

WORKS ORDER

CONDITIONS OF CONTRACT (SCOTLAND)

1. Definitions

- 1.1 In these Conditions “the Company” means BDW Trading Limited (having a place of business in Scotland) 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 The documents forming this Contract are these Conditions the Company’s General Terms the Specification (namely the drawings calculations schedules and specifications provided to the Contractor by the Company) the Company’s pro-forma Minutes of pre-Order Meeting (if any) (“the Minutes”) the “Supplier and Subcontractor SLA” issued by the Company (if any) the Supplier’s & Sub-Contract Works Code of Conduct issued by the Company (“the Code”) the Company’s trade specification (if any) relevant to the trade of the Contractor referred to in the Minutes (“the Trade Specification”) and the Order (collectively referred to as “the Contract Documents”).
- 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 and Materials**
- 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. All materials and goods used or provided by the Contractor are to be new of sound and satisfactory quality and suitable in all respects for the purposes of the Works and be of the kinds and standards described in the Contract Documents.
- 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 Where the Contract requires the supply of materials to a specific standard or specification or from a particular source no other substitute materials may be used without serving notice on the Company in accordance with clause 18 marked for the attention of the Commercial Director and with a further copy marked for the attention of the Construction Director setting out any proposed change and then receiving from the Company the prior written consent of the Company. The Company may at its discretion specify the source of any materials or provide materials for use in the Works. 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. The Contractor shall when requested by the Company submit at the Contractor’s cost samples of any goods and/or materials to be used in the Works. Each sample shall be labelled as to origin and intended use in the Works.

- 4.4 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.
- 4.5 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.
- 4.6 Where the Contractor is fixing materials supplied by the Company the Contract Sum includes 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.
- 4.7 The Contractor shall be deemed to have allowed in the Contract Sum for sufficient protection to prevent damage to the Works howsoever arising including but without limitation damage arising out of or in connection with weather conditions construction or other Contractors.
- 4.8 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.
- 4.9 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.
- 4.10 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.
- 4.11 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 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 regularly and 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 working hours are 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.
- 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 in writing 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 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 employ 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 his servants agents and employees (where applicable) 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 The Company without liability to the Contractor may require the Contractor to remove any person employed by the Contractor on the Works.
- 7.5 The Contractor is to be responsible for his own labour and any substitution 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 as it may determine and may substitute any person 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 materials tools 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 sorting storage (at temporary locations allocated from time to time by the Company) protection and insurance of his materials 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 his employees 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 is 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 or bimonthly 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 19th of each month or if the 19th of a particular month is not a working day then the last working day before the 19th (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 6th and 19th of each month or if the 6th or 19th of a particular month is not a working day then the last working day before the 6th or 19th (both such dates 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 24 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:
- 9.7.3 payment for materials delivered to the Site until such materials are fully incorporated into the Works; or
- 9.7.4 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 14 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 17.2) 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 16 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 14.3) 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.

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.



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- 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 any materials or 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. **Title to and risk in Goods and Works**

- 13.1 Title to goods and materials forming part of or intended to form part of the Works shall vest in the Company as and when the Contractor has received payment for the same or the same have been delivered to the Site whichever is the earlier.
- 13.2 Loss or damage to the Works and to any goods and materials forming part of or intended to form part of the Works from whatever cause shall be at the sole risk of the Contractor until completion of the Works.

14. Termination

- 14.1 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 14.1 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 14.4 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.
- 14.2 Without prejudice to any other rights and remedies of the Company if the Contractor:
- 14.2.1 suspends the Works without the prior consent of the Company in writing; or
 - 14.2.2 fails to proceed with the Works regularly and diligently; or
 - 14.2.3 refuses or fails to remove repair or reinstate defective or improper work or materials; or
 - 14.2.4 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
 - 14.2.5 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
 - 14.2.6 commits any breach of the health and safety plan or of any statute or statutory regulations for the time being in force;
 - 14.2.7 is or becomes Insolvent;
- then the Company may forthwith by written notice determine the Contract.
- 14.3 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 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.
- 14.4 Upon any termination of the Contract under clauses 14.1 or 14.2 the Contractor shall immediately:
- 14.4.1 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;
 - 14.4.2 deliver up to the Company all documents relating to the Works;
 - 14.4.3 deliver up any plant materials and other work for which the Contractor has received payment; and

- 14.4.4 remove all other goods from the Site except as necessary for safety and leave the Site.
- 14.5 If the Contract is determined under clause 14.2 or by reason of any other default of the Contractor then the Company:
- 14.5.1 may complete or engage another contractor or contractors to complete the Works and use any plant equipment and materials delivered to the Site by the Contractor for use in the Works;
- 14.5.2 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;
- 14.5.3 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;
- 14.5.4 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.
- 14.6 The determination of this Contract is without prejudice to the rights obligations and liabilities of either party accrued prior to termination.
15. **Indemnity**
- 15.1 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 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.
- 15.2 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.
16. **Insurances**
- 16.1 Without prejudice to its liabilities referred to in 15.1 the Contractor is to insure as follows:
- 16.1.1 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;

- 16.1.2 against personal injury to or the death of any employee of the Contractor under an Employer's Liability 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;
- 16.1.3 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.
- 16.2 The insurances to be taken out under this Contract are to be in terms and with an insurance company acceptable to the Company and not subject to any material excess or unusual exclusions
- 16.3 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 16 and in any event upon annual renewal of the insurance.
- 16.4 If the Contractor fails to effect or maintain any insurance required under clause 16 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.
- 16.5 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.
- 17. Assignment and Third Party Rights**
- 17.1 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.
- 17.2 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).
- 17.3 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:
- 17.3.1 terminate the Contract;
- 17.3.2 amend or otherwise vary or waive any terms of the Contract; and/or
- 17.3.3 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.

17.4 Save as provided in Clause 17.2 any person who is not a party to this Contract has no rights to enforce any term of this Contract..

18. Notices

18.1 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 sent by first class post to the registered office or the address of the 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.

19. Applicable Law and Jurisdiction

19.1 This Contract is governed by and construed in accordance with the laws of Scotland and the parties agree to submit to the exclusive jurisdiction of the Court of Session in Edinburgh.

19.2 Any reference to legislation is to that legislation as amended re-enacted or substituted from time to time.

20. Limitation

20.1 No action is to be brought under this Contract after the expiration of [10][12] years from the date on which the cause of action accrued save in the event of fraud or deliberate concealment.

21. Adjudication

21.1 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 (Scotland) Regulations 1998 (SI 1998 No 687) ("Scheme") except that:

21.1.1 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;

21.1.2 (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 abatements 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;

21.1.3 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;

21.1.4 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 21.1 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 21.1 shall continue in full force and effect.

21.2 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 (Scottish Branch).

22. Data Protection

22.1 Definitions for purposes of this clause only:

“Data Protection Laws” means the General Data Protection Regulation, the Data Protection Act 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.

“Personal Data” means personal information belonging to an individual as defined in the Data Protection Laws.

“Property” means any property constructed by the Company.

22.2 The Contractor may be provided with Personal Data in the course, or for the purposes, of the Contract. Such Personal Data may relate to the Company’s employees or those of any third party or any of the Company’s Customers. The Contractor shall only 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 works to, or goods for, a Property then only for purposes of contacting the Company’s Customer who owns that Property from time to time to carry out such works or provide such goods; and/or;

22.2.2 If provided in connection with the provision of services to a Property then to contact the Company’s Customer only for the purposes of providing those services; and/or;

22.2.3 If such Personal Data relates to any of the Company’s employees or those of any third party then solely for the declared purpose stated by the Company; and;

22.2.4 Any Personal Data shall be processed, used, distributed and stored strictly in accordance with the Data Protection Laws.

- 22.3 For the purposes of any Contract unless specifically agreed otherwise the Company shall be the Data Controller and the Contractor shall be the Data Processor each as defined in Data Protection Laws.
- 22.4 The Company shall, as Data Controller, be responsible for obtaining the consent (if required) of the person to whom the Personal Data relates and to its use by the Contractor as provided for in the Contract and the Company shall notify the Contractor of any relevant period for which the Contractor may retain such data. The Contractor shall be responsible for ensuring that any Personal Data is deleted promptly and permanently following its use, or earlier, if required by the Company.
- 22.5 No special categories of personal data (as defined in the Data Protection Laws) is to be provided to the Contractor in connection with any Contract and in the event the Contractor receives any special categories of personal data (Sensitive Personal Data) or Personal Data which the Contractor considers to be sensitive then the Contractor shall promptly notify us and shall take all immediate steps to delete the same from any records and confirm such deletion to the Company.
- 22.6 The Contractor shall, in any event, keep any and all Personal Data which is provided or which comes into its possession strictly private and confidential and shall not release or provide the same to any of its employees who are not required to receive this for the purposes of the Contract or to any third party without the Company's prior consent. The Contractor shall in any event be responsible for the use and security in processing any such Personal Data by it or the third party 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 at <https://www.barratthomes.co.uk/Footer/Privacy-policy/> from time to time.
- 22.8 In the event of any conflict between:
- any obligation imposed by law;
 - any obligation imposed by the Company's Data Protection Policy from time to time; and;
 - any instructed purpose for use of any Personal Data

then that order shall be the order of precedence in relation to and for the purposes of compliance by the Contractor under the terms of any Contract.



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- 22.9 In the event of any data breach including but not limited to the loss or unauthorised provision of any Personal Data by the Contractor or any third party to whom the Personal Data was provided or released by it whether or not authorised by the Company, then the Contractor shall immediately (and at all times within 24 hours) inform the Company via the Data Protection Manager designated in accordance with the Company's Data Protection Policy, from time to time, 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 Company receives updated information in respect of the same at all times. The Company shall report any such breach, loss or unauthorised disclosure to the Information Commissioner's Office.
- 22.10 In the event the Contractor receives any request for Personal Data whether from the owner of that data or not the Contractor shall refer such request to the Company and not supply any such Personal Data to any person.