Defects and provided also that ABC shall be under no obligation to remedy Defects under this Clause 27 where the only services it has provided are commissioning services.

27.3 During the Defects Fixing Period, the Customer shall not be entitled to carry out any rectification works and ABC will have no liability for the cost of any such works, unless expressly agreed in writing by ABC.

28. ABC's rights and obligations

28.1 ABC shall execute and complete the Works:

- (a) in all material respects in accordance with the Contract Documents;
- (b) in a good and workmanlike manner and using reasonable skill and care; and
- (c) in accordance with all applicable Statutory Requirements.

28.2 ABC shall use all reasonable endeavours to meet any performance dates for the Works specified in the Confirmation of Order, including the Time for Completion, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Works.

28.3 ABC reserves the right to amend the Works if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Works provided that ABC shall notify the Customer in any such event.

28.4 All information provided by ABC to the Customer remains the property of ABC and may not be copied or altered without the prior written consent of ABC.

28.5 All information provided by ABC to the Customer is indicative only unless otherwise specified by ABC, and ABC provides no warranty as to the accuracy of such information.

28.6 ABC's shall maintain the following insurance: Employers Liability (£10m any one loss), Public and Products Liability (£10m any one accident and in aggregate in any period of insurance for all products supplied) and Contractors All Risks (£100,000 any one loss) or such insurance as may be specified in the Confirmation of Order.

29. Customer's obligations

29.1 The Customer shall at its own cost:

- (a) ensure that the terms of the Quotation, Confirmation of Order and any information in relation to the Products and /or the Works are complete and accurate;
- (b) co-operate with ABC in all matters relating to the Works;
- (c) provide ABC, its employees, agents, consultants and subcontractors, with access to the Site, Customer's premises, office accommodation and other facilities as may be reasonably required by ABC to provide the Works;
- (d) provide ABC with such information and materials as ABC may reasonably require in order to supply the Works, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Works;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Works before the date on which the Works are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of ABC (**ABC Materials**) at the Customer's premises in safe custody at its own risk, maintain the ABC Materials in good condition until returned to ABC, and not dispose of or use the ABC Materials other than in accordance with ABC's written instructions or authorisation; and
- (i) maintain adequate insurance of the Site and of the Works or as may be specified in the Confirmation of Order.

29.2 If ABC's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, ABC shall have the right, on 7 days' notice in writing setting out the grounds of suspension, to suspend performance of any or all of the Works until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of

any of its obligations in each case to the extent the Customer Default prevents or delays ABC's performance of any of its obligations;

(b) ABC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ABC's failure or delay to perform any of its obligations as set out in this Clause 29.2; and

(c) the Customer shall reimburse ABC on written demand for any costs or losses sustained or incurred by ABC arising directly or indirectly from the Customer Default.

30. Commencement, delays and completion

30.1 On the Commencement Date ABC shall commence the execution of the Works and shall endeavour to complete the Works on or before the expiry of the Time for Completion.

30.2 If the progress of the Works is delayed as a result of any matter outside of the reasonable control of ABC, then ABC shall be entitled to an extension of time to the Time for Completion.

30.3 In the event of delay to the Works due to a Customer Default as referred to in Clause 29.2 above, ABC shall not be liable to the Customer for any losses, costs or damages arising from that delay, whether liquidated or unliquidated.

30.4 Upon completion of the Works, ABC shall issue a certificate of completion to the Customer.

30.5 Following the issue of the certificate of completion, ABC shall provide reasonable telephone and email support to the Customer for the duration of the Defects Fixing Period.

32. Adjudication

32.1 If and to the extent only that this Part B applies to the Contract, any dispute or difference arising between the parties in connection with the Contract may be referred to adjudication in accordance with the Statutory Scheme.