

ANDREWS AIR CONDITIONING AND REFRIGERATION LIMITED**TERMS AND CONDITIONS FOR SALE OF GOODS AND SUPPLY OF SERVICES****1. EXISTENCE AND SCOPE OF CONTRACT**

- 1.1 These terms and conditions together with AAR's Quotation set out all the rights and obligations of the parties each to the other and no other terms or conditions shall be implied save to the extent that such terms or conditions are implied by statute.
- 1.2 Unless otherwise expressly agreed, collection or acceptance of Goods or acceptance of Services by the customer shall signify acceptance of these terms and conditions. For the avoidance of doubt AAR do not intend to enter into contract on any terms and conditions other than those set out herein.
- 1.3 If the Contract includes any installation work or other Services, it is agreed between the parties that all the Contract Works shall be construction operations for the purposes of the Housing Grants, Construction and Regeneration Act 1996, Part 11. which Act shall apply to contract.
- 1.4 All quotations by AAR shall be open for acceptance for 60 days unless expressly stated otherwise or unless withdrawn or revised by AAR.
- 1.5 All quotations for the sale of Goods and conditional on availability of the said Goods to AAR.
- 1.6 These are the terms and conditions applicable to the contract unless expressly stated as different at the inception of the contract.

2.0 DEFINITIONS

- 2.1 The following terms shall have the following meanings:
 - (i) 'AAR' means Andrews Air Conditioning & Refrigeration Limited its successors and assigns.
 - (ii) The 'Customer' means the Customer of AAR to whom this document is addressed and includes successors or others for whom the said Customer is responsible.
 - (iii) The 'Goods' means the Goods supplied by AAR as described in AAR's Quotation.
 - (iv) 'Services' means the Services provided by AAR as described in AAR's Quotation.
 - (v) 'Contract Works' means Goods and Services where both are provided under the Contract.
 - (vi) 'Variation' means any charge or addition to, or omission from the specification of any Goods or Services, or any change in the manner or time in which such Goods or Services are to be carried out.
 - (vii) 'Site' means the area within which the Goods are to be installed together with any other area which AAR shall be permitted to use in connection with the Contract Works.
 - (viii) 'Defect' and 'Defective' means Goods and Services supplied not in accordance with the Contract. For the avoidance of doubt 'Defect' and 'Defective' does not include deterioration resulting from fair or excessive use, damage however caused, improper use, lack of proper maintenance by the Customer or others for whom it is responsible.
 - (ix) 'Contract Price' means the sum stated in AAR quotation as the price payable to AAR for performance of the Contract Works.
 - (x) 'CDM Regulations' mean the Construction (Design and Management) Regulations 1994.

3.0 SALE OF GOODS – DELIVERY AND ACCEPTANCE

- 3.1 This **CLAUSE 3** shall apply in all cases where the Contract is for the supply of Goods and no installation Services at the site are provided by AAR under the Contract notwithstanding other Services may be provided by AAR in connection with the Goods.

Delivery

- 3.2 The Goods are delivered to the Customer when AAR makes them available to the Customer or any agent of the Customer or any carrier (who shall be the Customers agent whoever pays its charges) at AAR's premises or other place of delivery agreed by AAR.
- 3.3 Risk in the Goods passes when they are delivered to the Customer.
- 3.4 AAR may at its discretion deliver the Goods by instalments in any sequence.
- 3.5 When the Goods are delivered by instalments no default or failure by AAR in respect of any one or more instalments shall be vitiate thee contract in respect of the Goods previously delivered or which remain undelivered.
- 3.6 Any dates quoted by AAR for the delivery of the Goods or if applicable for the provision or completion of the Services are approximate only and shall not form part of the contract, and the

- Customer acknowledges that in the performance expected of AAR no regard has been paid to any quoted delivery dates.
- 3.7 If the Customer fails to take delivery of the Goods or any part of them on the due date or to provide any instructions or documents required to enable the Goods to be delivered on the due date, AAR may on giving written notice to the Customer store or arrange for the storage of the Goods and on the service of the notice risk in the Goods shall pass to the Customer. Delivery of the Goods shall be deemed to have taken place and the Customer shall pay to AAR all costs and expenses including storage and insurance charges arising from its failure.
- 3.8 AAR shall not be liable for any penalty loss injury damage or expense arising from any cause at all, nor shall any such delay or failure entitle the customer to refuse to accept any delivery or performance or to repudiate the contract.

Acceptance and Notice of Complaint

- 3.9 The Customer shall be deemed to be satisfied with and have accepted the Goods on delivery UNLESS it shall have complied with the provision of this **Clause 3**.
- 3.10 Any claim that the Goods or any part of them have been delivered damaged or are not of the correct quantity or do not comply with their description shall be notified by the Customer to AAR by written endorsement on the delivery note in respect of such Goods and in writing to AAR within 48 hours of their delivery.
- 3.11 Any claim that the Goods or any part of them have been lost in transit or are defective or in the case of Services of a defect in workmanship shall be notified by the Customer to AAR within 7 days of delivery of the Goods or completion of the Services.
- 3.12 Any claim under this condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective Goods or part thereof.
- 3.13 AAR shall be afforded reasonable opportunity and facilities to investigate any claims made under this Condition and the Customer shall if so requested in writing by AAR promptly return any of the Goods the subject of any claim and any packing materials securely packed and carriage paid to AAR for examination.
- 3.14 AAR shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these conditions.

4.0 SUPPLY OF GOODS AND SERVICES- TIME ACCEPTANCE AND DEFECTS

- 4.1 This **Clause 4** shall apply in all cases where the Contract is for the supply of Goods and Services including installation Services by AAR at the site.
- 4.2 The Customer shall allow access to the site to enable AAR to carry out and complete the Contract Works.
- 4.3 Any dates quoted by AAR for delivery of Goods or completion of any service are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of AAR no record has been paid to any such dates.
- 4.4 AAR shall not be liable for any penalty loss injury charge or expense arising from its failure to meet any dates referred to in **Clause 4.3**, nor shall any such failure entitle the Customer to refuse performance or to repudiate the Contract.
- 4.5 When AAR considers it has substantially completed the supply of Goods and installation Services including testing and initial commissioning where appropriate, AAR shall notify the Customer that the Contract Works are complete providing that there may be Goods and Services remaining to be supplied or completed including:
- (i) Goods and/or Services of a de minimus nature
 - (ii) manuals instructions information to be provided (if any) in pursuance of AAR obligations under the CDM Regulations or otherwise under the Contract
 - (iii) completion of testing and/or commissioning which is prevented by circumstances beyond AAR control including but not limited to climatic conditions on the site.
- 4.6 In the event that supply of Goods or Services referred to in **Clause 4.5 (i) to (iii)** remains to be completed after the time notified by AAR under **Clause 4.5**, AAR shall complete the said supply in a reasonable time having regard to all the circumstances.
- 4.7 On receipt of notice by AAR under **Clause 4.5** the Customer shall forthwith inspect the work on the site and the Customer shall be deemed to be satisfied with and have accepted the Contract Works save in respect of matters referred to in Clause 4.5 (i) to (iii) notified to the Customer, UNLESS it immediately notifies AAR of its dissatisfaction in writing giving reasons.

- 4.8 In the event that AAR does not agree with the Customer that the work on Site is not substantially complete within the meaning of **Clause 4.5**, either party may refer the matter to adjudication under **Clause 20.1**.
- 4.9 The parties agree that on such referral under **Clause 4.8** all further work including matters notified by AAR as incomplete may be suspended without further notice until the Adjudicator's Decision is received by both parties and notwithstanding the Adjudicator's decision as to his costs, each party will bear its own cost in respect of suspension of the work. The right to suspend the work shall cease 4 days after receipt by AAR of the Adjudicator's Decision.
- 4.10 If any Defect appears or becomes apparent within 6 months following acceptance of the works under **Clause 4.5**, the Customer shall immediately notify AAR and afford AAR reasonable opportunity to inspect, to investigate the cause, and to correct the Defect.
On receipt of notification of a Defect, AAR shall within a reasonable time inspect the Defect and may as its discretion investigate and correct the Defect as its own cost.

5.0 VARIATIONS

- 5.1 All variations shall be in writing signed by both parties or shall be requested in writing by the Customer and accepted expressly as a Variation by AAR
- 5.2 No Variation shall vitiate the Contract.
- 5.3 AAR may require the basis of charging any Variation to be agreed in writing before any Goods or Service comprising a Variation is provided to the Customer.
- 5.4 In the event that the basis of charging a Variation is not agreed as provided in **Clause 5.3** AAR may at its absolute discretion refuse to accept the Variation or may require the subject of the proposed Variation to be supplied under a separate contract.
- 5.5 If AAR accepts a Variation without first having agreed the basis of charging, then the Variation shall be valued as the work contained therein proceeds on a fair and reasonable basis having regard to all the relevant circumstances including any prices for similar Goods or Services contained in the Contract.

6.0 INFORMATION PROVIDED BY CUSTOMERS AND ASSUMPTIONS

Information Provided by Customer.

- 6.1 Where in AAR quotation any information or document is identified as provided by the Customer, AAR shall be entitled to rely on such information or document for the purpose of discharging its obligations under the Contract.
- 6.2 If the said information or document contains any error or inconsistency, the correction of which would affect performance of the Contract Works in any way whatsoever and if such correction is required in writing by the Customer or is necessary for the performance of the Contract Works, any resulting effect on the Contract Works shall be carried out by AAR and otherwise it shall be treated as though it were a Variation.

Assumptions made by AAR

- 6.3 Where in AAR quotation it is stated that an assumption has been made, the Goods and/or Services specified and the prices therefore included in the Contract Price are based on such assumption being correct.
- 6.4 If at any time any said assumption is found to be incorrect and correction would affect the performance of the Contract Works in any way whatsoever, and if such correction either is requested in writing by the Customer or is necessary for the performance of the Contract Works, any resulting effect on the Contract Works shall be carried out by AAR and treated as though it were a Variation.

7. PRICES

- 7.1 The Contract Price is based on prices and rates, terms and duties applying at the time of AAR quotation.
- 7.2 If after the date of AAR quotation AAR costs are increased by any increase in the prices or rates to AAR of materials, plant, equipment, transport, labour and any part of AAR overhead costs, or if there is any imposition of a tax or duty, or any increases in the rate of any existing tax or duty, AAR shall be entitled to be reimbursed by the Customer the amount of its said increased costs.

7.3 The Contract Price and all prices contained in AAR quotation are nett and no provision is made for the Customer to be allowed discount.

8. PAYMENT AND SET OFF

Payment (supply only)

- 8.1 If the Contract does not include installation of the Goods by AAR at the site:
- (a) AAR may invoice for Goods supplied immediately after delivery. If the contract provides for delivery in instalments, AAR may invoice for the relevant Goods immediately after delivery of each instalment.
 - (b) All invoices for the price of the Goods and Services are payable without discount of any kind in pounds sterling within 30 days of date of invoice at AAR's premises stated on the invoice and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason at all.

Payment (Supply and Installation)

8.2 If the Contract includes installation of the Goods by AAR at the Site payment shall be made in the following manner:

- (a) AAR may submit its invoice for Goods supplied Services provided and/or Variations provided under the Contract or for any other amounts due from the Customer to AAR under the Contract, at one month intervals throughout and at the end of and commencing after the start of the Contract.
 - (b) Payment of the proper amount payable shall be made within a period of 25 days starting 5 days after receipt by the Customer of AAR's invoice
 - (c) Not later than 7 days after the receipt of AAR invoice the Customer shall notify AAR in writing giving details of the amount to be paid against the said invoice and the basis on which it is calculated.
 - (d) If in respect of any invoice submitted by AAR to the Customer, the Customer intends to withhold payment (or part thereof) of a sum previously notified as due under **Clause 8.2(c)**, the Customer shall give written notice of such intention not later than 7 days before the latest date for payment under **Clause 8.2(b)**, giving details of each amount to be withheld and the grounds for withholding each amount.
- 8.3 Should the customer default in making full payment in accordance with the foregoing provisions whether by non-payment or where applicable by failing to serve an effective notice to withhold payment under **Clause 8.2** without prejudice to any other right or remedy under the contract:
- (i) AAR understands and will exercise its statutory rights to claim interest and compensation for debt recovery costs under the terms of the Late Payment of Commercial Debts (Interest) Act 1998 if AAC are not paid according to the agreed terms.
 - (ii) AAR may suspend performance of its obligations under the contract, providing it first gives notice to the contractor stating the grounds on which the suspension is intended and the date on which it intends to suspend performance being not earlier than 7 days after the date of notice.
 - (iii) AAR may continue suspension of its performance under **sub-clause (ii)** hereof until 3 days after the Customer makes full payment of the amount due.
 - (iv) In respect of suspension of its performance under **sub-clause (ii) and (iii)** ARR shall be entitled to appropriate relief from any of its obligation under the Contract connected with time limits for its performance of the Contract Works.
 - (V) In the AAR shall have a lien on all the Customer's property in the possession of AAR for all amounts due at any time from the Customer, and it may use sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such amounts on 14 days notice in writing to the Customer. On accounting to the Customer for any balance remaining after payment of any amounts due to AAR and the costs of sale or disposal AAR shall be discharged of any liability in respect of the customer's property.
- 8.4 The Customer indemnifies AAR against all direct legal and other costs including but not limited to the cost of AAR employees incurred in the recovery of any sum which becomes overdue for payment and any loss and/or expense suffered by AAR resulting from action taken in accordance with the provisions contained in **Clause 8.3**.

Counter Claims and Set Off

8.5 Under no circumstances shall monies owed by AAR to the Customer under this or any other contract between the parties be set off against monies properly due to AAR under this contract.

9. TITLE

- 9.1 Notwithstanding the earlier passing of risk, title to and property in the Goods shall pass to the Customer when the amount due under the invoice for the Goods (including interest and costs) has been paid in full, and until such payment the Customer shall hold the Goods in a fiduciary capacity as bailee for AAR and shall store or mark them so that they can at all times be identified as the property of AAR.
- 9.2 AAR may at any time before title passes and without any liability to the Customer repossess and dismantle and use or sell any of the Goods and by doing so terminate the Customer's right to use sell or otherwise deal in them and for the purpose of determining what if any of the Goods are held by the Customer and inspecting them enter any premises of or occupied by the Customer.
- 9.3 Until title to the Goods passes to the Customer the entire proceeds of sale of the Goods shall be held in trust for AAR and shall be held in a separate designated account and not mingled with any other monies or paid into any overdrawn bank account and shall be at all times identifiable as AAR's money.
- 9.4 AAR may maintain an action or the price of the Goods notwithstanding that title in them has not passed to the Customer.
- 9.5 The Customer grants AAR and its agents an irrevocable licence to enter at any time any vehicles or premises owned or occupied by the Customer or in its possession for the purpose of repossessing and removing any such Goods the property in which has remained in AAR under **Clause 9.1** hereof. AAR shall not be responsible for and the Customer shall indemnify AAR against liability in respect of damage caused to such vehicles or premises in such repossession and removal being damage it was not reasonably practicable to avoid.
- 9.6 The Customer must ensure that if the Goods are or become affixed to any land or building they shall be capable of being identified as the property of AAR and removed without material injury to such land or building and to take all necessary steps to prevent title to the Goods from passing to the landlord of such land or building. The Customer warrants to repair and make good any damage caused by the affixation of the Goods or their removal from any land or building and to indemnify AAR against all loss damage or liability it may incur or sustain as a result of such affixation or removal.
- 9.7 If the Goods are affixed by AAR to any land or building in performance of the Contract. AAR rights to repossess the Goods and any obligations in respect thereof shall be the same as if the said Goods were affixed by the Customer, save that AAR shall mark the Goods so affixed as the property of AAR in such a manner that such mark shall not damage the Goods and may be removed by the Customer when title to and property in the Goods has passed to it.
- 9.8 The Customer's right to possession of the Goods shall cease if it does anything or fails to do anything which would entitle an administrator or administrative receiver to take possession of any assets or would entitle any person to present a petition for winding-up.

10. EXTENT OF LIABILITY

Generally

- 10.1 Unless otherwise provided in these Terms and Conditions under no circumstances shall AAR have any liability of whatever kind for:
- (a) Any fault or imperfection resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions of AAR or the manufacturer of any of the Goods, or neglect, or from any instructions or materials provided by the Customer.
 - (b) Any of the Goods which have been adjusted modified or repaired except by AAR.
 - (c) The suitability of any of the Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions was known by or communicated to AAR.
 - (d) Any substitution by AAR of any materials or components not forming part of any specification of the Goods agreed in writing by AAR.

- (e) Any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by AAR contained in AAR's catalogues, sales literature, price lists, or elsewhere since they are merely intended to represent a general impression of the Goods and not to form part of the contract or be treated as representations.
 - (f) Any technical information recommendation statements or advice furnished by AAR its servants or agents not given in writing in response to a specific written request from the Customer before the contract is made.
 - (g) Any variations in the quantities or dimensions of any of the Goods or changes of their specifications or substitution of any materials or components if the variation or substitution does not materially affect the characteristics of the Goods and the substituted materials or components are of a quality equal or superior to those originally specified.
- 10.2 Except as expressly provided elsewhere, AAR shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the contract or any negligence, breach of statutory or other duty on the part of AAR, or in any other way out of or in connection with the performance or purported performance of or failure to perform the contract except for death or personal injury resulting from the negligence of AAR.
- 10.3 If the Customer establishes that any of the Goods have not been delivered, have been delivered damaged, are not or the correct quantity or do not comply with their description, ARR shall at its option replace with similar Goods any of the Goods which are missing lost or damaged or do not comply with their description, and shall allow the Customer credit for their invoices value or repair any or the Goods which are damaged.
- 10.4 If the Customer establishes that any of the Goods are defective, AAR shall at its option replace with similar Goods or repair any defective Goods or rectify any defective workmanship or at the Customers request allow the Customer credit or to the extent that the Goods are not of AAR's manufacture assign to the Customer (so far as AAR is able to do so) any warranties given by the manufacturer of the Goods to AAR.
- 10.5 **Clause 10.4** shall not apply unless: (a) If so required by AAR all defective Goods are first returned to AAR's premise carriage paid by the Customer, and (b) The Goods have not been altered in any way whatsoever, nor have they been subjected to misuse or unauthorised repair (c) The Goods have been properly and correctly stored or installed or connected (unless AAR carried out such installation and connection) and used by the Customer in accordance with the manufacturer's instructions, and (d) In the case of Goods requiring service or maintenance the Customer has entered into a contract for their maintenance with AAR.
- 10.6 **Clause 10.4** shall not apply to plumbing work or repair of faults caused by failure or stoppage in power or defects or blockage in drainage systems or defects in water supply or scale formation resulting in pipe work blockage unless any of the foregoing was installed by AAR.
- 10.7 The delivery of any repaired or replacement Goods shall be at AAR's premises or other delivery point specified for the original Goods.
- 10.8 No claim against AAR shall be entertained for any defect arising either from any design or specification provided or made by the Customer, or from any adjustments alterations or other work done to the Goods or Services by any person except AAR.
- 10.9 AAR shall not be liable where any of the Goods the price of which does not include carriage are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacement for such loss or damaged Goods will if available be supplied by ARR at the prices ruling at the date of despatch and shall be a Variation
- 10.10 In no circumstances shall the liability of ARR to the Customer under the condition exceed the invoice value of the Goods or Services.
- 10.11 Except as expressly provided elsewhere in Contract AAR shall not be liable for any claims in respect of economic loss, loss of production, loss of profit, loss of opportunity loss of bargain or other indirect or consequential injury loss or damage caused directly or indirectly by any breach of the contract or any negligence on the part of AAR or on the part of any of its employees agents or others for whom it is responsible in connection with or arising out of the supply of the Goods or the Services or the installation repair or maintenance of the Goods or in connection with any statement given or made, or failure to give advice or warning on behalf of AAR except that such exclusion shall not apply to any implied term as to quality or fitness for any general or particular purpose where the Customer deals as a Consumer as defined in Section 12 of the Unfair Contract Terms Act 1977.

Design

- 10.12 To the extent that the Contract Works includes the provision by AAR of design Services, AAR shall supply such Services using reasonable professional care and skill.
- 10.13 Unless otherwise provided in the Contract, AAR does not warrant that the Contract Works as described in its quotation or its incorporation within the work of others will satisfy the Customers requirements.

11 TERMINATION

- 11.1 Without prejudice to and in addition to any other right or remedy it possesses under the Contract, AAR may at its discretion terminate the supply of the Goods or the Services if the Customer fails to make any payment when and as due, or otherwise defaults in any of its obligation under the contract or becomes insolvent, has an Administrative Receiver appointed of its business, or is compulsorily or voluntarily wound up. Or AAR bona fide believes that any of those events may occur. In the case of termination any deposit paid by the Customer to AAR shall be forfeited.

12 HEALTH AND SAFETY

CDM Regulations

- 12.1 Except if the Customer deals as a Consumer and the Site is a domestic dwelling, AAR draws the Customer's attention to the provisions of the Construction (Design and Management) Regulations 1994 and any subsequent amendments, and to the associated Approved Code of Practice.
- 12.2 In particular AAR draws the Customer's attention to the duties of the Client, if the Contract Works are subject to the CDM Regulations, to appoint specified duty holders to act under the said Regulations and to make a Declaration to the Health and Safety Executive in accordance with Regulation 4.
- 12.3 The Customer shall notify AAR if the Contract Works are subject to the CDM Regulations and warrants to AAR that if necessary the duty holders required by the said Regulations have been or will be appointed by the Customer.

Health and Safety Generally

- 12.4 The Customer's attention is drawn to the provisions of Section 6 of the Health and Safety at Work etc. Act 1974 (The 1974 Act). AAR will make available to the Customer such information, as is appropriate relating to the Goods as is its possession to ensure that as far as reasonably practicable they are safe and without risk to health when properly used.

13 SERVICES

- 13.1 This **Clause 13** shall apply if the Contract is for supply of Goods and Services including installation Services by AAR at the Site.
- 13.2 AAR shall be entitled to carry out the Services during normal working hours. If the Customer requests AAR to perform Services outside normal working hours such request shall be a Variation under **Clause 5.1**
- 13.3 Unless otherwise provided expressly in AAR's Quotation the Service shall exclude the following:
- All electrical mains power supplies and cables necessary for the Services, suitably rated fused switch isolator between the incoming mains distribution board and AAR's tools plant and equipment.
 - Any specialist builders' work of a structural nature including but not limited to drilling of holes through reinforced walls, special support slabs, walls. And cutting and weatherproofing of roofs, painting, redecorating and making good the premises after AAR installation work, removal and re-fixing of interlock design ceiling tiles, and all remedial work necessitated by accidental damage of any of the foregoing of by accidental breakage of glass during the carrying out of the Services.
 - All necessary Planning Approvals or other consents required for the performance of the Services.
 - Any craneage, hoisting gear, scaffold, ladders and moveable platforms.
- 13.4 Goods delivered to Site which remain unfixed and Goods installed and work carried out in connection therewith shall at all times be at the sole risk of the Customer and if any part thereof is lost damaged or destroyed through any cause whatsoever AAR shall be entitled to treat and charge for the cost of restoration of any Goods of Services so lost damaged or destroyed as a Variation. The Customer shall insure and keep insured in the joint names with such reputable insurers as

AAR shall approve the full value of the Goods and/or the Services, including AAR's tools plant and equipment on site and the cost of any relevant professional fees or Services against every kind of loss damage or destruction. The Customer shall produce to AAR on demand the policy or policies under which such insurance is effected together with the latest premium receipts. If the Customer shall default in effecting insurance AAR may effect the same on behalf of the Customer and the cost thereof shall be reimbursed by the Customer to AAR on demand.

13.5 If the Services are to be performed at the premises of the Customer or at its request at the premises of any other person then the Customer warrants and undertakes to AAR throughout the term of the contract as follows:

- (a) That the Customer has full power and authority to enter into the contract and to permit AAR to perform the Services and that all necessary Planning Approvals or other Consents authorising the Services have been obtained.
- (b) To grant to AAR's employees agents and contractors full and unrestricted safe access to the site as AAR shall from time to time require in order to discharge its obligations under the contract.
- (c) To make available free of charge at the Site such facilities as AAR shall reasonably require to enable the Services to be performed safely expeditiously and without any interruption by any activity of the Customer including but without limitation adequate and safe working space, storage, office furniture equipment and all electrical mains power water and/or other fuel supplies and cables necessary for the Services, suitably rated fused switch isolator between the incoming mains distribution board and AAR's tools plant and equipment, any craneage hoisting and/or lowering gear specialist lifting tackle scaffolding ladders and removable platforms.
- (d) To provide adequate protection of all the Goods tools plant and equipment and materials on site.
- (e) To provide prior to commencement of installation and at the Customer's cost all builder's work including but without limitation foundations, drilling of holes through reinforced walls, special support slabs, cutting and weathering of roofs, cutting away and making good as required and ready availability of all plant and equipment so as to ensure that premises are in a fit state for the Contract Works.
- (f) To take all reasonable precautions to protect the health and safety of AAR's employees agents and contractors while carrying out the services.
- (g) To allow AAR's employees agents and contractors reasonable access to the Customer's premises for the purpose of investigation and discussion in connection with the Services and to communicate the identity of the employee who shall act as the contact point and channel of communication with AAR in the provision of the Services.

13.6 Without prejudice to any other right or remedy it possesses under the Contract, AAR may claim the amount of any loss and/or expense incurred by it resulting from any breach by the Customer of its obligations under **Clause 13.1 to 13.5**.

14. CONFIDENTIALITY

14.1 The customer shall not at any time whether before or after completion or termination of the contract divulge or use any unpublished technical information deriving from AAR or any other confidential information in relation to AAR's affairs or business.

15. CANCELLATION BY CUSTOMER

15.1 Order for Goods which have to be made specially for the Customer and/or for which AAR has placed an order with a manufacturer will be charged in full unless written notice of cancellation is received not less than 8 weeks before the delivery date notified to the Customer, and providing manufacture of such Goods or any components has not commenced at the date of that notice. Orders for stock items may be cancelled by written notice at any time before the Goods are allocated or set aside for the contract by AAR, but if cancellation is received after such Goods or components have been allocated or set aside by AAR then a reasonable packing and handling charge will be payable by the Customer.

16. STATUTORY COMPLAINTS

16.1 The Customer warrants and represents to AAR that it will obtain every necessary licence or permit or approval required and give every necessary notice or declaration and/or comply with and legal requirement for or relating to the use or installation of the contract works.

17. FORCE MAJEURE

17.1 AAR shall not be liable for any failure in performance of any of its obligations under the contract caused by factors outside its control.

18. NOTICE

18.1 To be served effectively, any notice or communication in writing required to be given pursuant to these Conditions shall in the case of a notice or communication to AAR be sent to it at its address stated on AAR's Quotation and shall in the case of a notice or communication to the Customer at its registered office if the Customer is a company and in any other case to the address of the Customer last known to AAR. Any such notice or communication may be given by registered or recorded delivery post or facsimile transmission. To prove service in the case of a notice given by facsimile transmission it shall be sufficient to show that it was despatched to the correct facsimile number. Service shall be deemed to have been effected 24 hours after despatch by post or facsimile transmission.

19. GENERAL

- 19.1 AAR may subcontract the performance of the contract in whole or in part.
- 19.2 The Customer shall not assign or subject the contract in whole or in part, without first obtaining AAR's written consent which consent shall not be unreasonably withheld.
- 19.3 If the Goods are manufactured or supplied or other Services performed in accordance with any design or specification provided or made by the Customer the Customer shall indemnify AAR against and shall compensate AAR in full on demand for all claims expenses and liabilities of any nature in connection therewith including any claim whether actual or alleged that the said design or specification infringes the rights of any third party.
- 19.4 All tools patterns materials drawings specifications and other data provided by AAR shall remain its property, and all technical information patent able or un-patent able copyright and registered design arising out of or in connection with its performance or the Contract, shall be the property of AAR, save to the extent that the Contract Works stated in **Schedule 1** expressly provides otherwise.
- 19.5 If any provisions contained in these Conditions shall be deemed to be invalid for any reason the condition shall be read as if the invalid provision had to that extent been deleted therefrom and the validity of the remaining provisions of these Conditions shall be affected thereby.

20. SETTLEMENT OF DISPUTES

- 20.1 Should any dispute or difference arise between the parties under the contract at any time including after its completion and whether before or after the termination, abandonment or breach of the contract then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. For the avoidance of doubt, the following conditions are drafted to comply with Section 108 of the Housing Grants, Construction and Regeneration Act 1996 and any doubts or ambiguities shall be construed accordingly. Nothing in this clause shall be construed to deprive either party of its rights to commence proceedings in the Courts.
- 20.2 If any such dispute of difference arises then one party ("the Applicant") may serve upon the other ("the Responder") a notice in writing ("the Notice") which shall state in sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.
- 20.3 The Notice under **Clause 20.2** shall also be served forthwith by the applicant on the Adjudicator named in AAR's Quotation or if not so named, forthwith either upon his identity being subsequently agreed or upon him being appointed under **Clause 20.4** below as the case may be.
- 20.4 In the event that no Adjudicator is named in the contract, then the parties shall within four days of the Notice being served upon the Respondent agree upon a suitable Adjudicator. Failing agreement the Applicant shall and the Respondent may apply for an appointment to the Academy of Construction (whilst at the same time serving a copy of the application on the other party) whose written notification of an appointment of an Adjudicator shall be served on both parties and shall be binding on both parties.

21. ADJUDICATION

21.1 The adjudication is to be carried out in accordance with **Andrews Sykes Group plc Rules for Adjudication – Construction projects** (a copy of which shall be provided on request) and with the object of securing the appointment of and the referral of the dispute to the Adjudicator within seven days and requiring a Decision by him within twenty-eight days of such referral.

22 LAW

22.1 The contract shall be governed by English law and the customer consents to the exclusive jurisdiction of the English courts in matters regarding the contract except the extent that AAR invokes the jurisdiction of the Courts of any other country.