

BIRTLEY GROUP LIMITED
Terms and Conditions of Sale

1 In these Conditions

- (a) **"Additional Services"** means the design, installation, maintenance and supply of labour services, which are to be supplied by the Company to the Customer pursuant to the Contract, whether in relation to the supply of Goods or otherwise;
- (b) **"Coated Goods"** means the Goods in respect of which the Company has undertaken the Coating Services;
- (c) **"Coating Services"** means the galvanizing, chemical, electrical, fettling and/or metallurgical coating services, which are to be supplied by the Company to the Customer pursuant to the Contract, whether in relation to the supply of Goods or otherwise;
- (d) **"Company"** means Birtley Group Limited, a company registered in England and Wales with company number 00602575;
- (e) **"Conditions"** means these terms and conditions as amended by the Company from time to time;
- (f) **"Confidential Information"** means the provisions of the Contract, including the Specification and the Price, and all information which is secret or otherwise not publicly available (in both cases either in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, in all cases whether disclosed orally or in writing before or after the date of the Contract;
- (g) **"Contract"** means any contract between the Company and the Customer for the sale of Goods and/or provision of Services, incorporating these Conditions;
- (h) **"Customer"** means the person, firm, company or party who purchases the Goods and/or Services from the Company;
- (i) **"Customer Property"** means all property supplied to the Company by or on behalf of the Customer which is held by the Company for the purposes of the Contract, or is in transit to or from the Customer;
- (j) **"Goods"** means the goods, articles and materials (including any part or parts of them) which are to be supplied by the Company to the Customer pursuant to the Contract;
- (k) **"Intellectual Property Right"** means any patent, copyright, trade mark, service mark or trade name, right in software, right in design, right in databases, image right, moral right, right in an invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the United Kingdom and all other countries in the world in each case whether registered or not and including any application for registration of the foregoing;
- (l) **"Order"** means the Customer's order for the supply of Goods and/or Services as may be set out in the Customer's purchase order form, or the Customer's written acceptance of the Company's quotation, or in such form as the Company may determine from time to time;
- (m) **"Price"** means the price of the Goods and/or Services as defined in Condition 3(a);
- (n) **"Services"** means the Coating Services, Additional Services and any other services, which are to be supplied by the Company to the Customer pursuant to the Contract, whether in relation to the supply of Goods or otherwise;
- (o) **"Specification"** means the specification of the Goods and/or Services which is included or expressly referred to in the Contract;
- (p) **"Warranty Period"** means 12 months from the delivery or deemed delivery of the Goods or performance or deemed performance of the Services;
- (q) headings are inserted for convenience only and shall not affect the interpretation or construction of these Conditions;
- (r) words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender. References to a person include a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (s) a reference to a party includes its successors or permitted assigns;
- (t) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; and
- (u) any phrase introduced by the terms "other", "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the generality of the words preceding or following those terms.

2 BASIS OF CONTRACT

- (a) Any quotation or estimate given by the Company is an invitation to the Customer to make an offer only and no Order by the Customer shall be binding on the Company unless and until it is accepted by the Company in accordance with Condition 2(c) below.
- (b) The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- (c) No Order shall be deemed to be accepted by the Company until the Company issues written acceptance of the Order or (if earlier) the Company commences provision of the Services, manufacture of the Goods, their preparation to the Customer's order or dispatch of the Goods to the Customer. Any Order shall be accepted entirely at the discretion of the Company, at which point and on which date the Contract shall come into existence.
- (d) The Contract constitutes the entire agreement between the parties in relation to its subject matter and supersedes any prior arrangement, understanding, or written or oral agreements between the parties in relation to such subject matter. The Customer acknowledges that it has not wholly or in part relied on any warranty, statement, promise or representation made or given by or on behalf of the Company which is not expressly set out in the Contract. Each party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind the Contract which it might otherwise have had in relation to them. All warranties, conditions, terms and representations not set out in the Contract whether implied by statute or otherwise are excluded to the extent permitted by law. Nothing in this Condition 2(d) shall exclude any liability in respect of misrepresentations made fraudulently.
- (e) Any samples, drawings, figures, statements, descriptive matter, sales literature or advertising materials issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Company's catalogues, brochures or other documents are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. The Company gives no guarantee or representation that illustrations, weights and dimensions specified in such catalogues and literature will in all cases be identical with the Goods and/or Services due to improvements and modifications to the Goods and/or Services or their specifications that may be made from time to time. The Company will notify the Customer in writing of any material alterations to any specifications relating to the Goods and/or Services and the Customer shall be deemed to have accepted such alterations unless notice in writing to the contrary shall be received by the Company within 14 days of the Company's notice to the Customer. Such catalogues and literature shall not form part of the Contract or have any contractual force.
- (f) These Conditions apply to the Contract to the exclusion of any other terms, conditions or provisions that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- (g) Any quotation given by the Company is subject to these Conditions, and (without prejudice to the Company's right not to accept an Order) is only valid for a period of 30 days from its date of issue, unless stated otherwise by the Company in writing. If the quotation is given in a currency other than pounds sterling the applicable exchange rate for the purposes of Condition 4(h) shall be the published rate at which Barclays Bank sells the relevant currency on the date the quotation is given.
- (h) All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3 PRICE

- (a) The Price shall be the price set out in the Company's quotation or estimate or, if no price is quoted, the price set out in the Company's price list published on the date of delivery, or deemed date of delivery, of the Goods or date of performance, or deemed date of performance, of the Services.
- (b) The Price is exclusive of value added tax or other similar taxes or levies, import and export duties and/or taxes, any other tax or duty, and all costs or charges in relation to packaging, labelling, loading, unloading, delivery, carriage, freight and insurance, all of which amounts the Customer will pay, where appropriate, in addition when it is due to pay the Price.
- (c) If after the date of the Contract any increase occurs in the Company's costs of any materials, labour, transport or other items, including overheads, which the Company has to pay or incur in the performance of the Contract, the amount of any increase in such costs shall be added to the Price and shall be borne by the Customer.
- (d) Where the Price quoted in the Company's quotation or estimate is based on stated production runs or specific delivery periods, the Company reserves the right to vary the Price, should the Customer order different quantities from those stated and/or require delivery over a different period.
- (e) The cost of any variation or modification in the design, specification, materials or drawings of the Goods or Services, or any development of them requested by the Customer after the date of the Contract shall, if such variations or modifications are accepted by the Company, be borne by the Customer.

- (f) If performance of the Contract is suspended with the written agreement of the Company then the Customer shall pay the pro rata Price for Services already carried out, Goods supplied or ordered and any other additional costs incurred by the Company, including storage and insurance.

4 PAYMENT

- (a) In respect of Goods, the Company shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Company shall invoice the Customer on or at any time after the performance of the Services for or on behalf of the Customer.
- (b) The Customer shall pay all invoices in full and cleared funds without any deduction, or withholding, within 30 days of the date of the invoice. Time for payment shall be of the essence.
- (c) The Company may at any time at its sole discretion require that payment is to be made by letter of credit. Where the Company specifies that payment is to be made by letter of credit, the Customer must establish and maintain in favour of the Company an irrevocable and unconditional letter of credit in a form satisfactory to the Company and issued and/or confirmed by a bank in England which is acceptable to the Company. No delivery of the Goods or performance of the Services will take place until such a letter of credit has been issued and where appropriate confirmed and the Company is satisfied with all related arrangements. If for any reason payment is due under any letter of credit established for that purpose but not made, the Customer shall nevertheless remain liable to pay the Price.
- (d) The Customer shall not be entitled to set off against any monies due to the Company under the Contract, any amount claimed by or due to the Customer by the Company whether pursuant to the Contract or on any other account whatsoever.
- (e) No indulgence granted by the Company to the Customer concerning the Customer's obligations under this Condition 4 shall be or be deemed to be a credit facility, but if any such facility is granted to the Customer by the Company, the Company may withdraw it at its sole discretion at any time.
- (f) If any sum due from the Customer to the Company under the Contract or any other contract is not paid on or before the due date for payment then all sums then owing by the Customer to the Company shall become due and payable immediately and, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
 - (i) cancel or suspend its performance of the Contract or any Order including suspending deliveries of the Goods and suspending delivery of any other goods to the Customer and suspending provision of the Services or other services until arrangements as to payment or credit have been established which are satisfactory to the Company;
 - (ii) require the Customer to pay for Goods prior to their despatch or collection from the Company's place of business;
 - (iii) suspend performance of Services remaining to be carried out; and/or
 - (iv) charge the Customer:
 1. interest on the overdue amount from the due date until payment is made in full both before and after any judgment, at the prevailing rate under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (accruing on a daily basis and compounded monthly); and
 2. the cost of obtaining judgment, all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.
- (g) Where the Company suspends delivery of the Goods and/or performance of the Services pursuant to Conditions 4(f)(i) and (ii), any agreed time schedules shall be extended by a period equal to the period of such suspension without prejudice to any other remedy available to the Company.
- (h) Unless otherwise agreed in writing, payment shall be made by the Customer in pounds sterling. No payment shall be deemed to have been received until the Company has received cleared funds.

5 DELIVERY, RISK AND ACCEPTANCE

- (a) Delivery of the Goods shall, where the Contract designates a delivery point in the UK, be to such delivery point, and otherwise be Free Carrier (FCA), Birtley Group Limited, Westhaven House, Arleston Way, Shirley, Solihull, West Midlands, B90 4LH (Incoterms 2010) unless otherwise agreed in writing by the parties. The provisions of Incoterms 2010 shall apply to the Contract, but if there is any conflict between the provisions of Incoterms 2010 and these Conditions, then these Conditions shall prevail.
- (b) The Goods shall be at the risk of the Customer from the time of delivery or deemed delivery of the Goods. Any materials required to perform the Services shall be at the risk of the Customer from the time such materials are delivered, or deemed to be delivered, to the premises at which the Services are to be performed.
- (c) If for any reason the Customer does not accept delivery of any of the Goods or materials for the Services when they are ready for delivery, or the Company is unable to deliver the Goods or materials for the Services on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
 - (i) the Goods or materials for the Services will be deemed to have been delivered, risk passing to the Customer (including for loss or damage caused by the Company's negligence); and
 - (ii) the Company may store the Goods or materials for the Services until actual delivery whereupon the Customer shall be liable for all related costs and expenses (including storage and insurance).
- (d) If the Customer fails to collect or accept delivery of the Goods or any part thereof within 28 days of written notification from the Company that the Goods are ready for collection or delivery, the Company shall be entitled (without prejudice to its other remedies under the Contract for such breach) to sell, or at its option destroy, such Goods and to apply the proceeds of their sale and/or their scrap value if destroyed towards payment of all sums due to the Company under the Contract.
- (e) Any times specified by the Company for delivery of the Goods or performance of the Services are intended to be an estimate only and time for delivery shall not be of the essence. If the Company, having used its reasonable endeavours, fails to dispatch or deliver the Goods or perform the Services by any specified times, such failure shall not constitute a breach of the Contract nor, subject to Condition 11(d) below, shall the Customer be entitled to claim compensation for such failure or for any direct, indirect or consequential loss or damage as a result.
- (f) If the Company fails to deliver the Goods or perform the Services, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods or services of similar description and quality in the cheapest market available, less the Price. The Company shall have no liability for any failure to deliver the Goods or Services to the extent that such failure is caused due to circumstances beyond its reasonable control, the Customer's failure to provide the Company with adequate delivery or site or other instructions for the Goods or Services or any relevant instruction related to the supply of the Goods or Services.
- (g) The Customer shall be deemed to have accepted the Goods or performance of the Services as being in accordance with the Contract (and shall be bound to pay the Price for them as if they had been delivered in accordance with the Contract), unless written notice of any defect or other failure of the Goods or performance of the Services to conform with the Contract:
 - (i) (which would be apparent upon reasonable inspection and testing of the Goods) is received by the Company within 7 days of delivery of the Goods or performance of the Services; and
 - (ii) any other defect or non-conformance within a reasonable time (and no later than 7 days after such defect or non-conformance has become apparent).
- (h) Goods, once delivered, cannot be returned unless their return is agreed in advance in writing by the Company.
- (i) Unless otherwise agreed in writing, the Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by the Company, the Customer shall make those licences and consents available to the Company prior to the relevant shipment.
- (j) The Company shall be entitled at its discretion to make delivery of Goods or supply Services by instalments and to invoice the Customer for each instalment individually. Where Goods are delivered or Services are supplied by instalments each such instalment shall be deemed to be sold or supplied under a separate contract to which these Conditions shall apply. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- (k) The Company shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

6 TITLE

- (a) Notwithstanding Condition 5(b), full legal, beneficial and equitable title to and property in the Goods shall remain vested in the Company until:
 - (i) the Price and all other amounts due under the Contract have been received by the Company in cleared funds; and
 - (ii) all other money payable by the Customer to the Company on any other account or under the Contract or any other contract has been received by the Company in cleared funds.
- (b) Until full legal, beneficial and equitable title to and property in the Goods passes to the Customer:
 - (i) the Company may at any time require the Customer to deliver the Goods up to the Company and/or recover and resell the Goods if any of the events specified in Condition 17 below shall occur and/or if any sum owed by the Customer to the Company under any Contract is not paid on the due date for payment. For the purpose of exercising its rights under this Condition 6(b)(i) the Company, its servants or agents together with all necessary and appropriate transport shall be entitled to free and unrestricted entry to the Customer's premises and/or all other locations where the Goods are situated;
 - (ii) the Customer shall hold the Goods on a fiduciary basis as bailee of the Company;

- (iii) the Customer shall store the Goods for the Company in a proper manner without charge to the Company and ensure that they are stored separately from any other goods and are clearly identified as belonging to the Company. The Company shall (subject to giving reasonable notice) be entitled to examine the Goods in storage at any time during normal business hours; and
- (iv) the Company shall be entitled to maintain an action against the Customer for the Price, notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to the Customer.
- (c) The Company may sell the Goods in the ordinary course of its business, but the Customer's right of re-sale shall automatically cease upon the occurrence of any of the events referred to in Condition 16 below and/or if any sum owed by the Customer to the Company under any Contract is not paid on the due date for payment.
- (d) Upon the re-sale of the Goods by the Customer the proceeds of sale thereof shall be received and held by the Customer in trust for the Company (and if so requested by the Company in writing, in a separate bank account in the names of the Company and the Customer) but the Customer shall be entitled to retain any excess over the amount then outstanding under this or any other Contract.
- (e) Nothing in this Condition 6 shall entitle the Customer to return the Goods and/or materials or to delay payment.
- (f) The rights and remedies conferred upon the Company by this Condition 6 are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of the Company under the Contract.
- 7 TESTING AND INSPECTION**
- (a) Testing and inspection, if requested by the Customer in writing, shall be at the Company's premises (at the Customer's expense) and such testing and inspection shall be final and conclusive as to their results.
- (b) The Company shall not be obliged to produce test and performance certificates or safety critical certificates unless agreed otherwise in writing.
- (c) In addition to any costs incurred by the Company in testing the Goods, the Customer shall pay for all test pieces which comply with the Specification.
- 8 COATING SERVICES**
- (a) If the Contract is for, or includes, Coating Services to be performed by the Company, then, unless the Contract expressly states otherwise, the provisions of this Condition 8 shall apply.
- (b) The Customer shall ensure that the Goods are fit and proper for the application of the Coating Services in a safe and effective manner and the Customer confirms that it is aware of the processes which the Company will administer to the Goods as part of the Coating Services.
- (c) Subject to Condition 11(d), the Company shall have no liability for any loss, damage, delay or other liability whatsoever and howsoever arising in relation to the Goods and the Coated Goods to the extent Condition 8(b) is not fully complied with.
- (d) Notwithstanding Condition 8(b), the Company shall have the right to reject Goods presented for the Coating Services if the Company in its sole discretion considers such Goods are not fit to be so processed. The Company may modify, drill, suspend or otherwise adapt the Goods in order for them to be subject to the Coating Services and all such activities shall be at the risk and expense of the Customer.
- (e) The Company shall have no liability whatsoever for any loss or damage to the Goods or the inability of the Coated Goods to be assembled or reassembled or to be joined to any other item as a result of the Coating Services. The Customer shall be responsible for ensuring the Coated Goods are fit for the Customer's own purpose.
- (f) The Customer shall indemnify the Company in full for any liability that the Company may incur as a result of any breach of Condition 8(b) and for any damage or change that may be caused to the Coated Goods as a result of the activities of the Company in accordance with Condition 8(d).
- (g) The Company shall use all reasonable endeavours to meet any performance dates for the Coating Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Coating Services.
- (h) The Coating Services will be deemed to be completed and the relevant element of the Price to be due and payable:
- when the Company issues a written notice to the Customer confirming such completion; or
 - if the Company is available to perform the Coating Services but is prevented from doing so by reason of the lack of relevant assistance from the Customer (such as lack of availability of test components or parts from the Customer).
- 9 ADDITIONAL SERVICES**
- (a) If the Contract is for, or includes, Additional Services to be performed by the Company, then, unless the Contract expressly states otherwise, the provisions of this Condition 9 shall apply.
- (b) Where the Company is to perform Additional Services at a site or premises which are not in the control of the Company, the Customer shall procure safe access to the premises and the provision of adequate power, lighting, heating and other such facilities, supplies, materials or equipment for the Company's employees or agents in accordance with the demands of any applicable laws and as the Company shall reasonably require.
- (c) The Company shall use all reasonable endeavours to meet any performance dates for the Additional Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Additional Services.
- (d) It will be the responsibility of the Customer in cases where construction or erection is to take place at the Customer's, site or at a site directed by the Customer (unless the Company agrees otherwise in writing), to ensure:
- adequate and accurate foundations, pad stones, holding down bolts to columns and similar items (being properly cast into the concrete or other material using taper bases or similar means to ensure the bolts are loose for alignment purposes) sufficient to support or hold the Company's structures are provided prior to the Company's arrival on site;
 - firm and accurate building lines levels and positions are located and details given to the Company when it is ready to commence erection;
 - all necessary scaffolding and other works and all necessary builders works (including works of cutting away and making good) are provided; and
 - the Customer will off load and store free of cost to the Company all Goods and materials if the Company has no servants or agents employed at the site at the time of delivery.
- (e) The Additional Services will be deemed to be completed and the relevant element of the Price to be due and payable:
- when the Company issues a written notice to the Customer confirming such completion; or
 - if the Company is available to perform the Additional Services but is prevented from doing so by reason of:
 - the lack of relevant assistance from the Customer (such as lack of availability of test components or parts from the Customer); and/or
 - the condition of the Customer's premises or the site at which the Additional Services are to be provided and/or the facilities at, or the services available therein, at the time agreed for the provision of the Additional Services.
- 10 WARRANTY**
- (a) Where any Goods and/or Services (or any part thereof) are shown by the Customer during the Warranty Period, to the reasonable satisfaction of the Company, not to comply materially with the Specification, the Company shall at its sole discretion:
- repair or make good such non-conformance free of charge to the Customer; or
 - replace such Goods with goods which are in all respects in accordance with the Specification or re-perform such Services; or
 - issue a credit note to the Customer in respect of the whole or part of the Price of such Goods or Services as appropriate having taken back such Goods or materials relating to such Goods or Services, subject, in every case, to Conditions 10(b) and (e) below, provided that, subject to Condition 11(d) below, the liability of the Company under this Condition 10 shall in no event exceed the Price of such Goods or Services and performance of any one of the above options shall constitute an entire discharge of the Company's liability under this warranty.
- (b) Condition 10(a) above shall not apply unless the Customer:
- notifies the Company in writing within 7 days of becoming aware such non-conformance;
 - if so required by the Company, returns all defective Goods or materials relating to the Services to the Company's premises, carriage paid by the Customer, for inspection, examination and testing and/or otherwise permit the Company to have access to the Goods of such materials at the Customer's premises or other location where they may be or where the Services were performed for such purposes; and
 - has properly and correctly stored, installed and/or used the Goods.
- (c) If the Company elects to replace the Goods or re-perform the Services pursuant to Condition 10(a), the Company shall deliver the replacement Goods to or re-perform the Services for the Customer at the Company's own expense at the address to which the defective Goods were delivered and the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in the Customer) re-vest in the Company and the Customer shall make any arrangements as may be necessary to deliver up to the Company the defective Goods which are being replaced or materials relating to the previously performed Services.
- (d) The Company shall be under no liability under the warranty at Condition 10(a):
- in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;
 - if the total price for the Goods or Services has not been paid by the due date for payment;
 - for any Goods manufactured or appropriated to the Contract in accordance with any design, specification, instruction or recommendation made to the Company by the Customer or for any Services provided in accordance with specifications, instructions or recommendation issued by the Customer;
 - in respect of any type of defect, damage or wear specifically excluded by the Company by notice in writing; or
 - if the Customer makes any further use of the Goods after giving notice in accordance with Condition 10(b).
- (e) Insofar as the Goods comprise or contain equipment or components which were not manufactured or produced by the Company, the Customer shall be entitled only to such warranty or other benefit as the Company has received from the manufacturer.
- 11 LIMITATION OF LIABILITY**
- (a) Subject to Condition 11(d) below, the Company is not liable, whether in contract, tort (including negligence or breach or statutory duty), misrepresentation or otherwise, howsoever arising, in connection with the Contract for any:
- direct or indirect loss of profit, loss of revenue, loss of business, loss of anticipated savings; or
 - indirect, special or consequential loss or damage.
- (b) Subject to Conditions 5(f) and 11(a) and (d), the total aggregate liability of the Company arising out of, or in connection with the performance or contemplated performance of the Contract, whether for negligence or breach of contract or any case whatsoever, shall in no event exceed 120% of the Price paid or payable to the Company.
- (c) Each party agrees that the Price is set by the Company taking into account the limitation of the Company's liability as set out in these Conditions. Each party agrees that the limitation of the Company's liability as set out in these Conditions is reasonable.
- (d) Nothing in these Conditions shall exclude or limit the Company's liability for:
- death or personal injury resulting from the negligence of the Company, its servants or agents;
 - fraud or fraudulent misrepresentation;
 - breach of the terms implied by Section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12 FORCE MAJEURE**
- If the Company's ability to perform any of its obligations under the Contract is affected by any circumstances beyond its reasonable control (including act of God, fire, flood, lightning, compliance with any law or governmental order, rule, regulation or direction, war, revolution, act of terrorism, riot or civil commotion, strikes, lock-outs or other industrial action, inability to obtain materials or labour, power or machinery breakdown or failure) further performance of the Contract shall be suspended for so long as the Company is so affected provided that if the performance of the Contract shall be suspended for more than six consecutive calendar months the Customer shall be entitled by written notice to the Company to terminate the Contract or to cancel any outstanding part thereof and the Customer shall pay the pro rata Price for all Goods and Services supplied and materials used by the Company to the actual date of such termination. Subject to Condition 11(d) above, the Company shall not be liable for any direct, indirect or consequential or special loss or damage suffered by the Customer, howsoever arising, as a result of the Company's inability to perform its obligations under the Contract due to circumstances beyond its reasonable control.
- 13 CUSTOMER'S PROPERTY**
- All Customer Property shall be deemed to be entirely at the Customer's risk and the Company shall not be liable for any loss of or damage to any Customer Property whilst it is in the possession of the Company or in transit unless such loss or damage is due directly to the negligence of the Company, its servants or agents. The Customer shall insure all Customer Property on an all risks basis.
- 14 LIEN**
- Without prejudice to any other rights and remedies which the Company may have under the Contract, the Company shall in respect of all debts due and payable by the Customer to the Company have a general lien on all Goods and property belonging to the Customer in its possession (whether worked on or not) and shall be entitled upon the expiration of at least 14 days' notice to the Customer, to dispose of such Goods or property as it thinks fit and to apply any proceeds of sale thereof towards the payment of such debts.
- 15 HEALTH AND SAFETY**
- The Customer agrees to pay due regard to any information supplied by the Company relating to the use for which the Goods or product of the Services are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned, serviced or maintained by any person, and the Customer represents, warrants and undertakes to take such steps as may be specified by such information or otherwise necessary to ensure that as far as is reasonably practicable the Goods will be safe and without risk to health at all times as mentioned above.
- 16 COMPLIANCE**
- (a) The Customer shall comply with all relevant anti-corruption legislation in connection with the Contract and the Company's business and shall immediately notify the Company if it discovers or suspects that any of its officers, directors, employees or representatives are acting or have acted in a way which violates such legislation.
- (b) The Customer acknowledges that the Company has a code of responsible business: The Hill & Smith Holdings PLC Code of Business Conduct ("HS Code of Conduct"). The HS Code of Conduct together with the Company's Anti Bribery and Corruption Policy ("HS ABC Policy") are available at www.hsholdings.co.uk and the Customer shall, at all times, conduct, and procure that its officers, directors, employees and/or representatives conduct, business ethically and in accordance with the relevant provisions of the HS Code of Conduct and the HS ABC Policy. This Condition 16 shall apply whether or not the Customer is acting pursuant to the Contract or its relationship with the Company.
- (c) The Customer agrees that it must be able to demonstrate its compliance with the requirements referred to in this Condition 16 at the request of and to the satisfaction of the Company, which includes the Company having the right to inspect any site involved in work for the Company. If the Customer fails to comply with this Condition 16, the Company shall be entitled, in its sole discretion, to terminate this Contract and any other contracts between the Customer and the Company without penalty to the Company, and the Customer shall indemnify the Company in full for any losses suffered by the Company as a result of such termination.
- 17 TERMINATION**
- The Company shall be entitled, without prejudice to the Company's other rights and remedies, either to terminate wholly or in part any or every Contract between the Company and the Customer and/or to suspend any further deliveries of Goods, or performance of Services, in any of the following circumstances:
- non-compliance by the Customer with the Company's terms of payment set out in Condition 4 above;
 - the Customer has failed to provide a letter of credit or guarantee, bill of exchange or any other security required by the Contract;
 - the Customer makes or proposes in respect of it a company voluntary arrangement pursuant to the Insolvency Act 1986 or any other composition or scheme or arrangement with, or assignment for the benefit of, any of its creditors;
 - the Customer becomes subject to an administration order or becomes bankrupt or goes into liquidation;
 - the Customer has a petition presented for its winding up (which is not dismissed within 21 days of its service) or has an application made for the appointment of a provisional liquidator or has a creditors' meeting convened pursuant to Section 98 of the Insolvency Act 1986;
 - an embarguer takes possession of, or a receiver or administrative receiver or similar officer is appointed in relation to, any of the property or assets of the Customer;
 - the Customer suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
 - the Company reasonably believes that any of the events mentioned at Conditions 17(a) to (g) above or any equivalent or similar event under any relevant laws to which the Customer or any connected person is subject, has occurred or may occur;
 - the Customer or any connected person commits any breach of this Contract or any other contract whenever made between the Customer and the Company; or
 - the Company suspects that there has been a breach, or there has been a breach, of any of the provisions of Condition 16 above.
- (k) Notwithstanding any such termination, the Customer shall pay to the Company the pro rata Price for all work done, materials used and Goods delivered up to and including the date of termination.
- 18 INTELLECTUAL PROPERTY**
- Any Intellectual Property Rights created by the Company in the course of the performance of the Contract or otherwise in the manufacture of the Goods or provision of the Services shall remain the Company's property. Nothing in the Contract shall be deemed to have given the Customer a licence or any other right to use any of the Intellectual Property Rights of the Company.

19 CONFIDENTIALITY

The Customer shall keep and procure to be kept secret and confidential all Confidential Information disclosed to it or obtained by it as a result of the relationship of the parties under the Contract and shall not use or disclose the same, save for the purposes of the proper performance of the Contract or with the prior written consent of the Company.

20 NOTICES

- (a) Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address, if sent by prepaid first-class post or recorded delivery, at 10.00 am on the second day, which is not a Saturday, Sunday or a bank or public holiday in England, after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

21 GENERAL

- (a) If at any time any one or more of the provisions of these Conditions become invalid, illegal or unenforceable in any respect under any law, the validity and enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired thereby.
- (b) Nothing in the Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.
- (c) The rights and remedies of the Company under the Contract shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure of or delay by the Company in asserting or exercising any such rights or remedies.
- (d) The Customer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Company.
- (e) The Company may assign, charge, subcontract or transfer the Contract or any part of it to any person.
- (f) Subject to Condition 21(g) below, a person who is not a party to the Contract has no rights (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of the Contract.
- (g) The Company and any member of its group may enforce the provisions of this Contract subject to and in accordance with Condition 21(h).
- (h) The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any person that is not a party to this Contract.

22 GOVERNING LAW AND DISPUTES

- (a) The Contract and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England.
- (b) If the Customer is a company registered and/or domiciled in the European Union then all disputes or claims arising out of or relating to the Contract shall be subject to the exclusive jurisdiction of the English Courts, to which the parties irrevocably submit.
- (b) If the Customer is a company registered and/or domiciled outside of the European Union then all disputes or claims arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such rules. Such arbitration shall take place in the English language in London, England. The seat of the arbitration shall be in London, England.
- (c) The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Conditions or the Contract.

23 LANGUAGE

The Contract is drafted and entered into in the English language. All amendments to the Contract and all other documents provided under or in connection with the Contract shall be in the English language. If the Contract, or any documents provided under or in connection with the Contract, are translated into any other language, the English language version shall prevail.