

CONDITIONS

1. INTERPRETATION

1.1 The definitions and rules of interpretation set out at clause 11 apply to this Contract.

2. QUOTE

2.1 The 'Quote' set out in the Contract Details ("Quote") is valid and available for acceptance by the Customer for 30 days from the date on which it is notified to the Customer, unless the Supplier advises the Customer otherwise. The 'Quote' is based upon information received by the supplier prior to date of Quote. Any significant changes to drawings, structure or work to be carried out by the supplier after issue of Quote may incur additional charges to the customer.

2.2 Upon the signing of this Contract by the Customer, the amount of the Quote will constitute the Charges (as defined in clause 11) payable by the Customer on the terms of this Contract.

3. COMMENCEMENT

This Contract shall commence on the later of the dates set out next to the signatures of each party shown on the Contract Details.

4. SUPPLY OF SERVICES

4.1 The Supplier shall use its reasonable endeavours to supply the Services to the Customer within such period as has been agreed by the parties or included in the Contract Details (or, where no such period has been agreed or included in the Contract Details, within a reasonable period of the date of this Contract).

4.2 In supplying the Services, the Supplier shall:

- perform the Services with reasonable care and skill;
- use reasonable endeavours to perform the Services in accordance with any service description set out in the Contract Details;
- ensure that the Drawings are of satisfactory quality and are fit for purpose;
- observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Customer's premises and have been communicated to the Supplier; and
- take reasonable care of all Customer Materials in its possession and make them available for collection by the Customer on reasonable notice and request, always provided that the Supplier may destroy the Customer Materials if the Customer fails to collect the Customer Materials within a reasonable period after termination of this Contract.

4.3 In supplying the Services the Supplier shall not be liable or responsible for:

- any errors, omissions or discrepancies in any Customer Materials; and
- any loss or damage resulting from any Drawings produced in accordance with any Customer Materials.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- co-operate with the Supplier in all matters relating to the Services;
 - obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services; and
 - provide, in a timely manner, such information as the Supplier may reasonably require, and ensure that it is accurate in all material respects.
- 5.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall:
- not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
 - be entitled to payment of the Charges despite any such prevention or delay; and
 - be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.
- 5.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement.

6. INTELLECTUAL PROPERTY

6.1 Unless otherwise agreed in writing, the Supplier and its licensors shall retain ownership of all Supplier IPRs. The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.

6.2 The Intellectual Property Rights in all drawings, reports, models, specifications, calculations and such other documents and information prepared by or on behalf of the Supplier pursuant to this Contract shall remain owned by and vested in the Supplier.

6.3 Subject to the Supplier having received payment of any fees properly due and owing to it pursuant to this Contract, and as far as is permitted by law and is reasonably practicable, the Supplier grants the Customer a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy and use the Supplier's IPR for purposes relating to the Project only, including, but without limitation, the construction, maintenance and repair of the Project.

6.4 The Customer grants the Supplier a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the purpose of providing the Services to the Customer in accordance with this Contract.

6.5 The Customer shall keep the Supplier indemnified in full against any sums awarded by a court against the Supplier as a result of or in connection with any claim brought against the Supplier for infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt or use of the Customer Materials by the Supplier.

7. CHARGES AND PAYMENT

7.1 In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this clause 7.

7.2 All amounts payable by the Customer exclude amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

7.3 The Supplier shall submit invoices for the Charges plus VAT if applicable to the Customer either on completion of the Services or monthly in arrears. Each invoice shall include all reasonable supporting information required by the Customer.

7.4 The Customer shall pay each invoice due and submitted to it by the Supplier, within 30 days of receipt, by such method or to such bank account nominated in writing by the Supplier.

7.5 If the Customer fails to make any payment due to the Supplier under this Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 9:

- the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
 - the Supplier may suspend all Services until payment has been made in full.
- 7.6 All amounts due under this agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. LIMITATION OF LIABILITY

8.1 Nothing in this Contract shall limit or exclude the Supplier's liability for:

- death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - fraud or fraudulent misrepresentation; and
 - breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 8.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:
- loss of profits;
 - 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; and
 - any indirect or consequential loss.
- 8.3 Subject to clause 8.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to the amount of the Charges.
- 8.4 The conditions implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

9. TERMINATION

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

- the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified 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

(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.

9.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract:

- by giving the Customer 14 days notice in writing; or
- with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

9.3 On termination of this Contract for whatever reason:

- the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied or commenced but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination; and
- any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

10. GENERAL

10.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

10.2 **Assignment and other dealings.**

- The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract without the Supplier's prior written consent.
- The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this Contract.

10.3 Confidentiality.

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.3(b).

(b) Each party may disclose the other party's confidential information:

- 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 this 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 10.3; and
 - as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Contract.

10.4 Entire agreement.

(a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

10.5 **No partnership or agency.** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

10.6 **Variation.** No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.7 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- waive that or any other right or remedy; or
 - prevent or restrict the further exercise of that or any other right or remedy.
- (b) **Severance.** If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

10.9 Notices.

(a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 10.9(a); if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

10.10 **Third party rights.** No one other than a party to this agreement shall have any right to enforce any of its terms.

10.11 **Governing law.** This Contract, and 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 the law of England and Wales.

10.12 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

11. DEFINITIONS AND INTERPRETATION:

11.1 Definitions:

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

Charges: the charges payable by the Customer for the supply of the Services by the Supplier, as set out in the 'Quote' section of the Contract Details.

Conditions: these terms and conditions set out in clause 1 to clause 11 (inclusive).

Contract: the contract between the Customer and the Supplier for the supply of the Services in accordance with the Contract Details and these Conditions.

Contract Details: the details set out overleaf.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

Customer Materials: all materials; equipment and tools; any plans, drawings or schematics (engineering, architectural or otherwise); specifications; information; and data supplied by the Customer to the Supplier.

Drawings: all plans, drawings and schematics produced by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services.

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 rights, topography 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.

Project: the development detailed in the Contract Details.

Quote: has the meaning set out at clause 2.1 of these Conditions.

Services: the services, including without limitation any Drawings, to be provided by the Supplier pursuant to this Contract, as described in the Contract Details.

Supplier: Advanced Steel Detailing Limited of 4-6 Swabys Yard, Walkergate, Beverley HU17 9BZ (Company Number 09608842)

Supplier IPRs: all Intellectual Property Rights either subsisting in the Drawings (excluding any Customer Materials incorporated in them) or otherwise necessary or desirable to enable a Customer to receive and use the Services.

11.2 Interpretation:

(a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(b) Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(c) A reference to **writing** or **written** includes e-mail.