



## LABOUR ONLY

### CONDITIONS OF CONTRACT

#### 1. Definitions

- 1.1 In these Conditions “the Company” means BDW Trading Limited and “the Contractor” means the individual firm or company named in the order issued by the Company to the Contractor (“the Order”).

#### 2. Contract Documents and Conditions

- 2.1 These Conditions of Contract form the Contract between the Company and the Contractor save as may be supplemented by the Specification (namely the drawings, calculations, specifications provided to the Contractor by the Company) and the “Suppliers and Sub-Contract Works SLA” and Code of Conduct (“the Code”) in each case issued by the Company together with the Company’s Trade Specification (if any) relevant to the trade of the Contractor and the Order which describes the Works as defined herein receipt of all of which documents are confirmed by the Contractors as having been received by them.
- 2.2 The Contract Documents govern this Contract to the exclusion of any terms and conditions stipulated or referred to by the Contractor in his quotation or pre-contract negotiations. The carrying out of the Works or any part of the Works by the Contractor is acceptance of these Conditions and the Contract Documents.
- 2.3 The Contract Documents are to be read as a whole. If any conflict appears between these documents the priority in which they prevail (subject to clause 2.4) is the Conditions the Order the Minutes the Specification the Supplier and Subcontractor SLA the Code the General Terms and lastly the Trade Specification. Subject thereto if the Contractor finds any ambiguity conflict discrepancy or contradiction in any of the Contract Documents it shall immediately notify the Company in writing who shall upon receipt of such notice issue any necessary instruction or clarification remedying such ambiguity conflict discrepancy or contradiction. The Contractor shall comply with such instruction without any adjustment to the Contract Sum stated in the Order.
- 2.4 No amendment to these Conditions is binding unless authorised in writing by the Company or expressly set out in the Minutes as amending these Conditions.

#### 3. Works

- 3.1 The Contractor is to carry out and complete the Works described in the Order in accordance with the Contract Documents to the satisfaction of the Company and in accordance with such instructions issued from time to time by the Company.
- 3.2 The Works form part of a project (“the Project”) being carried out on the Site stated in the Order. The placing of this Contract does not signify that the Contractor is or will be retained to undertake work on the entire Project or that the whole of the Works can be executed in one visit to the Site.



- 3.3 The Contractor is deemed to have examined the Site and to have satisfied himself as to the nature and extent of the Works the nature risk and condition of the Site including the sub-surface and hydrological condition and the materials equipment and facilities required to carry out the Works. The Contractor shall be responsible for verifying and interpreting any data relating to the subsurface and hydrological conditions at the Site including environmental aspects and any other surveys results or information which are relevant to the Works prepared by or on behalf of the Company and made available to the Contractor. The Company shall have no responsibility for the accuracy sufficiency or completeness of any such data or for any information or statement contained therein whether made negligently or otherwise. No failure on the part of the Contractor to discover or foresee any nature extent risk or condition entitles the Contractor to any additional payment or time under this Contract.
- 3.4 Without prejudice to the provisions at clause 3.3 where the Works require existing utility services to be exposed or disturbed or where such services are liable to be disturbed the location of such services must be fully established by the Contractor and identified prior to the Works commencing.
- 3.5 The Contractor is to comply with the Construction (Design and Management) Regulations (“the CDM Regulations”) and the safety policy of the Company and as issued or amended from time to time and all directions of the Company the Principal Contractor (where not the Contractor) and the Principal Designer (both as defined in the CDM Regulations) on health and safety matters at no cost to the Company.
- 4. Quality of Work**
- 4.1 All work carried out by the Contractor in the course of or in connection with the Works is to be carried out in a good and proper workmanlike manner and to the standards described in the Specification or where no standards are stated to the satisfaction of the Company.
- 4.2 The Works are to conform in all respects with British Standards and codes of practice and good building practice current at the relevant time and be in accordance with all relevant law the requirements of the Building Regulations the performance standards and technical requirements of the National House Building Council or equivalent (“NHBC”) and the requirements of any statutory undertakers as are applicable from time to time and the requirements and instructions of the Company issued to the Contractor from time to time.
- 4.3 The Company shall set out all main datum lines to enable the Contractor to carry out and complete the Works. The Contractor is responsible for taking site dimensions where necessary for the proper execution of the Works.
- 4.4 Before commencing the Works the Contractor is to notify the Company if the work of any prior Contractor is sub-standard or will be detrimental to the Works. The Company will have no liability to the Contractor if such notification is not given.
- 4.5 Where the Company is providing materials for use in the Works the Contractor shall give written notice to the Company at least 7 days prior to the date that such materials are required by the Contractor. Where the Contractor is fixing materials supplied by the Company the Contract Sum includes an amount for collecting the materials from the store at and distributing them to the workface. The Contractor is to check both quantity and specification compliance before removing materials from the store. The Contractor is wholly responsible for the materials from the time of collection and shall be liable in the event of any errors anomalies incomplete supply and / or excess wastage.
- 4.6 The Contractor shall be deemed to have allowed in the Contract Sum for sufficient protection to prevent damage to the Works howsoever or whensoever arising including but without



limitation damage arising out of or in connection with weather conditions construction or other Contractors.

- 4.7 The Contractor shall give written notice to the Company whenever any part of the Works is ready and before it is covered up or put out of sight. The Company may carry out an examination inspection testing or measurement without unreasonable delay. If the Contractor fails to give such written notice it shall if required by the Company uncover the work and make good at the Contractor's cost. Whether as a result of any inspection under this clause or otherwise in the event that there has been non compliance with the terms of the Contract the Company shall be entitled to request that other parts of the Works are opened up by the Contractor at the Contractor's own cost to determine whether there has been any further similar non compliance.
- 4.8 The Contractor will comply with and be subject to the Supplier and Subcontractor SLA and the Code as issued by the Company from time to time and notified to the Contractor. If the Contractor fails to so comply any costs and/or liability arising from such non-compliance will be paid or allowed by the Contractor to the Company.
- 4.9 The Contractor at all times is to keep the Site clear of excess materials debris and general rubbish arising from the Works and is to comply with the waste policy provided by the Company from time to time as such details are displayed on Site or notified to the Contractor. If the Contractor fails to do so the Company may without notice to the Contractor effect such clearance and compliance and the cost of so doing and any other cost or liability arising will be paid or allowed by the Contractor to the Company.
- 4.10 Where the Works include off-site works or earth-works the Contractor will at its own cost clear and dispose of safely and in accordance with all legal and regulatory requirements all contaminated or hazardous waste and surplus arising.

## **5. Commencement and Completion of the Works**

- 5.1 The Contractor is to commence the Works on the Commencement Date and thereafter proceed diligently to carry out and complete the same by the Date for Completion (as both are described in the Order) in accordance with the programme ("the Programme") to be agreed with the Company or within such reasonable time limits as the Company may stipulate.
- 5.2 The Contractor acknowledges that works will be undertaken by others on behalf of the Company in respect of the Project ("Related Works"). The Contractor shall permit execution of the same and the Contractor shall see that the performance of the Works is properly coordinated with the Related Works. The Contractor shall not be entitled to any adjustment to the Contract Sum and/or to the Date for Completion by reason of compliance with the requirements of this clause.
- 5.3 If requested by the Company the Contractor shall provide prior to commencement of the Works a method statement which includes a sequence of work complying with the Programme showing how the Contractor intends to execute and complete the Works in accordance with the Contract. The Contractor shall keep the method statement fully updated and developed throughout the course of the Works. The Contractor accepts that there is no guarantee that it will be able to carry out works in accordance with the method statement and its own planned sequence of work.
- 5.4 Where requested by the Company the Contractor is to accelerate or decelerate as the case may be the carrying out and completion of the Works at no cost to the Company notwithstanding the Programme.



- 5.5 The Site opening hours are generally between 7.30 am and 5.30 pm Monday to Friday and 7.30 am and 1.00 pm on Saturday unless otherwise required by or pursuant to law planning requirement or as agreed from time to time between the Company and the Contractor. The Contractor may choose the hours he works (when the site is open) providing always that he fulfils all of his obligations under the Contract Documents and the Contractor achieves the agreed date for completion of the works.
- 5.6 The latest drawings details or other information (together the “Information”) are available from the Company at the Site and the regional office stated in the Order. The Contractor is to apply to the Company in good time for all Information and where applicable free issue materials necessary to enable the Contractor to perform the Works in accordance with the Programme and so as not to cause delay or disruption to the works of any other Contractor engaged at the Site or to the Project.
- 5.7 The Contractor is to notify the Company of any event likely to cause delay to the Works within 24 hours of the happening thereof giving details of such event. Subject thereto the Company may grant in writing a reasonable extension of time for delays arising in its opinion solely from causes beyond the Contractor’s control.
- 5.8 If in the opinion of the Company the Contractor fails to maintain reasonable progress in the performance of the Works or comply with an instruction under clause 5.4 the Company may without prejudice to any other right of the Company under this Contract after giving notice to the Contractor in writing engage its own labour or another contractor or Contractors to improve the progress of the Works. The Contractor will pay or allow to the Company all such additional costs and expenses thereby incurred.
- 5.9 If the Contractor fails to carry out or complete the Works in accordance with the Programme or such other time agreed or allowed by the Company the Contractor will pay or allow to the Company any cost loss charge expense or damage incurred by the Company.
- 5.10 Prior to completion of any works requiring work below ground level, where the ground surface is being disturbed, including the construction of sewers and drains or adoptable works and as a condition of payment the Contractor is to carry out and supply to the Company a CCTV survey of all sewer and drain runs forming part of the Works.
- 5.11 On completion of the Works and the construction of sewers drains and adopted works and as a condition precedent to the release of the Retention the Contractor is to supply to the Company 1 hard copy and 1 copy on disc in a format to be agreed of an “as-built” survey of the Works identifying but not limited to all levels manholes and drain and sewer runs.
- 6. Variations**
- 6.1 The Company at any time may issue written instructions to the Contractor requiring the Contractor to alter amend add to omit substitute or otherwise vary the Works (a “Variation”) but no such Variation shall vitiate this contract. The amount to be paid or allowed in respect of such Variation is to be agreed in writing between the Company and the Contractor before such Variation is carried out or be settled by the Company in accordance with the rates upon which the Contract Sum has been calculated or where such rates cannot reasonably be utilised at fair rates and values. Where such Variation requires the omission of work the amount to be allowed by the Contractor shall include overhead and profits if stated separately to the rates upon which the Contract Sum has been calculated.
- 6.2 Where the Contractor considers that any work to be undertaken by it will constitute a Variation the Contractor will notify such work in writing to the Company (through the Quantity Surveyor as notified to the Contractor) prior to the execution of such work. The Company will within 7



days of such notification authorise or disagree in writing such Variation as the case may be. The Company will have no liability to the Contractor if written notification is not given to the Company prior to carrying out such work.

## **7. Site Personnel**

- 7.1 The Contractor shall engage for the purpose of the Works such persons as are so skilled qualified and experienced in their respective trades and calling as may be necessary to discharge properly and fully the Contractor's obligations under the Contract.
- 7.2 At all times where 2 or more persons are undertaking work on the Site under this Contract the Contractor is to provide on Site a competent person authorised to receive instructions on behalf of the Contractor and to ensure the proper administration co-ordination and supervision of the Works. The Company will appoint a Site Manager who will be authorised to give instructions to the Contractor in connection with the Works.
- 7.3 The Contractor and any person or agent engaged by the Contractor in whatever capacity shall at all times are to observe perform and comply with all statutory provisions bye-laws rules and regulations so far as they are applicable to the Works.
- 7.4 Should a person or agent engaged by the Contractor in whatever capacity on the works breach any of the terms in the Contract Documents the Company may without liability to the Contractor require the Contractor to remove such person or agent from the Site.
- 7.5 It is acknowledged that that Contractor does not have an obligation to provide personal service to the Company. The Contractor is to be responsible for his own labour and any substitution or delegation of that labour and for the provision of (and all contractual and statutory payments due to) all persons undertaking work on the Site under this Contract. Whilst the Contractor must comply with its obligations under the Contract, it is acknowledged that the Contractor is entitled to meet those obligations as it may determine and in particular the Contractor is free to use such labour at any time as it may determine and may substitute or delegate to any person qualified and with appropriate health and safety training to carry out any part of the Works and any failure on the part of the Contractor to exercise its rights under this Clause 7.5 shall not constitute a waiver of any such rights by the Contractor provided always that the Contractor shall remain liable for the proper performance of the Works and its obligations under the Contract.

## **8. Attendance**

- 8.1 The Contractor is to supply all labour, tools, personal protective equipment and plant necessary for the execution of the Works. The Company at its absolute discretion from time to time may permit the Contractor to use standing scaffolding ladders mechanical and non-mechanical plant ("the Equipment") for himself and his workmen and agents at his own risk. No warranty or liability on the part of the Company is created or implied as to the condition suitability or fitness of the Equipment. The Contractor is to make good any damage caused to the Works by the use of the Equipment and indemnify the Company against all payment cost loss damage or expense arising out of or in the course of such use.
- 8.2 Subject to the terms of Clause 5 and the Contract the Contractor shall be free to complete the Works as he thinks fit and shall have control over its own labour.
- 8.3 The Contractor at his own expense is to make all provision for transporting loading storage (at temporary locations allocated from time to time by the Company) protection and insurance





of his plant and tools brought on to the Site and for their subsequent handling on Site. The Company is not liable for loss or damage to the same howsoever arising.

- 8.4 Unless provided by the Company the Contractor at his own expense is to provide or erect as necessary temporary workshops sheds offices or other buildings for any such person engaged by the Contractor or his agent at such place or places on the Site as the Company directs and pay all rates taxes assessments and other outgoings appertaining thereto and supply all necessary lighting power and security for the purposes of the Works. Water for the Works will be available at the nearest stand pipe but the Contractor must allow for all expenses in conveying water there from to the Works.
- 8.5 Where provided by the Company the Contractor may be required to contribute such reasonable amount as the Company directs to the provision of lighting, power, water, security, storage and accommodation for the Site. The Company may deduct such amount from any sum due to the Contractor under this Contract.

## 9. **Payment**

- 9.1 The Contract Sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of the Contract.
- 9.2 The Contractor shall be entitled to interim payments during the course of the Works either on a monthly bimonthly or weekly basis as set out in the Order. In the event that the basis is not set out in the Order the interim payments shall be on a monthly basis.
- 9.3 The Contractor shall provide a written application for interim payment ("Interim Application") to the Company complying with the requirements of this clause 9:
- 9.3.1 in the case of interim payments to be made on a monthly basis by the 19<sup>th</sup> of each month or if the 19<sup>th</sup> of a particular month is not a working day then the last working day before the 19<sup>th</sup> (such date being an "Application Date"); or
- 9.3.2 in the case of interim payments to be made on a bimonthly basis by the 6<sup>th</sup> and 19<sup>th</sup> of each month or if the 6<sup>th</sup> or 19<sup>th</sup> of a particular month is not a working day then the last working day before the 6<sup>th</sup> or 19<sup>th</sup> (both such dates being an "Application Date").
- 9.3.3 in the case of interim payments to be made on a weekly basis by Friday of each week (such date being an "Application Date").
- 9.4 Payment of any amount ascertained in accordance with the Contract under an Interim Application (if any) to the Contractor shall become due:
- 9.4.1 in the case of interim payments to be made monthly or bimonthly 24 days after the Application Date ("Payment Due Date"); or
- 9.4.2 in the case of interim payments to be made weekly 7 days after the Application Date ("Payment Due Date").



- 9.5 Subject to 9.7 the Interim Application shall state the amount the Contractor considers will become due on the Payment Due Date which shall be the amount due to the Contractor in respect of the Works carried out by the Contractor up to and including the last working day of the month within which the Interim Application is made and where interim payments are to be made on a bi monthly basis then the Interim Application to be made on the 6th day of a month and the Interim Application to be made on the 19th day of a month shall be the amount the Contractor considers will be due in respect of such part of the Works carried out up to the last working day prior to the 15th of such month and the last working day of such month respectively. Where the Company provides a format to the Contractor the Interim Application shall be in that format and in any event shall detail: the Site; the order number; the full name and address of the Contractor as stated in the Contract; any new address where applicable; the Contractor's VAT registration number; the value of the work carried out and/or materials and goods delivered and incorporated by the Contractor since commencement of the Works or the last Interim Application as appropriate; the amount of Retention to be released (if any); and any other amounts claimed under this Contract.
- 9.6 Not later than 5 days after the Payment Due Date, the Company shall issue a notice stating the amount considered due to the Contractor at the Payment Due Date and the basis on which the amount is calculated.
- 9.7 The basis on which the amount due is calculated on an Interim Application shall be:
- 9.7.1 the total of the prices for the elements of work separately identified in the Contract Sum Analysis properly executed and fully completed; and
- 9.7.2 the amount of any adjustment to the Contract Sum agreed or ascertained under the Contract to the extent that such adjustment is in respect of work already executed or damage loss and/or expense already incurred up to and including the relevant date, as referred to in clause 9.5 less all amounts previously paid and less the Retention and the Discount provided that the Contractor shall not be entitled to payment as a result of standing time, overtime, or time lost for reasons beyond the control of the Company including but not limited to plant breakdown shortage of materials or adverse weather conditions
- 9.8 If the Company fails to issue a notice stating the amount due to the Contractor in accordance with clause 9.6 the amount due to the Contractor shall be the amount the Contractor considers will be due as set out in the Interim Application.
- 9.9 The final date for payment of an amount stated as due in a notice under clause 9.6 or in default of such notice in the Interim Application (in either case the "Notified Sum") shall be:
- 9.9.1 in the case of interim payments to be made monthly or bimonthly 14 days after the Payment Due Date; or
- 9.9.2 in the case of interim payments to be made weekly 7 days after the Payment Due Date.
- 9.10 The Contractor shall be deemed not to have allowed in its rates or prices for any tax payable by it as a taxable person to the Commissioners of Customs and Excise being Value Added Tax on taxable supplies. The Company and Contractor shall respectively comply with the law on Value Added Tax. The Contractor must notify the Company within 7 days of any change in its VAT status registration number or address. If the Contractor fails to do so the Company may deduct from any future payment due to the Contractor or claim from the Contractor the amount of any VAT paid by the Company during such time as the Contractor is unregistered for VAT or has failed to notify the Company of any change in its details.



- 9.11 The Contractor is to obtain written authorisation from the Company before daywork is carried out (including where forming part of the Contract or a Variation). Within 7 days of undertaking authorised daywork a statement of all daywork carried out detailing labour materials hours and activities must be submitted in writing to the Site Manager for signature by him to confirm the details recorded on that statement. Application for payment for daywork is to be made in an Interim Application. The Company is not liable to make payment for daywork unless this clause 9.11 is complied with.
- 9.12 Without prejudice to any other rights and remedies it may possess the Company shall be entitled to deduct and withhold from amounts due to the Contractor under the Contract any sums which the Company or any Associated Company (as defined in clause 16.2) has suffered or incurred or anticipates suffering or incurring due to a breach of or failure by the Contractor to observe the provisions of the Contract or any other agreement entered into between the Contractor and the Company or any Associated Company.
- 9.13 If the Company intends to pay less than the Notified Sum the Company shall give notice to the Contractor (a "Pay Less Notice") stating the amount the Company considers to be due at the date of the Pay Less Notice and the basis on which that sum is calculated. A Pay Less notice shall be given not less than 1 day before the final date for payment of a Notified Sum in respect of which the Company intends to pay less.
- 9.14 The failure to issue a Pay Less Notice where a right to withhold would otherwise exist shall not be construed as a waiver of the right to withhold any sum at any time. The Company may on any subsequent Interim Application or any subsequent payment notice issued pursuant to sub clause 9.6 or, in any subsequent Pay Less Notice, delete, correct or modify any previous Notified Sum certified to be due.
- 9.15 No admission approval consent comment acceptance advice expression of satisfaction acknowledgement confirmation payment or the like made or given by or on behalf of the Company in relation to any work materials or goods operates to exclude or limit the Contractor's responsibility or liability for any breach of its obligations under the Contract.
- 9.16 Notwithstanding any other term of the Contract it shall be a condition precedent to the Contractor's entitlement to payment that the Contractor shall have:
- 9.16.1 provided to the Company evidence that the insurances required to be taken out and maintained by the Contractor in accordance with clause 15 have been taken out;
  - 9.16.2 properly executed and fully completed all elements of the work for each part of the Works to which the application for payment relates;
  - 9.16.3 complied with the requirements of the Construction Industry Scheme; and
  - 9.16.4 for any element of work undertaken submitted an application for payment to the Company not later than 6 months after the day on which the element of work is undertaken.
- Payment of any monies to the Contractor prior to compliance with any or all of these conditions precedent shall not in any circumstances constitute a waiver of the Company's right to withhold further payment until the condition precedent has been satisfied.
- 9.17 The Company shall be entitled to retain from the first and each subsequent interim payment to the Contractor the percentage as stated for the Discount in the Order and 5% or such other percentage as stated for Retention in the Order of the amount that would be otherwise due under the Contract in any interim payment under clause 9.7. The Discount accrues for the benefit of the Company.





- 9.18 The first half of the Retention shall be released and maybe included in an Interim Application on the earlier of:-
- 9.18.1 the date of completion of the last dwelling within the Works; or
  - 9.18.2 where the Works are suspended before completion of the last dwelling the date 3 months from the date of suspension of the Works.
- 9.19 The second half of the Retention shall be released and maybe included in an Interim Application on the later of:
- 9.19.1 2 years from the date of release of the first half of the Retention as determined under 9.18; or
  - 9.19.2 completion of all outstanding defects.
- 9.20 Where the Company has agreed with the Contractor to operate a self-billing arrangement and such arrangement has been approved by the Commissioners for Her Majesty's Revenue and Customs the provisions set out in the General Terms relating to self-billing arrangements will apply.
- 9.21 The Contractor shall be entitled to claim interest on any amount properly due to the Contractor hereunder (at the rate of 2% above the official dealing rate of the Bank of England current at the final date for payment of the amount due) from the final date for payment thereof until the date of actual payment.
- 9.22 Where the Company is employed under a contract by a third party ("Employer") to carry out the whole or part of the Project (not being an individual dwelling) and the Employer becomes Insolvent (as defined in clause 13.3) then to the extent to which any payments due from the Employer to the Company in relation to Project relates to the carrying out of Works the Company shall not be obliged to make any payment otherwise due to the Contractor under this Contract unless and until the Company has received payment in respect thereof from the Employer and then only to the extent that such receipt relates to the Works.
- 9.23 Where applicable the Contractor is to pay all National Insurance contributions due arising from the Contractor's status as self employed and provide evidence of such payment if required.
- 9.24 The Company may deduct the CITB levy applicable from time to time from payments falling due to the Contractor.
- 10. Final Account**
- 10.1 Within 2 months from the date of completion of the Works the Contractor shall submit to the Company a final account showing the sum the Contractor considers due at the due date and the basis on which the sum is calculated including the amount of the Contract Sum and all additions or omissions which are to be made to that amount under the Contract together with details of all payments made by the Company ("Final Account"). The Final Account shall be accompanied by all documents necessary to detail the additions or omissions made or as the Company may reasonably require for the purpose of adjusting the Contract Sum.
- 10.2 If the Contractor fails to submit a Final Account within 2 months from the date of Practical Completion of the Works in accordance with clause 10.1 the Company may prepare and submit to the Contractor a final account at any time thereafter.
- 10.3 The due date for payment of any sums stated as due in the Final Account or the Company's final account whether from the Company to the Contractor or the Contractor to the Company



is 2 months from receipt by the Company of the Contractor's Final Account and of all accompanying documentation and information reasonably required by the Company or if no Final Account is submitted by the Contractor the date of submission of a final account by the Company.

- 10.4 Not later than 5 days after the due date the Company shall issue a Statement of Final Account specifying the sum the Company considers due to the Contractor or as the case may be the sum the Company considers due by the Contractor to the Company at the due date and the basis on which that sum is calculated ("the Notified Sum").
- 10.5 If the Company fails to issue a Statement of Final Account as required by clause 10.4 the Final Account shall be the Statement of Final Account and shall be treated as issued on the date 2 months after receipt by the Company of the Final Account and the sum stated by the Contractor as considered due therein shall be the Notified Sum.
- 10.6 If the Statement of Final Account shows a balance payable by the Company to the Contractor the final date for payment of the Notified Sum subject to clause 9.13 is and the Company shall pay the amount shown to the Contractor within 21 days after the later of the date for release of the second half of the Retention or the date all defects in the Works (if any) are remedied to the satisfaction of the Company.
- 10.7 If the Statement of Final Account shows a balance payable by the Contractor to the Company the final date for payment of the Notified Sum is and the Contractor shall pay the amount shown to the Company within 14 days from the date of issue of the Statement of Final Account.
- 10.8 Except as provided for in this clause 10.8 and clause 10.9 (and save in respect of fraud) the Statement of Final Account shall have effect in any proceedings under or arising out of or in connection with this Contract (whether by adjudication or otherwise) as:
- 10.8.1 conclusive evidence that any necessary effect has been given to all the terms of this Contract which require an amount to be added or deducted from the Contract Sum save where there has been any accidental inclusion or exclusion of any work materials goods or figure in any computation or any arithmetical error in any computation in which event the Statement of Final Account shall have effect as conclusive evidence as to all other computations; and
- 10.8.2 conclusive evidence that all and only such extensions of time if any as are due under clause 5.7 and any other entitlements claimed by the Contractor under or in connection with the Contract have been given.
- 10.9 If any adjudication or other proceedings have been commenced by either party before the Statement of Final Account is issued or within 28 days thereafter the Statement of Final Account shall have effect as conclusive evidence as provided in clause 10.8 upon and from the earlier of:
- 10.9.1 the conclusion of such proceedings in which case the Statement of Final Account shall be subject to the terms of any decision award or judgment in or settlement of such proceedings; or
- 10.9.2 the expiry of any period of 12 months from or after the issue of the Statement of Final Account during which neither party takes any further step in such proceedings in which case the Statement of Final Account shall be subject to any terms agreed in settlement of any of the matters previously in issue in such proceedings.



- 10.10 No notice or certificate shall of itself be conclusive evidence that any works, goods or design completed by the Contractor to which the notice or certificate relates are in accordance with this Contract.

**11. Non-Waiver**

- 11.1 The allowance of time or any other indulgence or non-enforcement by the Company in respect of its rights or any matter will not affect or prejudice or be taken as a waiver of the rights of the Company.

**12. Defects**

- 12.1 If any defects imperfections shrinkages or other faults appear in the Works the Company at its option may require the Contractor to return to Site to carry out remedial work at the Contractor's own cost and/or may carry out remedial work without notice to the Contractor whether by itself or another contractor or contractors and the Contractor will pay or allow to the Company any loss damage cost or expense thereby incurred.

**13. Termination**

- 13.1 The Company may at any time serve notice on the Contractor forthwith terminating the Contract. As soon as reasonably practicable after termination in accordance with this clause 13.1 the Company shall ascertain the total amount properly due to the Contractor up to the date of termination which shall include the Contractor's reasonable costs properly incurred in complying with clause 13.4 and the Company shall pay such amount to the Contractor no later than 3 months from the date of service of such notice. The Contractor shall not be entitled to payment of any other costs expenses damages or losses arising from such termination including but not limited to any loss of profit expectation overheads or otherwise.

- 13.2 Without prejudice to any other rights and remedies of the Company if the Contractor:

- 13.2.1 suspends the Works without the prior consent of the Company in writing; or
- 13.2.2 fails to proceed with the Works regularly and diligently; or
- 13.2.3 refuses or fails to remove repair or reinstate defective or improper work or materials; or
- 13.2.4 having been notified by the Company in writing that it has carried out defective work (whether or not repaired or reinstated by the Contractor) carries out further or other work which is defective; or
- 13.2.5 fails to comply with any reasonable request from or instruction of the Company or its authorised servants or agents as to the manner in which the Works are carried out; or
- 13.2.6 commits any breach of the health and safety plan or of any statute or statutory regulations for the time being in force; or
- 13.2.7 is or becomes Insolvent;

then the Company may forthwith by written notice determine the Contract.

- 13.3 In this Contract the Contractor or an Employer is Insolvent if it shall become bankrupt or make a composition or arrangement with its creditors or in the case of the sequestration of its estate under Scottish Law or in the case of a partnership each partner is the subject of a composition



or arrangement with its creditors or any other event or proceeding referred to in this sub-clause or have a provisional liquidator receiver or manager of its business or undertaking or property duly appointed or have a resolution passed for the voluntary winding-up without a declaration of solvency or have an administrator administrative receiver receiver or manager as defined in the Insolvency Act 1986 appointed or have possession taken by or on behalf of the holders of any debentures secured by a floating charge.

13.4 Upon any termination of the Contract under clauses 13.1 or 13.2 the Contractor shall immediately:

13.4.1 cease all further work except for such work as may have been instructed by the Company for the protection of life or property or for the safety of the Works;

13.4.2 deliver up to the Company all documents relating to the Works;

13.4.3 deliver up any plant and other work for which the Contractor has received payment; and

13.4.4 remove all other goods from the Site except as necessary for safety and leave the Site.

13.5 If the Contract is determined under clause 13.2 or by reason of any other default of the Contractor then the Company:

13.5.1 may complete or engage another contractor or contractors to complete the Works and use any plant and equipment delivered to the Site by the Contractor for use in the Works;

13.5.2 is not obliged to make any further payment to the Contractor under this Contract or any other contract between the Company and the Contractor until after completion of the Works and the final date for payment of any sum due whether past or not shall be deemed not to have occurred;

13.5.3 is liable to the Contractor only for the value of any work carried out to the satisfaction of the Company and not paid for up to the time of determination and for no other sum or sums whatsoever;

13.5.4 may recover or deduct from or set off against any amount due to the Contractor whether under this Contract or under any other contract between the Company and the Contractor any cost loss damage or expense suffered by the Company by reason of such determination the balance (if any) of such cost loss damage or expense being a debt recoverable by the Company from the Contractor.

13.6 The determination of this Contract is without prejudice to the rights obligations and liabilities of either party accrued prior to termination.

#### 14. **Indemnity**

14.1 The Contractor is liable for and is to indemnify the Company against all payment loss damage action cost or expense of whatsoever nature made or incurred by the Company arising out of or in connection with any loss or damage to the Works and ( to the extent permissible by law) any personal injury to or the death of any person whomsoever and damage to property real or personal including the Project arising out of or in the course of or caused by the Contractor his servants or agents in the carrying out of the Works unless due to any act or neglect of the Company or its servants or agents or of any other contractor engaged upon the Site.



14.2 The Contractor is to indemnify the Company against all payment loss damage cost or expense made or incurred by the Company as a result of any defect imperfection shrinkage or other fault in the Works or arising out of or in connection with any breach by the Contractor of his obligations under this contract in relation to the Works including but not limited to any claims or payments made under or arising from the NHBC or equivalent scheme.

## 15. Insurances

15.1 Without prejudice to its liabilities referred to in 14.1 the Contractor is to insure as follows:

15.1.1 against loss of or damage to property including the Project and personal injury to or the death of any person whomsoever other than any employee of the Contractor under a Public Liability policy or policies of at least £5,000,000 or such other amount as may be stated in the Order;

15.1.2 against personal injury to or the death of any person engaged by the Contractor or agent of the Contractor under an Employer's Liability or such analogous policy of at least £5,000,000 or such greater amount as may be required by law or such other amount as may be stated in the Order;

15.1.3 all risks insurance in the joint names of the Contractor and the Company for the Works for no less than the full reinstatement value of the Works and shall maintain such insurance up to handover in full or part as agreed with the Company.

15.2 The insurances to be taken out under this Contract are to provided by an 'A' rated insurance company or an insurance company of a similar standard acceptable to the Company and not be subject to any material excess or unusual exclusions.

15.3 As and when the Contractor is reasonably requested to do so by the Company the Contractor is to produce promptly for inspection documentary evidence including premium receipts and policy terms that the required insurances are being maintained in accordance with the terms of clause 15 and in any event upon annual renewal of the insurance.

15.4 If the Contractor fails to effect or maintain any insurance required under clause 15 or to produce evidence to that effect the Company may at its option insure on behalf of the Contractor and deduct as a debt the premiums paid from any money payable to the Contractor or terminate forthwith this Contract or withhold any further sums due to the Contractor until evidence of insurance is provided.

15.5 The Company shall insure any existing structures on the Site (together with the contents thereof) owned by the Company or for which it is responsible.

## 16. Assignment and Third Party Rights

16.1 The Contractor may not assign any part of the benefit of nor sub-let or sub-contract any of the obligations under this Contract without the prior written consent of the Company.

16.2 Barratt Developments PLC and any direct or indirect holding company or parent undertaking of Barratt Developments PLC and any direct or indirect subsidiary or subsidiary undertaking of Barratt Developments PLC or any such holding company or parent undertaking (as all such terms are defined in the Companies Act 2006) ("Associated Company") shall have the right to enforce the terms of the Contract directly against the Contractor and the parties grant the right to be able to enforce the terms of the Contract to each such Associated Company as though they were the Company in addition to the Company. The Contractor shall be liable for any loss or damage suffered or incurred by any Associated Company notwithstanding





that such loss or damage would not have been suffered or incurred by the Company (or suffered or incurred to the same extent by the Company).

- 16.3 The rights of any third party to enforce the terms of the Contract may be varied and/or extinguished by agreement between the parties without the consent of any such third party and the rights of the Contractor and of the Company to:

- 16.3.1 terminate the Contract;
- 16.3.2 amend or otherwise vary or waive any terms of the Contract; and/or
- 16.3.3 agree to settle any dispute or other matter arising out of or in connection with the Contract in each case in or on such terms as they shall in their absolute discretion think fit;

shall not be subject to the consent of any third party.

- 16.4 Save as provided in Clause 16.2 any person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract except where such right or remedy exists or is available apart from this Act.

## 17. Notices

- 17.1 Any notice required to be given under or pursuant to this Contract is valid and effective for the purposes of this Contract if [sent by facsimile to the number of the party to be served or if] delivered by hand or if sent by electronic mail to the address specified as notified by the other party only upon receipt of 'delivery receipt' or sent by first class post to the registered office or the address of the other party and as stated in the Order and is deemed served on the day of transmission if sent by facsimile or on the day of delivery if delivered by hand or two days after posting if sent by first class post.

## 18. Applicable Law and Jurisdiction

- 18.1 This Contract is governed by and construed in accordance with the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales.
- 18.2 Any reference to legislation is to that legislation as amended re-enacted or substituted from time to time.

## 19. Limitation

- 19.1 Section 5 of the Limitation Act 1980 does not apply to this Contract. The Company and the Contractor agree that they will not rely upon a defence pleading Section 5 of the Limitation Act 1980 (including any amendment extension or re-enactment) in any proceedings commenced under this Contract.
- 19.2 No action is to be brought under this Contract after the expiration of 12 years from the date on which the cause of action accrued save in the event of fraud or deliberate concealment.

## 20. Adjudication

- 20.1 Any dispute or difference arising under or in connection with the Contract may be referred to adjudication in accordance with the Scheme for Construction Contracts SI 1998 No 649 ("Scheme") except that:
- 20.1.1 the Responding Party to any adjudication shall have a minimum of 14 days from receipt of the Referral Notice to respond to the Referral Notice;



- 20.1.2 the parties agree that the Adjudicator shall have jurisdiction to consider and determine any matter raised by the Company in its response to a Referral Notice served by the Contractor including but not limited to any counterclaims set offs or abatement which the Company might raise in its response notwithstanding the fact that the Company may have failed to serve a notice of intention to payless pursuant to section 111 of the Housing Grants Construction and Regeneration Act 1996 ("Act") and/or a Payless Notice pursuant to clause 9.13 of the Contract;
- 20.1.3 the Referring Party in any Adjudication proceedings may not rely upon any report or statement or opinion which has not been previously seen by the other party and which the other party has not had a reasonable opportunity to consider prior to the Adjudication. If notwithstanding this the Referring Party submits to the Adjudicator such a document the Adjudicator shall have no jurisdiction to take its contents into account on reaching its decision. This clause shall take preference over clause 17 of the Scheme;
- 20.1.4 the Adjudicator shall be required to give detailed reasons in support of his decision including stating expressly what evidence he has relied upon and what evidence he has discounted and why in making his decision. The Adjudicator shall apply the usual rules of evidence for civil proceedings;

provided always that if any provision of this clause 20.1 is or becomes to any extent invalid or unenforceable under any applicable law (including a failure to comply with the requirements of the Act) then such provision shall be severed and the remainder of the provisions of clause 20.1 shall continue in full force and effect.

- 20.2 The adjudicator to whom the dispute is referred is such person as the Company and the Contractor choose by mutual agreement or such other person appointed as the adjudicator on the request of the Company or the Contractor by the President or the Vice President of the RICS.

## 21. Contractor Status

- 21.1 For the avoidance of doubt in its relations with the Company the Contractor is a self-employed contractor carrying on its own business undertaking. Nothing in this Contract will render the Contractor (or any agent or other person engaged by the Contractor in any capacity) an officer, employee, worker or partner of the Company and neither the Contractor nor any agent or any other person engaged by the Contractor in any capacity will hold themselves out as such.
- 21.2 Without prejudice to the wording in 21.1 above in so far as the Contractor or any person engaged by the Contractor in any capacity (or found to be) a "worker" of the Company (as defined by the Working Time Regulations 1998 (the "Regulations")) the Contractor acknowledges and agrees that all payments made by the Company to the Contractor for himself or any person engaged by the Contractor in any capacity includes a sum as agreed by the Contractor and the Company in lieu of payments made to employees and workers of the Company (the "Premium"). The Contractor agrees that:-
- 21.2.1 this Premium will be retained by him and used to provide holiday pay as provided by the Regulations during such periods of annual leave for himself or any person engaged by the Contractor in any capacity who are workers within the meaning of the Regulations; and



21.2.2 the Contractor and any of those listed in clause 21.2.1 above will take and be treated as having so taken the paid annual leave to which he and they may be entitled to under the Regulations.

21.3 The Contractor shall indemnify the Company on demand and keep it indemnified at all times against any liability loss damage costs (including legal costs on an indemnity basis) and expense of whatsoever nature incurred or suffered by the Company arising from the Contractor's performance of or breach of his obligations or warranties under this Contract including without limitation:-

21.3.1 any income tax national insurance contributions (including secondary contributions to the extent permitted by law) (including any interest penalties or gross up thereon) arising in respect of the Contractor or Contractor's personnel for which the Company is called upon to account to the relevant taxing authority.

21.3.2 any liability for any employment or worker related claim or any claim based on workers' status brought by any persons employed by the Contractor against the Company arising out of or in connection with the provision of the works or this Contract.

21.4 Each of the rights and obligations in this clause 21 is an entire separate and independent right or obligation on the parties. If any part is found to be invalid or unenforceable the remainder will remain valid and enforceable. If any right or obligation is found to be unenforceable but would be valid if part of the wording were deleted then such restrictions or obligations shall apply with such deletions as may be necessary to make it enforceable.

## 22. **Data Protection**

22.1 Definitions for the purposes of this clause

"Affiliate" means any Corporate Entity in which the Company from time to time has a material interest, including but not limited to an interest in not less than 33% of the ordinary share capital in a Company or an interest as a Member in a Limited Liability Partnership.

"Contract" means any and all Contracts between the Company and the Contractor.

"Customer" means any customer or prospective customer of the Company who has or will be purchasing a Property or who is or has been contacted by the Company in connection with a possible purchase by them of a Property.

"Data Protection Laws" means the Data Protection Act 1998 and includes for the purposes of this agreement associated legislation including (a) European Union Directives 95/46/EC and 2002/58/EC (as amended by Directive 2009/139/EC) and any legislation and/or regulation implementing or made pursuant to them including but not limited to the UK's Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2013; (b) from and including 25 May 2018, the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR"); and (c) any applicable associated or supplementary data protection laws, regulations, codes of practice or guidance, as updated, amended or replaced from time to time;

"Order" means an Order for the supply of Goods and/or Services from the Company to the Contractor by which a Contract has come into being.



“Personal Data” means Personal Data as defined by the Data Protection Laws.

“Property” means any residential or commercial property constructed by the Company at any Development Site.

“The Company” includes any Affiliate for the purposes of this clause.

“Website” means the website at [www.barrattcommercialsupport.co.uk](http://www.barrattcommercialsupport.co.uk)

- 22.2 For the purposes of the Contract and the respective performance by the Company and the Contractor of these obligations or exercise of their rights each party may be provided with Personal Data in the course, or for the purposes, of the Contract. For the purposes of the Personal Data the party supplying the same shall be the Data Controller. Such Personal Data may relate to employees of either party or any third party or any of the Company’s Customers (“Data Subject”).

Each party shall use or process any such Personal Data for the express purposes for which the same shall be provided which shall be:

- 22.2.1 If provided in connection with the carrying out of the Works (including rectifying defective works) to a Property then only for purposes of contacting any Company’s Customer who owns the or a Property from time to time within which the Works are to be carried out.
- 22.2.2 If in connection with an express specific purpose then solely for or in relation to use for that express specific purpose; and/or;
- 22.2.3 If such Personal Data relates to employees of the Company or any third party then solely for the declared purpose required by the Company and such Personal Data shall be processed only in accordance with the express instructions of the Company or third party; and;
- 22.2.4 If such Personal Data relates to persons carrying out the Works to enable the Company to carry out its obligations to them under the Contract or by law.

- 22.3 Any Personal Data shall be processed, used, distributed and stored in any event strictly in accordance with Data Protection Laws and any data protection principles published by the Information Commissioners Office or any restatement or update or amendment thereto published from time to time and only for the period and purpose required by the terms of the Contract.

- 22.4 Each Party shall as Data Controller be responsible for obtaining the consent (if required) of the person to whom the Personal Data relates to and its use by the other as provided for in this clause and shall notify the other of any relevant period for which the consent of such person has been obtained or for which the Personal Data may be retained by the other. Each Party shall be responsible for ensuring that any Personal Data is destroyed, permanently deleted or, if not possible by reason of any legislative obligation notified to the other, secured and not used for any other purpose promptly upon expiry of such consent or expiry of any notified period or otherwise earlier termination of the same where such earlier termination is notified to it by the other, or in any event upon the later of termination of the Contract and following discharge of any obligations thereunder for which the same was provided.



- 22.5 Each Party confirms that save where specifically notified to the other no Sensitive Personal Data (as defined in the Data Protection Laws) is to be provided to the other in connection with the Contract and in the event of the receipt of any Sensitive Personal Data or Personal Data which it considers to be sensitive then the receiving Party shall promptly notify the other of the same and shall, following such notification, take all immediate steps to delete the same from any of its records and confirm such deletion to the other.
- 22.6 Each Party shall, in any event, keep any and all Personal Data which is provided to it or which comes into its possession strictly private and confidential and shall not transfer or provide the same to any employee of it not required to receive the same for the purposes of the Contract or to any third party save with the other's prior consent for a specified purpose and shall in any event be responsible for the use and security in processing of any such Personal Data provided to a third party by it and shall ensure it is not provided to or shared with any third party outside the European Economic Area.
- 22.7 The Contractor shall in connection with the use or processing of any Personal Data adhere to the provisions of the Data Protection Policy operated by the Company as published on the Company's Website from time to time.
- 22.8 In the event that either Party receives any request from a Data Subject relating to any Personal Data it has then it shall immediately notify the Data Controller for such Personal Data and shall not provide any Personal Data to the Data Subject without the Data Controller's express prior written consent.
- 22.9 The Contractor shall permit the Company to carry out an audit of the arrangements it, or any third party to whom it proposes to transfer Personal Data in accordance with the terms of this clause, has in place to keep any Personal Data secure and to comply with any reasonable requests for changes to the arrangements made by the Company to ensure the same is processed only in accordance with this clause.
- 22.10 In the event of any conflict between any obligation imposed by law, any obligation imposed by the Data Protection Policy operated by the Company from time to time and any instructed purpose or use of any Personal Data then that order shall be the order of precedence in relation to and for the purposes of compliance by each Party under the terms of the Contract.
- 22.11 In the event of any data breach occurring from a Party's (the "Responsible Party") systems or records or for which that Party is responsible, including but not limited to the loss or unauthorised provision of any Personal Data by either Party or any third party to whom the Personal Data was provided or released whether or not such release was authorised then the Responsible Party shall immediately inform and in any event within 36 hours the other party of such breach or unauthorised release and shall provide full and complete details of such loss or such unauthorised release or breach together with the steps to be taken in order to recover or otherwise minimise the effect of such breach or loss or unauthorised disclosure and the full and precise extent of the Personal Data the subject of such breach, loss or unauthorised disclosure and shall ensure that the designated contact for the Company being the Company's Data Protection Manager receives updated information in respect of the same at all times and shall also report any such breach, loss or unauthorised disclosure to the Information Commissioner's Office, as well as report to the other and shall otherwise fulfil each of its obligations in accordance with the data principles under the Data Protection Laws.





22.12 Any breach of this clause by either party shall entitle the party not in breach to recover damages for any cost, expense, loss, or fine incurred by such party which is attributable to the failure of the party in breach to meet its obligations under the Contract.

**23. Living Wage**

23.1 This clause applies unless deleted by agreement as recorded in the Minutes or otherwise between the parties.

23.2 In respect of the Contractor, all the Contractor's employees, and those of any sub-contractors or agents who are involved in the execution or completion of the Works, the Contractor shall pay or take all reasonable steps to ensure they are paid the Living Wage as verified from time to time by the independent Living Wage Commission which shall be fixed for the period from the date of this contract to the 30<sup>th</sup> April in the next following calendar year at the rates specified within the Minutes and thereafter at rates fixed by the independent Living Wage Commission on or about each 1<sup>st</sup> November and notified by or on behalf of the Company on not less than 3 months' notice prior to each following 30<sup>th</sup> April.

23.3 The Contractor shall confirm to the Company on or before each 30<sup>th</sup> June in each year during the contract period and on each occasion it notifies the Company that it is maintaining the insurance policies required to be carried by the Contractor in accordance with clause 16.3 that it continues to comply with the terms of this clause. This obligation on the Contractor shall last up to and including the date of expiry of the defects liability period for the purposes of the Works or, if earlier, a date 12 months after practical completion of the Works.

23.4 If provided for within the Minutes and without prejudice to the Contractors obligations as set out in the sub-clause 3 of this clause the Company shall have the right to require the Contractor to produce such reasonable evidence not more than once in any 12 month period of the Contractor's compliance with the terms of this clause.

23.5 Compliance with the terms of this clause shall constitute grounds for a Variation if, to the extent and from the date that such compliance causes the cost to the Contractor of carrying out the balance of the Works following each 30<sup>th</sup> April during the contract period by more than 2% and, notwithstanding the terms of clause 6 the Contractor shall not be due any adjustment to the Date of Completion under clause 5 or otherwise arising from a Variation on the grounds set out in this sub-clause.

**LABOUR ONLY****CONDITIONS OF CONTRACT**

The Contractor has as a condition of this Contract provided the following documents (signified by a cross in the box against such documents) to the Company and the Contractor confirms that it will, on request provide such documents at any time during the duration of the Contract:

A copy of Insurance Policy or evidence of Public Liability and/or Employers Liability.

☐

CIS card and number

☐

**AGREED BY THE CONTRACTOR WHOSE SIGNATURE TO THIS DOCUMENT CONFIRMS THAT THE TERMS OF THE CONTRACT HAVE BEEN PROVIDED TO THEM.**

**SIGNED:** .....

..... (name and title)

**DATE:** ...../...../.....

**AGREED ON BEHALF OF THE COMPANY BY:**

**SIGNED:** .....

..... (name and title)

**DATE:** ...../...../.....