

TERMS AND CONDITIONS FOR HIRE OF EQUIPMENT

1. EXISTENCE AND SCOPE OF CONTRACT

- 1.1 These terms and conditions together with AS verbal or written quotation and the Hirer's acceptance thereof 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 and conditions are implied by statute.
- 1.2 Unless otherwise expressly agreed collection or acceptance of Equipment or Services by the Hirer shall signify acceptance of these terms and conditions. For the avoidance of doubt AS do not intend to enter into contract on any terms and conditions other than those set out herein.
- 1.3 If the Contract includes the provision of an operator or other services at the site, it is agreed between the parties that all hire of Equipment and provision of Services shall be construction operations for the purposes of The Housing Grants, Construction and Regeneration Act 1996, Part II, which Act shall in its entirety apply to this Contract.
- 1.4 All quotations by AS shall be open for acceptance for 30 days unless expressly stated otherwise or unless withdrawn or revised by AS.
- 1.5 All quotations by AS are conditional on availability of Equipment.

2. DEFINITIONS

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| "AS" | is Andrews Sykes Hire Limited its successors and assigns; |
| "Equipment" | means any plant, machinery or equipment hired to the hirer by AS including ancillary equipment and accessories in connection therewith but excluding fuel, lubricants and other consumables; |
| "Hirer" | is the customer of AS to whom this document is addressed and includes successors or others for whom the said customer is responsible; |
| "Hire Period" | is the period from when Equipment leaves AS depot until it is received back at AS depot or such other time notified to AS under Clause 3; |
| "Irreparable Damage" | means damage to Equipment which is not Repairable Damage; |
| "Lost Equipment" | means Equipment which is not delivered up to AS at the end of the Hire Period, and which is no longer in possession of the Hirer because it has been lost or stolen; |
| "Repairable Damage" | means damage which has occurred to the Equipment and which in the opinion of AS can be repaired by AS at an aggregate cost for all damaged Equipment hired under each hire contract of the lesser of (i) 60% of the replacement cost of the Equipment calculated by reference to the Equipment Manufacturers current list prices for the nearest equivalent replacement models and applying the AS then current published charging rates for its repair engineers, together with material, at cost plus 15% and (ii) £3,000; |
| "Repairable Damage Waiver" | means the additional payment of a proportion of the Hire Charge paid by the Hirer; |
| "Service(s)" | means any service other than hire of equipment provided by AS including but not limited to the provision of any operator or other labour; |
| "Site" | means the place at which the Hirer wishes to use Equipment hired or Services rendered by AS, and which place has been notified in writing to AS before commencement of the hire period; |
| "Specialist Equipment" | means items defined to the Hirer on AS quotations, collection and delivery notes; |
| "Variation" | means any of the following provided it is agreed between the Parties: <ol style="list-style-type: none">(i) Change of specification of Equipment(ii) Additional Equipment(iii) Extension of any Hire Period previously agreed between the Parties |

- (iv) Supply of labour to operate maintain or otherwise perform services in connection with the Equipment
- (v) Provision of carriage from or to AS depot unless expressly included in AS quotation.

3 HIRE PERIOD

- 3.1 The Hire Period shall start at the time when Equipment leaves AS depot and end when it is received back at AS depot provided always that if AS are obliged to arrange carriage the Hire Period may be ended by the Hirer on the receipt by AS of a notice from the Hirer setting out details of the end of the Hire Period.
- 3.2 The customer shall give to AS not less than 2 days notice of the customer's intent to terminate the hire of the equipment, such notice to be effective and to run from the date when it is actually received by AS ("the notice period") The Hirer will terminate all hires verbally and an off-hire number must be obtained and retained. The equipment shall remain at the risk of the hirer for the notice period, two working days. For Specialist equipment the notice period is five working days, this excludes any installed equipment, which will be agreed locally at the time of termination. It is the hirer's responsibility to ensure that the equipment is available for collection. Following an aborted collection the equipment will remain on hire and be the responsibility of the hirer. Charges for an aborted collection will be levied. In the event that the previously agreed Hire Period is terminated prematurely, charges for the full contract hire period will be levied.

4 VARIATIONS

- 4.1 All Variations shall be in writing and signed by both parties, or shall be requested in writing by the Hirer and accepted expressly as a Variation in writing by AS
- 4.2 No Variation shall vitiate the Contract
- 4.3 AS may require the basis of charging any Variation to be agreed in writing before any Equipment or any service comprising a Variation is provided to the Hirer.
- 4.4 In the event that the basis of charging a Variation is not agreed as provided in **Clause 4.3** AS 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
- 4.5 If AS accepts a Variation without first having agreed the basis of charging, then the Hirer shall pay a reasonable amount for the Variation having regard to all relevant circumstances including the prices or basis in the Contract of charging for Equipment or Services.
- 4.6 AS reserves the right to increase the hire rates on the anniversary of any hire, at the time of cost increase or the 1st January every year, to cover any increase in operating costs including without limitation European or domestic regulatory changes, labour costs, taxation, insurance, updated equipment etc. such increases will be reflected in the monthly invoices
- 4.7 AS reserves the right to modify and or vary its terms and conditions as and when necessary.
- 4.8 AS reserves the right to apply additional charges at the point of equipment collection.

5. HIRE CHARGES AND PAYMENT

- 5.1 Hire charges shall accrue throughout the Hire Period and may be calculated daily or weekly.
- 5.2 Charges for Variations supplied under **Clause 4** shall be added to Hire Charges.
- 5.3 The basis of hire and the provision of Variations shall be as stated on the face hereof.
- 5.4 AS may submit its invoice for hire services and/or Variations provided under the contract or for any other amounts due from the Hirer to AS under the contract at monthly intervals commencing after the start of the Hire Period and throughout and at the end of the Hire Period.
- 5.5 Payment of the invoice amount shall be made within a period of 25 days starting 5 days after date of invoice.
- 5.6 The Customer shall raise any dispute relating to the invoice no later than 12 days following the date of the invoice. AS reserves the right to rely on the Late Payment of Commercial Debts (Interest) Act 1998, and charge, at a daily rate, until payment, interest upon the debt then due at the rate prevailing at the date of default (currently 8% above the prevailing Bank of England base rate) together with the late payment charges set out in the Act, until payment or sooner settlement
- 5.7 The Hirer indemnifies AS against all direct legal and other costs including but not limited to the cost of AS employees incurred in the recovery of hire charges or other sums, which become overdue for payment.

6. COUNTERCLAIMS AND SET OFF

- 6.1 Under no circumstances shall monies owed by AS to the Hirer under this or any other contract between the parties be set off against monies properly due to AS under this contract.

7. TRANSPORT AND HANDLING OF EQUIPMENT

- 7.1 The Hirer shall, unless otherwise expressly agreed, arrange and be responsible for all transport of Equipment from AS depot at commencement of the Hire Period and for return to AS store on completion or termination of the Hire Period.
- 7.2 The Hirer shall be responsible for unloading and loading the Equipment at its Site.
- 7.3 When an operator, or Service requiring the provision of labour at the Site is provided by AS:
 - 7.3.1 Such person shall be under the direction and control of the Hirer and shall for all purposes in connection with this contract be regarded as a servant or agent of the Hirer.
 - 7.3.2 The Hirer shall indemnify AS against all claims arising out of actions or negligence of such person(s) provided always that this clause shall not be construed to exclude or limit liability for death or personal injury resulting from negligence by AS its servants or others for whom it is responsible.

8. REPAIR AND MAINTENANCE

- 8.1 The Hirer shall at all reasonable times allow AS or its representatives or insurers access to the Site to inspect maintain or repair the Equipment.
- 8.2 The Hirer shall not test adjust or repair the equipment or attempt to do so without written authority from AS.
- 8.3 If at any time during the Hire Period the Equipment, in AS opinion, is in need of repair or adjustment, AS may at its discretion either stop further use of the equipment until such repairs have been carried out or replace the equipment with other similar equipment.
- 8.4 In the event that the Equipment (following permission given under **Clause 12** of these Conditions) is removed from the Site to which it is delivered AS reserves the right to recharge to the customer all costs of repair or adjustment arising after such removal howsoever caused during the remainder of the Hire Period.

9. DAMAGE TO EQUIPMENT

- 9.1 Subject to clause 9.2 below the Hirer accepts full responsibility for all damage and loss arising from the Hirer's hire of the Equipment including all Repairable Damage, Irreparable Damage and Lost Equipment and hereby undertakes to indemnify and to keep indemnified AS from and against all such damage and loss. Any such damage or loss shall be payable to AS within 7 days of the date of the invoices during which period the Hirer may inspect any repaired or replaced items of Equipment.
- 9.2 If the Hirer has paid the Repairable Damage Waiver or has agreed in the Hirer's Order form to pay the Repairable Damage Waiver and provided that it is not otherwise in breach of this Agreement, the Hirer will not be liable to AS for Repairable Damage, but will continue to be liable for, and to indemnify AS in respect of all Irreparable Damage and Lost Equipment as set out in clause 9.1 above.
- 9.3 The Hirer shall be liable to pay to AS two-thirds of the hire charges, from the date of off-hire, or damage, or loss, for the Equipment until the Hirer or its insurer has paid to AS the full replacement cost or the cost of repairing the equipment to full hireable condition.
- 9.4 Failure of the Equipment from whatever cause shall not entitle the Hirer to any allowance for loss of hire.

10. ACCIDENT ON SITE

- 10.1 If the Equipment is involved in any accident resulting in injury or death to persons or damage to property, the Hirer shall immediately notify AS orally, and shall confirm such notification in writing within 2 days.

11. OWNERSHIP AND SUB-LETTING

- 11.1 The Equipment remains the property of AS at all times.
- 11.2 The Hirer shall not sub-let sell, mortgage charge pledge or part with possession of the Equipment or any part thereof without prior consent in writing from AS and shall at all times protect the Equipment against seizure, distress or execution.

12. SITING OF EQUIPMENT

- 12.1 The Hirer shall not remove the Equipment or permit the Equipment to be removed from the site without prior consent in writing from AS.
- 12.2 The Hirer shall indemnify AS against all losses costs, damage, charges and expenses arising as a direct result of failure to observe and perform this condition.
- 12.3 The Hirer shall not remove, deface or cover any name plate or mark on the Equipment indicating that it is the property of AS.

13. SUITABILITY OF EQUIPMENT

13.1 The choice of Equipment shall be the sole responsibility of the Hirer. No warranty is given or implied by AS as to suitability of Equipment for any particular purpose whether or not such purpose is made known to AS

14. EXCLUSION OF LIABILITY

14.1 AS shall not be liable for any advice or opinion whether given gratuitously or otherwise by it, its employees, agents, or others for whom it is responsible, to the Hirer. To the extent that the Hirer relies on such advice or opinion it does so at the Hirer's own risk

14.2 Except as expressly provided elsewhere in these Conditions, AS will be under no liability under the contract for any personal injury, death loss or damage of any kind whatsoever (other than death or personal injury resulting from AS negligence) whether consequential or otherwise including but not limited to loss of production and loss of profits and AS hereby excludes all conditions warranties and stipulations express or implied statutory customary or otherwise which but for such exclusion would or might subsist in favour of the Hirer except that such exclusion shall not apply to any implied term as to quality or fitness of the Equipment for a particular purpose where the Hirer deals as Consumer as defined in Section 12 of the Unfair Contract Terms Act 1977.

14.3 In no circumstance will AS or its employees, agents or others for whom it is responsible be liable for any loss or damage of any kind whatsoever (other than death or personal injury resulting from AS negligence) whether consequential or otherwise caused directly or indirectly by any negligence on the part of AS 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 manufacture supply of hire of the Equipment or the installation repair or maintenance of the Equipment or in connection with any statement given or made, or failure to give advice or warning, by or on behalf of AS.

14.4 In any case where the Equipment is installed or connected to any property of the Hirer or to a third party, and, notwithstanding that the installation and connection of such equipment was carried out by AS, AS shall not be liable for any damage caused to any property of the Hirer or any third party and resulting from such installation or connection and the Hirer shall indemnify AS in respect of all and any liability of AS so incurred.

15. TERMINATION

15.1 If the Hirer makes default in punctual payment of any hire charges or other sums due to AS under the contract or fails to observe and perform any of the terms and conditions of the contract or if the Hirer suffers any distress or execution to be levied against it or makes, or proposes to make any arrangement with its creditors or becomes bankrupt or (being a company) goes into liquidation or has an Administrative Receiver or Administrator appointed of the whole or part of its assets or undertaking, or shall do or cause to be done or permit or suffer any act or thing whereby AS rights and the Equipment may be prejudiced or put in jeopardy then in any such case AS may at its discretion terminate the contract and the hire of the Equipment without any notice to the customer and retake possession of the Equipment and for that purpose enter into or upon the Site or any site or premises where the equipment may be and the termination of the contract shall not affect the rights of AS to recover from the customer any monies due to AS under the contract or damages for breach thereof.

16. INDEMNITY AND INSURANCE

16.1 The Hirer accepts full liability and responsibility in respect of and shall fully and completely indemnify AS against all third party claims and losses howsoever arising in respect of damage to or loss or destruction of any property or in respect of the personal injury or death of anybody in any way caused by or relating to the equipment or its use including but not limited to the payment of all damages costs and charges in connection therewith, except insofar as the damage loss destruction injury or death directly results from negligence of AS its employees or agents.

16.2 The hirer shall throughout the Hire Period including the notice period at the Hirer's expense fully insure with a reputable insurance office in the joint names of the Hirer and AS:

16.2.1 The Equipment for the full replacement value thereof against loss or damage or destruction howsoever arising.

16.2.2 The Hirer's liability to AS under **Clause 16.1** hereof.

16.3 The Hirer shall:-

16.3.1 Produce the policy or policies effected under this condition for inspection by AS on demand, and

16.3.2 Hold the proceeds of any claim under the policy or policies in trust for AS.

17. STATUTORY COMPLIANCE

17.1 The Hirer warrants and represents to AS that it will obtain every necessary licence or permit required and/or complies with any legal requirements for or relating to the use or installation of the Equipment.

18. FORCE MAJEURE

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

19. NOTICES

19.1 To be served effectively, any notice or communication in writing to AS shall be sent to its address on the face hereof and shall in the case of a notice or communication to the Hirer be sent to the Hirer at its registered office or the address of the Hirer last known to AS. 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 dispatched to the correct facsimile number. Service shall be deemed to have been effected 24 hours after dispatch by post or facsimile transmission.

20. SETTLEMENT OF DISPUTES

20.1 Should any dispute or difference arise between the parties under contract at any time then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. 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 or difference arises then one party ("the Applicant") may serve upon the other ("the Respondent") 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 either upon his identity being agreed or upon him being appointed under **Clause 20.4** below as the case may be.

20.4 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 Adjudicators (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) 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. GENERAL

22.1 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 there from and the validity of the remaining provisions of these Conditions shall not be affected thereby.

22.2 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 to the extent that AS invokes the jurisdiction of the Courts of any other country.

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 AS '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 and 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 AS do not intend to enter into contract on any terms and conditions other than those set out herein.
- 1.3 All quotations by AS shall be open for acceptance for 60 days unless expressly stated otherwise or unless withdrawn or revised by AS.
- 1.4 All quotations for the sale of Goods are conditional on availability of the said Goods to AS.

2. DEFINITIONS

- 2.1 The following terms shall have the following meanings
 - 2.1.1 'AS ' means Andrews Sykes Hire Limited its successors and assigns.
 - 2.1.2 The 'Customer' means the Customer of AS to whom this document is addressed and includes successors or others for whom the said Customer is responsible.
 - 2.1.3 The 'Goods' means the Goods supplied by AS as described in AS 's Quotation.
 - 2.1.4 'Services' means Services provided by AS as described in AS 's Quotation.
 - 2.1.5 'Contract Works' means Goods and Services where both are provided under the Contract.
 - 2.1.6 'Variation' means any change 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.
 - 2.1.7 'Site' means the area within which the Goods are to be installed together with any other area which AS shall be permitted to use in connection with the Contract Works.
 - 2.1.8 'Defect' and 'Defective' means Goods or 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.
 - 2.1.9 'Contract Price' means the sum stated in AS quotation as the price payable to AS for performance of the Contract Works.

3. 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 AS under the Contract notwithstanding other Services may be provided by AS in connection with the Goods.
- 3.2 Delivery
 - 3.2.1 The Goods are delivered to the Customer when AS makes them available to the Customer or its agent (a carrier shall be the Customers' agent whoever pays its charges) at AS 's premises or other place of delivery agreed by AS.
 - 3.2.2 Risk in the Goods passes when they are delivered to the Customer.
 - 3.2.3 AS may at its discretion deliver the Goods by instalments in any sequence.
 - 3.2.4 When the Goods are delivered by instalments no default or failure by AS in respect of any one or more instalments shall vitiate the contract in respect of the Goods previously delivered or which remain undelivered.
 - 3.2.5 Any dates quoted by AS 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 AS no regard has been paid to any quoted delivery dates.
 - 3.2.6 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. AS 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 AS all costs and expenses including storage and insurance charges arising from failure.

- 3.2.7 AS shall not be liable for any penalty loss injury damage or expense arising from delay through 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.
- 3.3 Acceptance and Notice of Complaint
- 3.3.1 The Customer shall be deemed to be satisfied with and have accepted the Goods on delivery UNLESS it shall have complied with the provisions of this **Clause 3**.
- 3.3.2 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 AS by written endorsement on the delivery note in respect of such Goods and in writing to AS within 48 hours of their delivery.
- 3.3.3 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 AS within 7 days of delivery of the Goods or completion of the Services.
- 3.3.4 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.
- 3.3.5 AS 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 AS promptly return any of the Goods the subject of any claim and any packing materials securely packed and carriage paid to AS for examination.
- 3.3.6 AS shall have no liability with regard to any claim in respect of which the Customer has complied to with the claims procedures in these conditions.
- 4. SUPPLY OF GOODS AND SERVICES – TIME, ACCEPTANCE, AND DEFECTS**
- 4.1 This **Clause 4** shall apply in all cases where the Contract is for supply of Goods and Services including installation Services by AS at the Site.
- 4.2 The Customer shall allow access to the Site to enable AS to carry out and complete the Contract Works.
- 4.3 Any dates quoted by AS for delivery of Goods or completion of any service are approximate only and shall not form part of the Contract and the Customer paid to any such dates.
- 4.4 AS 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 AS considers it has completed supply of Goods and installation Services including testing and initial commissioning where appropriate AS shall notify the Customer that the Contract Works are complete.
- 4.6 On receipt of notice by AS under **Clause 4.5** the Customer shall forthwith inspect the work on Site and the Customer shall be deemed to be satisfied with and have accepted the Contract Work UNLESS it immediately notifies AS of its dissatisfaction in writing giving reasons.
- 4.7 In the event that AS does not agree with the Customer that the work on Site is not complete either party may refer the matter to adjudication as provided in this Contract.
- 4.8 If any defect appears or becomes apparent within 6 months following acceptance of the works the Customer shall immediately notify AS and afford AS reasonable opportunity to inspect, to investigate the cause, and to correct the Defect.
- 5. 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 AS.
- 5.2 No Variation shall vitiate the Contract.
- 5.3 AS may require the basis of charging any Variation to be agreed in writing before any Goods or Services comprising a Variation are provided to the Customer.
- 5.4 In the event that the basis of charging a Variation is not agreed AS 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 AS accepts a Variation without first having agreed the basis of charging then the Variation shall be valued on a fair and reasonable basis.
- 6. INFORMATION PROVIDED BY CUSTOMER AND ASSUMPTIONS**
- 6.1 Information Provided by Customer
- 6.1.1 Where in AS quotation any information or document is identified as provided by the Customer, AS shall be entitled to rely on such information or document for the purpose of discharging its obligations under the Contract.
- 6.2 Assumptions made by AS

- 6.2.1 Where in AS 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.
- 6.2.2 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, any resulting effect on the Contract Works shall be carried out by AS 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 AS quotation.
- 7.2 If after the date of AS quotation AS costs are increased by any increase in the prices or rates to AS of materials, plant, equipment, transport, labour and any part of AS overhead costs, or if there is any imposition of a tax or duty, or any increase in the rate of any existing tax or duty, AS 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 AS quotation are net and no provision is made for the Customer to be allowed discount.

8. PAYMENT AND SET OFF

- 8.1 If the Contract does not include installation of the Goods by AS at the Site
 - 8.1.1 AS may invoice for Goods supplied immediately after delivery. If the contract provides for delivery in instalments, AS may invoice for the relevant Goods immediately after delivery of each instalment.
 - 8.1.2 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 AS '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.
- 8.2 Payment (Supply and Installation)
 - 8.2.1 If the Contract includes installation of the Goods by AS at the Site payment shall be made in the following manner:
 - 8.2.1.1 AS 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 AS under the Contract immediately after installation.
 - 8.2.1.2 Payment of the proper amount payable shall be made within a period of 25 days starting 5 days after date of invoice.
 - 8.2.1.3 The Customer shall raise any dispute relating to the invoice no later than 12 days following the date of the invoice.
 - 8.2.2 Should the Customer default in making full payment against any invoice in accordance with the foregoing provision:
 - 8.2.2.1 all outstanding invoices whether due or not shall become immediately payable. Furthermore in the event of late or non payment in accordance with these terms and conditions (or any other terms so agreed and in writing), AS reserves the right to rely on the Late Payment of Commercial Debts (Interest) Act 1998, and charge, at a daily rate, until payment, interest upon the debt then due at the prevailing at the date of default (currently 8% above the prevailing Bank of England base rate) together with the late payment charges set out in the Act, until payment or sooner settlement.
 - 8.2.2.2 AS may immediately suspend performance of its obligations under the Contract.
 - 8.2.2.3 AS may continue suspension of its performance hereof until 3 days after the Customer makes full payment of the amount due.
 - 8.2.2.4 In respect of suspension of its performance AS shall be entitled to appropriate relief from any of its obligation under the Contract connected with time limits.
 - 8.2.2.5 AS shall have a lien on all the Customer's property in the possession of AS 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 AS and the costs of sale or disposal AS shall be discharged of any liability in respect of the Customer's property.
- 8.3 The Customer indemnifies AS against all direct legal and other costs including but not limited to the cost of AS employees incurred in the recovery of any sum save which becomes overdue

for payment. This includes any loss and/or expense suffered by AS resulting from action taken in accordance with the provisions contained in **Clause 8.2**.

8.4 Counter Claims and Set Off

8.4.1 Under no circumstance shall monies owed by AS to the Customer under this or any other contract between the parties be set off against monies properly due to AS 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 AS and shall store or mark them so that they can at all times be identified as the property of AS.
- 9.2 AS 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 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 AS 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 AS 's money.
- 9.4 AS may maintain an action for the price of the Goods notwithstanding that title in them has not passed to the Customer.
- 9.5 The Customer grants AS 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 AS under **Clause 9.1** hereof. AS shall not be responsible for and the customer shall indemnify AS against liability in respect of damage caused to such vehicle 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 AS and removed without material injury to such land or building and to take all necessary steps to prevent title of 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 AS against all loss damage and liability it may incur or sustain as a result of such affixation or removal.
- 9.7 If the Goods are affixed by AS to any land or building in performance of the Contract, AS 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 AS shall mark the Goods so affixed as the property of AS 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

- 10.1 Unless otherwise provided in these Terms and Conditions under no circumstances shall AS have any liability of whatever kind for:
- 10.1.1 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 AS or the manufacturer of any of the Goods, or neglect, or from any instructions, design specification, or materials provided or made by the Customer, or for any of the Goods which have been adjusted modified or repaired except by AS.
- 10.1.2 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 AS.
- 10.1.3 Any substitution by AS of any materials or components not forming part of any specification of the Goods agreed in writing by AS.
- 10.1.4 Any descriptions, illustrations, specification, figures as to performance, or any other information submitted by AS contained in AS '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.
- 10.1.5 Any technical information recommendation statements or advice furnished by AS its servants or agents before the contract is made.
- 10.1.6 Any variations in the quantities or dimensions or specification of any of the Goods 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, AS shall have no liability to the Customer for the loss or damage of any nature arising from any breach of the contract or any negligence, breach of statutory or other duty on the part of AS, except for death or personal injury resulting from the negligence of AS.
- 10.3 If the Customer establishes that any of the Goods have not been delivered, have been delivered damaged are not of the correct quantity or do not comply with their description AS 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 invoice value or repair any of the Goods which are damaged.
- 10.4 If the Customer establishes that any of the Goods are defective, AS 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 AS's manufacture assign to the Customer (so far as AS is able to do so) any warranties given by the manufacturer of the Goods to AS.
- 10.5 **Clause 10.4** shall not apply unless:
- 10.5.1 If so required by AS all defective Goods are first returned to AS 's premises carriage paid by the Customer, and
- 10.5.2 The Goods have not been altered in any way whatsoever nor have they been subjected to misuse or unauthorised repair
- 10.5.3 The Goods have been properly and correctly stored or installed or connected (unless AS carried out such installation and connection) and used by the Customer in accordance with the manufacturer's instructions, and
- 10.5.4 In the case of Goods requiring service or maintenance the Customer has entered into a contract for their maintenance with AS.
- 10.6 **Clause 10.4** shall not apply to plumbing work or repair of faults caused by failure or stoppage in power supply or defects or blockage in drainage systems or defects in water supply or scale formation resulting in pipework blockage unless any of the foregoing was installed by AS.
- 10.7 The delivery of any repaired or replacement Goods shall be at AS's premises or other delivery point specified for the original Goods.
- 10.8 AS 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. Replacements for such loss or damaged Goods will if available be supplied by AS at the prices ruling at the time of dispatch and shall be a Variation.
- 10.9 In no circumstances shall the liability of AS to the Customer under this condition exceed the invoice value of the Goods or Services.
- 10.10 Except as expressly provided elsewhere in the Contract AS 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 AS including any damage arising as a result of installing the Goods at the Customer or a third party properly or as a result of connecting the Goods to other equipment owned by a Customer or third party or on the part of any of its employees agents or others from 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 in connection with any statement given or made, or failure to give advise or warning by or on behalf of AS 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.

10.11 Design

- 10.11.1 To the extent that AS carries out design or chooses equipment AS shall supply such Services using reasonable professional care and skill, and AS 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, AS 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 AS bona fide believes that any of these events may occur. In the case of termination any deposit paid by the Customer to AS shall be forfeited.

12. SERVICES

- 12.1 This Clause shall apply if the Contract is for supply of Goods and Services including installation Services by AS at the Site.
- 12.2 AS shall be entitled to carry out the Services during normal working hours. If the Customer requests AS to perform Services outside normal working hours such request shall be a Variation.
- 12.3 Unless otherwise provided expressly in AS 's Quotation the Services shall exclude the following:-
- 12.3.1 All electrical mains power supplies and cables necessary for the Services, suitably rated fused switch isolator between the incoming mains distribution board and AS 's tools plant and equipment
- 12.3.2 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 AS installation work, removal and refixing of interlock design ceiling tiles, and all remedial work necessitated by accidental damage of any of the foregoing or by accidental breakage of glass during the carrying out of the Services.
- 12.3.3 All necessary Planning Approvals or other consents required for the performance of the Services.
- 12.3.4 Any craneage, hoisting gear, scaffold, ladders and moveable platforms.
- 12.4 Goods delivered to Site which remain unfixated 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 AS shall be entitled to treat and charge for the cost of restoration of any Goods or 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 AS shall approve the full value of the Goods and/or the Services, including AS '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 AS on demand the policy or policies under which such insurance is effected together with the latest premiums receipts. If the Customer shall default in effecting insurance AS may effect the same on behalf of the Customer and the cost thereof shall be reimbursed by the Customer to AS on demand.
- 12.5 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 AS throughout the term of the contract as follows:
- 12.5.1 That the Customer has full power and authority to enter into the contract and to permit AS to perform the Services and that all necessary Planning Approvals or other Consents authorising the Services have been obtained.
- 12.5.2 To grant to AS 's employees agents and contractors full and unrestricted safe access to the site as AS shall from time to time require in order to discharge its obligations under the contract.
- 12.5.3 To make available free of charge at the Site such facilities as AS 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 incoming mains distribution board and AS 's tools plant and equipment, any craneage hoisting and/or lowering gear specialist lifting tackle scaffolding ladders and moveable platforms.

- 12.5.4 To provide adequate protection of all the Goods tools plant and equipment and materials on site.
- 12.5.5 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.
- 12.5.6 Without prejudice to any other right or remedy it possesses under the Contract, AS may claim the amount of any loss and/or expense incurred by it resulting from any or each by the Customer of its obligations under **Clause 12.1 to 12.5**.

13. CONFIDENTIALITY

- 13.1 The Customer shall not any time whether before or after completion or termination of the contract divulge or use any unpublished technical information deriving from AS or any other confidential information in relation to AS's affairs or business.

14. CANCELLATION BY CUSTOMER

- 14.1 Orders for Goods which have to be made specially for the Customer and/or for which AS 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 AS, but if cancellation is received after such Goods or components have been so allocated or set aside by AS then a reasonable packing and handling charge will be payable by the Customer.

15. STATUTORY COMPLIANCE

- 15.1 The Customer shall obtain every necessary licence or permit or approval required and give every necessary notice or declaration and/or comply with any legal requirement for or relating to the use or installation of the Contract Works.

16. FORCE MAJEURE

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

17. NOTICES

- 17.1 To be served effectively, any notice or communication in writing shall in the case of a notice or communication to AS be sent to its address stated on AS 's Quotation and shall in the case of a notice or communication to the Customer be sent to the Customer at its registered office or to the address of the Customer last known to AS. 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 shall be sufficient to show that it was dispatched to the correct facsimile number. Service shall be deemed to have been effected 24 hours after dispatch by post or facsimile transmission.

18. GENERAL

- 18.1 AS may subcontract the performance of the contract in whole or in part.
- 18.2 The Customer shall not assign or sublet the contract in which or in part, without first obtaining AS 's written consent which consent shall not be unreasonably withheld.
- 18.3 All tools patterns materials drawings specifications and other data provided by AS shall remain its property and all technical information patentable or unpatentable copyright and registered design arising out of or in connection with its performance of the Contract, shall be the property of AS, save to the extent that the Contract Works described on AS 's quotation expressly provides otherwise.
- 18.4 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 there from and the validity of the remaining provisions of these Conditions shall be affected thereby.

19. SETTLEMENT OF DISPUTES

- 19.1 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. Nothing in this clause shall be construed to deprive either party of its rights to commence proceedings in the Courts.

- 19.2 If any such dispute or difference arises then one party ("the Applicant") may serve upon the other ("the Respondent") a notice in writing ("the Notice") which shall state sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.
- 19.3 The Notice under **Clause 19.2** shall also be served forthwith by the Applicant on the Adjudicator either upon his identity being agreed or upon him being appointed under **Clause 19.4** below as the case may be.
- 19.4 The parties shall within four days of the Notice being served upon the Respondent agree upon a suitable Adjudicator Failure agreement the Applicant shall and the Respondent may apply for an appointment to the Academy of Construction Adjudicators (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.

20. ADJUDICATION

- 20.1 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.

21. LAW

- 21.1 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 to the extent that AS invokes the jurisdiction of the Courts of any other country.