

## THE ROE BROS & CO LIMITED – TERMS OF BUSINESS

- |   |                                    |
|---|------------------------------------|
| 1. Definitions and Interpretation           | 11. Indemnity and Confidentiality  |
| 2. Purchase of the Goods                    | 12. Termination                    |
| 3. The Goods                                | 13. Force Majeure                  |
| 4. Delivery of the Goods                    | 14. Service of Documents           |
| 5. Title, Property & Risk in the Goods      | 15. Assignment and Sub-Contracting |
| 6. Information Supplied                     | 16. Miscellaneous Matters          |
| 7. Health & Safety                          | 17. Calculation of Time            |
| 8. Variations                               | 18. Governing Law                  |
| 9. Invoices and Payment                     | 19. Dispute Resolution             |
| 10. Limitations and Exclusions of Liability |                                    |

### 1. Definitions and Interpretation

- 1.1. In these Conditions, a Quotation and an Order Acknowledgment the following words and phrases shall, unless the context otherwise requires, have the following meanings: -

“Address for Service”	the address of a Party as set out in the Quotation or Order Acknowledgment or such other address for service in England as any party may notify to the other parties by 14 days prior notice in writing;
“ADR Notice”	a notice given by a party identifying a dispute or difference arising out of or in connection with this Contract and requesting the parties seek to resolve the dispute or difference by mediation;
“Base Rate”	the Bank of England Base Rate as may be adjusted by the Bank of England from time to time;
“Business Day”	a day (other than a Saturday or Sunday or public holiday) when banks in London are open for business;
“Conditions”	these Roe Bros & Co Limited Terms of Business which form part of this Contract;
“Contract”	this contract between Roe Bros and the Customer for the sale and purchase of the Goods in accordance with these Conditions and including any Quotation and/or any Order Acknowledgment relating to the Goods;
“Customer”	the person, company or other legal entity who enters into this Contract to purchase the Goods from Roe Bros;

- “Delivery” the delivery of the Goods (or the delivery of any part of the Goods) is;
1. completed on completion of the unloading of the Goods (or any part of the Goods) at the Delivery Address;
  2. completed on the loading of the Goods or (the loading of any part of the Goods) onto the Customers own vehicle; or
  3. deemed to be completed if the Customer fails to confirm that it will accept delivery of the Goods (or any part) within 1 Business Day of Roe Bros sending the Customer a notice that the Goods (or any part) are ready for delivery to the Delivery Address and the date of delivery for the Goods which are the subject matter of the notice is deemed to be 2 Business Days after the date Roe Bros sent the said notice to the Customer.
- “Delivery Address” the address (or addresses) to which the Goods (or any part) are to be delivered as identified in the Quotation and/or Order Acknowledgment;
- “Delivery Date” an approximate indication of likely dates or time periods for Delivery of the Goods (or any part) as hereinafter provided and as may be referred to in the Quotation and/or Order Acknowledgment or as may be otherwise agreed by the parties;
- “Force Majeure Event” any event or circumstance not within Roe Bros’ reasonable control including:
1. acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, nuclear, chemical or biological contamination or sonic boom; collapse of buildings, fire, explosion or accident;
  2. any terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  3. any law or any action taken by a government or public authority, including imposing an export or import restriction, quota, tariff or prohibition, or

failing to grant a necessary licence or consent;

4. any labour or trade dispute, strikes, industrial action or lockouts;
5. any non-performance by suppliers or subcontractors;
6. any interruption or failure of utility service;
7. any difficulty in obtaining labour or materials (including any change in economic or market circumstances or any increase in the price of materials or if the supply of the Goods (or any part) has been rendered more onerous or will become uneconomic); or
8. any breakdown of machinery or equipment or other matter which adversely affects the rate of production of any machinery or equipment;

“Goods” the goods to be supplied by Roe Bros as described in the Quotation and/or Order Acknowledgment (as may be varied as provided in the Conditions) being the subject matter of this Contract;

“Group Company” in respect of the Customer any company which is a subsidiary, or a holding company, or another subsidiary of a holding company of the Customer or any Company which has the same common control as the Customer or any other analogous corporate arrangement or entity (including any Limited Liability Partnership) (“subsidiary” and “holding company” having the meanings ascribed to them by section 1159 of the Companies Act 2006 and/or regulation 4 and Schedule 2 of the Limited Liability Partnership Regulations 2001 (as amended));

“Insolvent” for the purposes of this Contract a Customer (or any Group Company or other associated legal entity) becomes insolvent on:

- .1 the making of an administration, bankruptcy or winding-up order against him, appointment of an administrative receiver, receiver or manager of his property, his passing of a resolution for voluntary winding-up without declaration of solvency
- .2 any other event referred to in section 113, sub-

sections (2) to (5), of the Housing Grants, Construction and Regeneration Act 1996;

- .3 otherwise entering administration within the meaning of Schedule B1 to the Insolvency Act 1986;
- .4 entering into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction);
- .5 (in the case of a partnership) each partner being the subject of an individual arrangement or any other event or proceedings referred to in this clause; or
- .6 the enforcement of any security over his assets or any analogous procedure or step or any analogous procedure or step taken in any other jurisdiction.

“Interest Rate”	the rate of 8% (eight per cent) over the official bank rate of the Bank of England (Bank Rate) at the date that a payment due under this Contract becomes overdue;
“Invoice”	an invoice for the Total Price of the Goods (or any part of the Total Price or any part of the Goods) sent by Roe Bros to the Customer;
“Legislation”	a statute, statutory instrument or other subordinate legislation or any regulatory provisions (including the Statutory Requirements);
“Order”	any order received by Roe Bros from the Customer for the purchase of all or any part of the Goods whether in the form of a purchase order or other similar document or other communication which order (including any purchase order or other similar document or other communication) shall not form part of this Contract;
“Order Acknowledgment”	an order acknowledgment in respect of the Goods (which may be in such format as Roe Bros may determine) sent by Roe Bros to the Customer confirming receipt of any Order for the purchase of the Goods;

“Price”	the price (or prices) for the Goods set out in the Quotation and/or Order Acknowledgment or other communication from Roe Bros, as may be adjusted (including by a Variation) in accordance with these Conditions;
“Quotation”	any quotation for the Goods (which may be in such format as Roe Bros may determine) sent by Roe Bros to the Customer;
“Registered Office”	the registered office of a company or other legal entity as recorded at Companies House current at the time of service of any document;
“Roe Bros”	Roe Bros & Co Ltd, a company incorporated in England (Company Number 01564981) whose registered office is at 1 Fenlake Business Centre, Fengate, Peterborough, PE1 5BQ;
“Specification”	any specification for the Goods including any related information as referred to in the Quotation and/or any Order Acknowledgment ;
“Statutory Requirements”	a requirement of any law, any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Goods or the performance of any obligations under this Contract;
“Total Price”	the total price for the Goods which the Customer is liable to pay to Roe Bros as hereinafter provided (and as such Total Price may be adjusted in accordance with these Conditions (including in respect of Variations));
“Variation”	any change to the Goods including a change in quantity, specification or the conditions for production or Delivery of the Goods or and change due to a change in the Statutory Requirements or any change in the Delivery Dates or any other change to be treated as a variation as provided in these Conditions.

1.2. In these Conditions, a Quotation and an Order Acknowledgement unless the context otherwise requires:

1.2.1. headings and sub-headings are for ease of reference only and are not to be taken into consideration in the interpretation or construction of this Contract,

- 1.2.2. references to the clauses and schedules are references to clauses and schedules of and/or to this Contract;
- 1.2.3. the words “herein”, “hereto” and “hereunder” refer to this Contract as a whole and not to the particular clause or schedule in which such word may be used;
- 1.2.4. references to specific standards, codes of practice, British or European Standards or other instruments shall be construed as including all amendments, supplements and substitutes thereto and any changes and updates relating thereto;
- 1.2.5. references to Legislation or regulatory provisions shall be construed as references to such Legislation as amended and in force from time to time, including any Legislation which re-enacts or consolidates it, with or without modification and including corresponding Legislation in any other relevant part of the United Kingdom and also including any legal or regulatory provision which subsequently amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any and all subordinate instruments, orders, rules, regulations and bye-laws made thereunder and any codes of practice or other guidance issued in respect thereof;
- 1.2.6. references to a public organisation or authority shall be deemed to include any successor to such organisation or authority which takes over the functions or responsibilities of such organisation or authority;
- 1.2.7. references to a “person” includes any individual, partnership, LLP, firm, trust, company, corporation, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association;
- 1.2.8. references such as “including”, “include”, “in particular”, “such as”, “for instance”, “for example” or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms and are to be construed without limitation and the “ejusdem generis” rule shall not apply and the use of the words “other” or “otherwise” shall not be construed as having a limiting effect;
- 1.2.9. references to a week or a month are references to a calendar week or calendar month;
- 1.2.10. the singular shall include the plural and vice versa and a gender includes any other gender;
- 1.2.11. any reference to “this agreement”, or “this Contract”, or to any other agreement or document referred to in this agreement, or this Contract, is a

reference to this agreement, or this Contract, or to such other agreement or document as varied from time to time;

- 1.2.12. any reference to the "Goods" shall include any part or any parts of the Goods;
  - 1.2.13. any reference to "in writing" or "by writing" shall include communications by email; and
  - 1.2.14. any references to a party or a person shall include that party's or person's permitted successors and permitted assigns.
- 1.3. Unless otherwise agreed by Roe Bros, the Price stated in a Quotation shall only be valid and capable of acceptance for a period of 1 Business Day from the date stated on the Quotation.
  - 1.4. The acceptance by Roe Bros of an Order placed by the Customer (whether by purchase order or otherwise) and the supply of the Goods by Roe Bros shall be subject to these Conditions.
  - 1.5. The Conditions apply to this Contract to the exclusion of any other terms that the Customer seeks to incorporate or which would otherwise be implied by trade, custom, practice or course of dealing. No terms of the Customer included in any Order shall be incorporated in or form part of this Contract.
  - 1.6. In the event of any conflict, ambiguity, discrepancy or divergence between any of the following (1) these Conditions (2) any Order Acknowledgment (3) any Quotation (4) any Order, the order of priority shall be as listed in this clause where (1) has the first priority and (4) has the last priority.

## **2. Purchase of the Goods**

- 2.1. The Customer has purchased the Goods at the Total Price as provided in the Quotation and/or Order Acknowledgment subject to the terms of this Contract (including the Conditions) and shall be liable to pay the Total Price to Roe Bros on the terms provided in the Contract. The Customer's liability to pay the Total Price is not related to the Delivery of any, or any part, or all of the Goods by Roe Bros, or in any way related to the transfer of property, legal and beneficial title and full ownership of any of the Goods (and/or the risk in the Goods) to the Customer from Roe Bros.
- 2.2. The Goods shall be delivered in parts or instalments by Roe Bros on dates as may be agreed by the parties or in the absence of such agreement on dates as may be determined by Roe Bros (in its absolute discretion) and notified to the Customer.
- 2.3. The Customer may send Orders to Roe Bros to request Roe Bros agree to dates for the Delivery of the Goods (or any part) purchased by the Customer from Roe Bros pursuant to this Contract. Any Order shall be a request by the Customer for Delivery

of the Goods (or any part) and shall not create any separate agreement or any separate contract between the parties. This Contract shall be the only agreement between the parties in respect of the supply of the Goods by Roe Bros. Roe Bros is not under any obligation to agree to any dates for Delivery of the Goods (or any part) which may be proposed by the Customer.

### **3. The Goods**

- 3.1. The Goods shall conform with their description as set out in or reasonably to be inferred from the Quotation and/or the Order Acknowledgment. The Goods are sold by weight unless otherwise stated by Roe Bros.
- 3.2. The Goods are supplied to the Customer subject to a quantity tolerance of plus or minus 5% of the weight (or if applicable the quantity) stated in the Quotation. Where the Price for any Goods reflects a value calculated on a per tonne basis the theoretical weight of the material supplied will be the upper limit of the permitted rolling tolerance of that material, rounded upwards to two decimal places.
- 3.3. Roe Bros may from time to time make changes in the specification, quantity or quality of the Goods which are required to comply with any applicable safety or Statutory Requirements or which do not materially affect the quality of the Goods and Roe Bros shall notify the Customer in any such event and any such changes to the Goods shall be treated as a Variation. If Goods are required to be supplied to a British Standard other than as expressly set out on the Quotation or Order Acknowledgment the Customer must agree that standard with Roe Bros in writing in advance of the Quotation. Any specific requirements in respect of suitability of the Goods (including in respect of BREEAM) must be notified by the Customer in advance of the Quotation. Mild steel bar may be supplied in high yield and 8 mm bar may be supplied as 10 mm at Roe Bros' discretion.
- 3.4. Roe Bros shall not be required to supply test certificates to the Customer unless the said certificates are requested in writing and the supply of such test certificates shall be treated as a Variation.

### **4. Delivery of the Goods**

- 4.1. Any dates or time periods agreed for Delivery of the Goods (or any part) including any Delivery Dates are only an approximate indication of likely dates for information only and shall not bind Roe Bros in anyway whatsoever. Any dates or time periods agreed for Delivery of the Goods (or any part) including any Delivery Dates shall also be subject to availability of materials and manufacturing capacity and may be subject to change by Roe Bros at any time. Time shall not be of the essence in relation to any dates or time periods agreed for Delivery of the Goods (or any part) including any Delivery Dates.
- 4.2. If the Customer requests and if Roe Bros agrees to expedited Delivery of the Goods (or any part), the additional cost will be treated as a Variation and the



provisions of clause 4.1 in respect of any Delivery Dates shall also apply to any expedited Delivery which may be agreed.

- 4.3. Any Delivery is subject to Roe Bros rights in these Conditions including the right to suspend Delivery as provided in clause 9. Roe Bros may arrange Delivery of the Goods (or any part) in separate deliveries, which may be invoiced separately by Roe Bros. Any material defect in any Goods shall not entitle the Customer to cancel the Delivery of any other Goods. Roe Bros may arrange Delivery of the Goods (or any part) in advance of any Delivery Date subject to Roe Bros giving reasonable notice to the Customer. Any request by the Customer for any change in relation to the Goods may change any estimated Delivery Date at Roe Bros discretion.
- 4.4. The Customer shall be responsible for assessing the conditions at the Delivery Address to allow for efficient and safe Delivery and unloading of the Goods and for providing Roe Bros with full and appropriate Delivery instructions. The Customer shall make all necessary arrangements to take safe Delivery of the Goods whenever Delivered by Roe Bros. The Customer shall be responsible for the arrangement and management and all the costs of and associated with unloading the Goods (including appropriate equipment and experienced and qualified personnel are available for such unloading). Transport to site will be by way of full articulated lorry unless otherwise agreed in accordance with the Customer.
- 4.5. The Customer shall inspect the Goods immediately on Delivery and shall within 3 Business Days of Delivery notify Roe Bros in writing of any alleged material defect, shortage in quantity, damage or failure to comply with description or any other complaint or claim of any other nature that would be reasonably apparent on reasonable inspection of the Goods. The Customer shall then allow Roe Bros a reasonable opportunity to inspect the Goods within a reasonable time before any use is made of the Goods by the Customer. If the Customer fails to comply with these provisions the delivered Goods shall be conclusively deemed to be in accordance with this Contract and free from any material defect, shortage in quantity, damage or failure to comply with description or any other complaint or claim of any other nature including any material defect or damage which would be apparent on a reasonable inspection of the delivered Goods.
- 4.6. The signature by the Customer on Roe Bros' (or a carrier's) delivery note recording the Delivery to the Customer (or on a collection note for Delivery by collection by the Customer) shall be confirmation of receipt of the quantity of Goods recorded or referred to on the said delivery note or collection note (as applicable).
- 4.7. Roe Bros shall use all reasonable endeavours to ensure delivery of the Goods in accordance with the terms of this Contract. However, in the unlikely event that Roe Bros fails to deliver the Goods (or any part thereof) within a reasonable period following the agreed delivery date due to reasons within Roe Bros control, the Customer shall be entitled to the following remedies:

- (a) For Goods purchased on account – if the Customer has not yet made payment, they shall not be required to make payment for the undelivered Goods, and Roe Bros shall have no further liability in respect of such Goods
  - (b) For Goods paid in advance – if the Customer has already made full or partial payment for the undelivered Goods, Roe Bros shall, at its discretion:
    - (i) Arrange an alternative delivery date and fulfil the order within a reasonable time; or
    - (ii) Issue a credit note to be applied against future purchases by the Customer; or
    - (iii) Refund the amount paid in respect of the undelivered Goods.
- 4.8 The remedies set out in Clause (4.7) shall be the Customer’s sole and exclusive remedies in the event of non-delivery, and Roe Bros shall not be liable for any indirect, consequential, or special losses, including loss of profit or business interruption, arising out of or in connection with a failure to deliver the Goods.
- 4.9 This clause shall not apply where delivery is prevented, hindered or delayed due to a Force Majeure Event in which case Clause 13 (Force Majeure) shall apply.

## **5. Title, Property & Risk in the Goods**

- 5.1. Notwithstanding Delivery of the Goods (or any part) having been made property, legal and beneficial title and full ownership of all Goods shall be retained by Roe Bros and shall not pass to the Customer until Roe Bros has received payment in full (in cash or cleared funds) for:
- 5.1.1. the Goods delivered to the Customer;
  - 5.1.2. all other sums which are or which become due to Roe Bros from the Customer for any other goods and/or materials of any nature supplied by the Roe Bros to the Customer under this or any other contract between the Customer and Roe Bros; and
  - 5.1.3. all other sums which are or which become due to Roe Bros from any Group Company for any other goods and/or materials of any nature supplied by the Roe Bros to the Group Company under any other contract between the Group Company and Roe Bros.
- 5.2. Until property, legal and beneficial title and full ownership of all Goods delivered to the Customer has passed to the Customer, the Customer shall:
- 5.2.1. hold such Goods on a fiduciary basis as Roe Bros’ bailee;
  - 5.2.2. store such Goods separately from any other goods and/or materials held by the Customer and clearly mark the said Goods as Roe Bros’ property so they remain readily identifiable as Roe Bros’ property;

- 5.2.3. not remove, deface or obscure any identifying mark or packaging on or relating to such Goods;
  - 5.2.4. maintain such Goods in a satisfactory condition and keep the Goods insured on Roe Bros' behalf for their full price against all risks with a reputable insurer;
  - 5.2.5. on request, allow Roe Bros access to inspect such Goods and/or on request provide a copy of the insurance policy in respect of such Goods;
  - 5.2.6. not pledge, charge or provide any other form of security over or in respect of the Goods;
  - 5.2.7. notify Roe Bros if it becomes Insolvent; and
  - 5.2.8. provide to Roe Bros such information in relation to the Goods as it may request.
- 5.3. Notwithstanding that property, legal and beneficial title and full ownership of the Goods shall not have passed to the Customer. Risk in any Goods delivered to the Customer shall pass to the Customer on the unloading of the Goods from the lorry transport and the Customer shall be deemed to have accepted the Goods on the unloading of the Goods from the lorry transport.
- 5.4. Until such time as property, legal and beneficial title and full ownership of the Goods passes to the Customer and without prejudice to its other rights of any nature, Roe Bros may, at any time, require the Customer to deliver up such Goods (or any part thereof) and if the Customer fails to do so forthwith, may enter any premises of the Customer or in relation to which the Customer has a right of possession or access in order to recover such Goods.
- 5.5. Roe Bros shall be entitled to recover the Total Price of the Goods (plus VAT (as applicable)) from the Customer notwithstanding that Delivery of any of the Goods has not taken place and notwithstanding that property, legal and beneficial title and full ownership of any of the Goods (and/or the risk in any of the Goods) has not passed to the Customer from Roe Bros.

## **6. Information Supplied**

- 6.1. The Customer acknowledges that Roe Bros has or will rely on all information that is provided by the Customer including any information in any schedules or specifications including quantities or calculations and other similar documents relating to the Goods (and any amendments thereto). The Customer shall;
- 6.1.1. be responsible for checking all information provided to Roe Bros and ensuring that all such information is complete and accurate and that the Goods will meet and be fit for the Customer's purposes;

- 6.1.2. co-operate with Roe Bros in all matters relating to the Goods (including providing Roe Bros with such information as Roe Bros may reasonably require in order to provide the Goods and such facilities as reasonably required by Roe Bros when delivering the Goods); and
  - 6.1.3. be responsible for obtaining all consents, licences, permissions, easements and licences necessary and/or to comply with the Statutory Requirements in relation to the Delivery and/or use of the Goods.
- 6.2. The Customer is responsible for checking any information including (without limitation) quantities and specifications and other similar documents relating to the Goods (and any amendments thereto) which may be supplied by Roe Bros. Roe Bros shall have no responsibility or liability in respect of any such information provided by Roe Bros. Roe Bros does not carry out any design or provide any other similar services or provide any advice to the Customer in relation to the Goods.

## **7. Health & Safety**

- 7.1. The Customer shall comply in all respects with all Statutory Requirements in relation to health and safety and also with all Roe Bros' policies relating to health and safety. The Customer shall take all reasonable precautions and safety measures necessary to protect his own and Roe Bros' employees and any other persons who are at any time directly or indirectly affected by the Customer's operations in relation to the Goods. The Customer shall also observe and follow any appropriate guidance or codes of practice or other relevant recommendations issued or made by any government, professional or trade organisation or any other responsible organisation relating to health and safety.

## **8. Variations**

- 8.1. The Total Price may be adjusted by Roe Bros by the amount of the valuation of any Variations. The valuation of any Variations may be invoiced by Roe Bros as part of the Total Price at such time or times as Roe Bros shall determine. Roe Bros shall be entitled to payment of such sum as provided in these Conditions in respect of any such Variations or such sum as agreed with the Customer in respect of any Variations or in the absence of such agreement such fair and reasonable sum as may be determined by Roe Bros in respect of any Variations.
- 8.2. Roe Bros may notify any Variations to the Customer and the absence of any written instruction from the Customer shall not affect Roe Bros' entitlements of any nature (including payment) in respect of any Variations. In the event that Roe Bros suspends any or all of its obligations arising out of or in connection with this Contract any expenses, liabilities, losses, damages and/or costs of whatever nature and howsoever arising that Roe Bros incurs or becomes liable for directly or indirectly shall be treated as a Variation. If heading details are non-contractual then any changes shall be treated as a Variation.
- 8.3. Roe Bros may, by giving notice to the Customer at any time up to the Delivery Date,

increase the Price of the Goods as a Variation to reflect any increase in the cost of the Goods that is due to:

- 8.3.1. any factor beyond Roe Bros' control (including foreign exchange fluctuations, increases in taxes, levies or customs or import or other similar duties, and increases in labour, materials and other manufacturing costs);
- 8.3.2. any request by the Customer to change the Delivery Date, quantities or types of Goods ordered, or the Specification; or
- 8.3.3. any delay caused by any instructions of the Customer or failure of the Customer to give Roe Bros adequate or accurate information or instructions.

## **9. Invoices and Payment**

- 9.1. Roe Bros may send one or more Invoices to the Customer in respect of the Total Price (or any part thereof) at any time or times, at Roe Bros absolute discretion (including that Roe Bros may send an Invoice for the Total Price at any time (including Roe Bros may send an Invoice for the Total Price before Delivery of any, or any part, or all of the Goods by Roe Bros)).
- 9.2. Each Invoice shall be paid in full by the Customer within 30 days from the date of the Invoice. Time for payment shall be of the essence.
- 9.3. The Total Price is exclusive of VAT (as applicable) which shall be paid by the Customer at the appropriate rate as at the date of the applicable VAT tax point.
- 9.4. All amounts due to Roe Bros under this Contract shall be paid by the Customer in full without any abatement, deduction, set off, counterclaim and/or withholding of whatever nature or howsoever arising.
- 9.5. Roe Bros shall have the right to apply any payment made by the Customer to any Invoice at Roe Bros' absolute discretion.
- 9.6. Roe Bros shall be entitled (without prejudice to its other rights) at any time or times to deduct, set off, abate, counterclaim or otherwise withhold from any monies due to the Customer arising under or in connection with this Contract (or any other agreement between the parties whether relating to the Goods or otherwise), any sums which are in the opinion of Roe Bros due or are likely to become due to Roe Bros under or in connection with this Contract or any other agreement between the parties whether relating to the Goods or otherwise (including the deduction, set off, abatement, counterclaim or otherwise withholding of monies relating to one contract from monies due in relation to any other contract between the parties).
- 9.7. Without prejudice to any other rights which Roe Bros may possess (including in respect of termination), if the Customer fails to pay any Invoice or to make any payment due to Roe Bros as provided in these Conditions;

- 9.7.1. Roe Bros shall have the right to charge interest on the overdue amount at the Interest Rate accruing on a daily basis from the date the payment becomes due until the date of payment of the overdue amount (whether before or after judgment);
- 9.7.2. Roe Bros may (without prejudice to its other rights and remedies) with immediate effect, by serving written notice on the Customer, suspend all or any part of its obligations under this Contract or any other agreement between the parties (including suspending any future deliveries to the Customer) until all payments due (plus accrued interest) have been received by Roe Bros;
- 9.7.3. all other Invoices sent arising out of or in connection with this Contract or arising under or in connection with any other agreement between the parties shall become payable forthwith; and
- 9.7.4. Roe Bros may terminate any other agreement between the parties forthwith by written notice and the provisions of clauses 12.2, 12.3, 12.4 and 12.5 shall apply to any such termination;
- 9.8. If Roe Bros, in its absolute discretion, considers the Customer's or any Group Company's credit to be unsatisfactory Roe Bros may (without prejudice to its other rights and remedies), by notice forthwith suspend all or any part of its obligations under this Contract (including the suspension of any future deliveries to the Customer) until credit arrangements satisfactory to Roe Bros are made by the Customer.
- 9.9. If requested by the Customer Roe Bros may send its Invoices by directly inputting the appropriate invoice details and data into the Customer's computer systems and any Invoice so notified to the Customer shall be deemed to have been sent to the Customer by Roe Bros and received by the Customer on the date which the Invoice is inputted by Roe Bros for all purposes in connection with this Contract.
- 9.10. Any interaction with, use of and/or connection to the Customer's computer systems by Roe Bros is entirely at the Customer's own risk. Roe Bros excludes any liability of whatever nature and howsoever arising in relation to any interaction with, use of and/or connection to the Customer's computer systems (including in relation to the inputting of any data or the transmission of any virus or other malware, errors, breach of security, accuracy, reliability, corruption or alteration occurring on or after transmission of any data) and the provisions of clause 10.1, 10.4, 10.5, 10.6 and 10.8 shall apply in relation to any claims by the Customer in arising out of or in connection with any such matters save that the amounts provided in clause 10.6 shall be amended to 0.025% (zero point zero two five percent) of the Total Price or £300 whichever shall be the greater amount.

## **10. Limitations and Exclusions of Liability**

- 10.1. Nothing in these Conditions shall limit or exclude the liability of Roe Bros for:

- 10.1.1. death or personal injury caused by its negligence, or the negligence of its employees or agents;
  - 10.1.2. fraud or fraudulent misrepresentation; or
  - 10.1.3. any matter in respect of which it would be unlawful for Roe Bros to exclude or restrict its liability.
- 10.2. Save as provided in clause 10.1, Roe Bros shall have no liability of whatever nature or howsoever arising to the Customer in respect of any delay in respect of Delivery of the Goods (or any part) or any claim of any nature arising out of or in connection with dates or time periods agreed for Delivery of the Goods (or any part) (including arising out of or in connection with any Delivery Dates).
- 10.3. Save as provided in clause 10.1, Roe Bros shall have no liability of whatever nature or howsoever arising to the Customer in respect of any material defect of any nature in the Goods, save that, in the event of any material defect in the Goods due to defective materials or defective workmanship by Roe Bros, and provided always that any such alleged material defect is notified to Roe Bros in writing within 3 Business days of the date when such material defect would have been apparent on a reasonable inspection of the Goods, Roe Bros shall, at its absolute discretion, either:
  - (a) make good the material defect within a reasonable time,
  - (b) provide replacement Goods to the Customer, or
  - (c) offer a refund to the Customer if repair or replacement is not possibleIn all cases, Roe Bros shall have no further liability of any nature to the Customer.
- 10.4. Save as provided in clauses 10.1 or 10.3, all warranties, conditions, statements, terms, representations whether express or implied, statutory, tortious (including negligence), contractual, or at common law or otherwise whether arising under this Contract or in oral or written statements made on behalf of Roe Bros in the course of negotiations with the Customer or its representatives or otherwise, are excluded (so far as allowed by statute) including (without limitation) the implied terms and conditions and warranties of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 or any re-enactment or statutory modification thereof as if the same were each expressly set out and excluded. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.
- 10.5. Save as provided in clause 10.1 and notwithstanding any other provisions of this Contract, Roe Bros shall not be liable to the Customer in respect of any expenses, liabilities, charges, costs or losses (including any loss of profit or anticipated savings, any loss of contracts, any loss of future business or business opportunity or revenue, any damage to reputation or depletion of goodwill, any additional costs of funding, borrowing, interest (save as otherwise provided in these Conditions), any loss or costs relating to delay (including any liquidated damages), any loss or use or loss of production, any costs or losses in respect of management time, any legal or professional fees, any special or indirect losses, any indirect or consequential costs,

any similar expenses, liabilities, charges, costs or losses to those listed above) any claims, demands, damages, tax or duty, proceedings and/or associated costs, of whatsoever nature and howsoever arising that the Customer incurs or becomes liable for either directly or indirectly whether in contract, tort (including negligence), for an indemnity or contribution, for breach of statutory duty, in misrepresentation or otherwise, arising out of or in connection with this Contract (including any breach of this Contract (including any repudiatory breach)) or any breach of tortious duty (including negligence) or any statutory duty or other duty or any misrepresentation on the part of Roe Bros;

- 10.6. Save as provided in clause 10.1 and notwithstanding any other provision of this Contract, the total aggregate liability of Roe Bros to the Customer in respect of any and all claims whether in contract, tort (including negligence), for an indemnity or contribution, breach of statutory duty, in misrepresentation or otherwise arising out of or in connection with this Contract (including any breach of this Contract including any repudiatory breach) or any breach of tortious duty (including negligence) or any statutory duty or other duty or any misrepresentation on the part of the Roe Bros or for any other claim of whatever nature or howsoever arising shall not in any circumstances exceed and is agreed by the parties to be limited to either;

10.6.1. the sum of 5% (five per cent) of the Total Price, or

10.6.2. the total sum of £20,000 (twenty thousand pounds)

whichever shall be the greater amount.

- 10.7. The limitations and exclusions set out above apply whether or not the purpose for which the Goods are required has been made known to Roe Bros. The Customer is responsible for ensuring that the Goods ordered from Roe Bros meet the Customer's requirements and are fit for the Customer's intended purpose.
- 10.8. The Customer acknowledges that it has received due consideration to agree to the above provisions in clauses 10.2. to 10.7 and the Customer considers those provisions reasonable in all circumstances. The Customer acknowledges that it is only by reference to and by reason of the aforesaid limitations that Roe Bros is able to supply the Goods for the Total Price and that the exclusions and limitations are reasonable. The Customer acknowledges that it is the responsibility of the Customer to insure against any liability or risk not accepted by Roe Bros under this Contract.

## 11. Indemnity and Confidentiality

- 11.1. In addition and without prejudice to its obligations hereunder the Customer shall be liable for and shall indemnify Roe Bros against any expenses, liabilities, losses (including without limitation any consequential losses including loss of profit, and/or loss of reputation), claims, demands, damages, tax or duty, proceedings and/or costs (including without limitation legal and/or professional fees) of whatsoever nature and howsoever arising that Roe Bros incurs or becomes liable for either directly or indirectly whether in contract, tort (including negligence), for an indemnity or



contribution, breach of statutory duty, in misrepresentation or otherwise arising out of or in connection with any breach of this Contract (including any repudiatory breach) or any breach of tortious duty (including negligence) or any statutory duty or other duty or any misrepresentation on the part of the Customer.

- 11.2. The Customer shall keep in strict confidence all technical or commercial know how, specifications, invention, processes or initiatives which are disclosed to the Customer by Roe Bros and any other confidential information concerning the business of Roe Bros, its products, services or personnel which the Customer may obtain in relation to this Contract.
- 11.3. In addition and without prejudice to its obligations hereunder the Customer shall be liable for and shall indemnify Roe Bros against any expenses, liabilities, losses (including without limitation any consequential losses including loss of profit, and/or loss of reputation), claims, demands, damages, tax or duty, proceedings and/or costs (including without limitation legal and/or professional fees) of whatsoever nature and howsoever arising that Roe Bros incurs or becomes liable for either directly or indirectly whether in contract, tort (including negligence), for an indemnity or contribution, breach of statutory duty, in misrepresentation or otherwise, arising out of or in connection with any claim against Roe Bros by any third party arising out of or in connection with this Contract (including arising out of or in connection with the supply or use of the Goods and including any claim arising out of or in connection with the Consumer Protection Act 1987).

## **12. Termination**

- 12.1. Without prejudice to any other rights or remedies which Roe Bros may possess whether by virtue of the terms of this Contract and/or otherwise (including Roe Bros' right to accept a repudiatory breach of contract by the Customer) Roe Bros may terminate this Contract with immediate effect by giving written notice to the Customer if:
  - 12.1.1. the Customer fails to pay any Invoices or other monies due to Roe Bros in accordance with this Contract;
  - 12.1.2. the Customer commits a material breach of this Contract;
  - 12.1.3. the Customer fails to accept Delivery of the Goods (or any part) within 1 Business Day of a notification from Roe Bros that the Goods (or any part) are available for Delivery, except where the Customer has notified Roe Bros of an inability to take delivery or has rescheduled delivery with Roe Bros' prior written consent.
  - 12.1.4. the Customer becomes Insolvent;
  - 12.1.5. any Group Company becomes Insolvent;

- 12.1.6. if Roe Bros is prevented, hindered or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event as provided in clause 13;
  - 12.1.7. the Customer or any Group Company or other associated legal entity appears, in the reasonable opinion of Roe Bros, to be likely to become Insolvent; or
  - 12.1.8. any Group Company fails to pay any invoices or other monies due to Roe Bros in accordance with any other contract between any Group Company and Roe Bros.
- 12.2. On any termination of this Contract by Roe Bros under clause 12.1 or howsoever arising (including any repudiation or alleged repudiation of this Contract):
- 12.2.1. Roe Bros may send the Customer an Invoice for the Total Price (or such part or parts thereof which have not been previously Invoiced by Roe Bros) and the Customer shall pay such Invoice within 1 Business Day of the date of such Invoice;
  - 12.2.2. the Customer shall pay all other outstanding Invoices under this Contract (and all accrued interest) to Roe Bros;
  - 12.2.3. all other Invoices submitted under this Contract (which have not at that time become due for payment) shall become due for payment forthwith and the Customer shall pay all such Invoices under this Contract (and any accrued interest) to Roe Bros within 1 Business Day of the date of termination of this Contract;
  - 12.2.4. the Customer shall in addition and without prejudice to its obligations hereunder be liable for and shall indemnify Roe Bros against any expenses, liabilities, losses (including without limitation any consequential losses including loss of profit, and/or loss of reputation), claims, demands, damages, tax or duty, proceedings and/or costs (including without limitation legal and/or professional fees) of whatsoever nature and howsoever arising that Roe Bros incurs or becomes liable for either directly or indirectly whether in contract, tort (including negligence), for an indemnity or contribution, breach of statutory duty, in misrepresentation or otherwise, arising out of or in connection with any termination or repudiation of this Contract or any other breach of this Contract or any breach of tortious duty (including negligence) or any statutory duty or other duty or any misrepresentation on the part of the Customer;
  - 12.2.5. the Customer shall pay all other outstanding Invoices under any other agreement between the parties (and all accrued interest) to Roe Bros within 1 Business Day of the date of termination of this Contract;

- 12.2.6. all other invoices submitted by Roe Bros arising under or in connection with any other agreement between the parties (which have not at that time become due for payment) shall become payable forthwith and the Customer shall pay all other outstanding Invoices under any other agreement between the parties (and all accrued interest) to Roe Bros;
  - 12.2.7. Roe Bros may terminate any other agreement between the parties forthwith by written notice and the provisions of this Clause 12 shall apply to any such termination; and
  - 12.2.8. Roe Bros shall have the right to charge interest on any overdue amounts due from the Customer to Roe Bros at the Interest Rate accruing on a daily basis from the date the payment becomes due until the date of payment of the overdue amount (whether before or after judgment);
- 12.3. The provisions of this clause 12 are without prejudice to;
- 12.3.1. any other rights or remedies which may be available to Roe Bros (including Roe Bros' rights to claim payment of any outstanding Invoices and/or damages in respect of any breach of this Contract which existed before the date of termination);
  - 12.3.2. any obligations of the Customer (including to make payment of all sums due or which become due to Roe Bros) or to indemnify Roe Bros pursuant to clause 11; and
  - 12.3.3. any exclusions or limitations of any nature which may be available to Roe Bros shall continue to apply (including the provisions of clause 10).
- 12.4. Any provision of this Contract that expressly or by implication is intended to come into force or to continue in force on or after the termination or suspension shall come into force or remain in full force and effect including the following provisions, Clause 1 (Definitions and Interpretation), Clause 2 (Purchase of the Goods), Clause 3 (The Goods), Clause 5 (Title, Property & Risk in the Goods), Clause 6 (Information Supplied), Clause 8 (Variations), Clause 9 (Invoices and Payment), Clause 10 (Limitations and Exclusions of Liability), Clause 11 (Indemnity and Insurance), Clause 12 (Termination), Clause 14 (Service of Documents), Clause 15 (Assignment and Sub-Contracting), Clause 16 (Miscellaneous Matters), Clause 17 (Calculation of Time), Clause 18 (Governing Law), Clause 19 (Dispute Resolution).
- 12.5. Roe Bros' right to terminate this Contract under clause 12 is without prejudice to and in addition to all of Roe Bros' rights at common law or otherwise including Roe Bros' right to accept a repudiatory breach of contract by the Customer and nothing in this Contract shall exclude, hinder, restrict, prescribe or limit any way whatsoever Roe Bros' right to accept a repudiatory breach of contract by the Customer (including that Roe Bros shall not be required to exercise the right to accept a repudiatory breach of contract by reference to or in accordance with the notice or other provisions of clause 12 and/or the provisions of clause 12 shall not be taken

into account when determining whether any breach or alleged breach by the Customer is or was a repudiatory breach of contract by the Customer).

### **13. Force Majeure**

- 13.1. If Roe Bros is prevented, hindered or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event;
  - 13.1.1. Roe Bros shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of any such obligations;
  - 13.1.2. Roe Bros shall within a reasonable time after the occurrence of such Force Majeure Event give the Customer reasonable notice of a Force Majeure Event and the likely effect of the Force Majeure Event on Roe Bros' ability to perform any of its obligations under this Contract;
  - 13.1.3. the time for performance of any of Roe Bros' obligations under this Contract shall be extended by Roe Bros by such reasonable time as Roe Bros shall determine and notify to the Customer;
  - 13.1.4. Roe Bros shall have no liability of any nature to the Customer and any exclusions or limitations of any nature which may be available to Roe Bros shall continue to apply (including the provisions of clause 10); and/or
  - 13.1.5. if Roe Bros is prevented, hindered or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event for a period of more than 21 Business Days Roe Bros may by notice to the Customer immediately terminate this Contract and the provisions of clause 12.2, 12.3, 12.4 and 12.5 shall apply to any such termination.

### **14. Service of Documents**

- 14.1. Any document (including any notices or other communications) may be served at either the Registered Office or the Address for Service of a party to this Contract.
- 14.2. Any document (including any notices or other communications) may be served by any effective means (including by email, by facsimile or otherwise).
- 14.3. Any document (including any notices or other communications) shall be deemed to be duly served if delivered by commercial courier or sent by Recorded Signed For or Special Delivery post:
  - 14.3.1. if delivered by commercial courier, at the time of delivery, unless delivery by commercial courier occurs after 5:00 pm or not on a Business Day, when service shall be deemed at 9:00 am on the next Business Day; or
  - 14.3.2. if sent by Recorded Signed For or Special Delivery post, at 9.00 am on the second Business Day after the day of posting;

In proving such service, it shall be sufficient to show that the envelope or package containing the document (including any notices or other communications) was properly addressed and delivered by commercial courier or sent by Recorded Signed For or Special Delivery post to either the Registered Office or the Address for Service of a party to this Contract.

## **15. Assignment and Sub-Contracting**

- 15.1. Roe Bros may, on any number of occasions, without the consent of the Customer being required, assign this Contract, or all or any part of Roe Bros' interest or rights in this Contract, to any person. Roe Bros shall notify the Customer in writing of any such assignment but if Roe Bros fails to do so, any assignment shall still be valid and effective.
- 15.2. Roe Bros may sub-contract, sub-let or otherwise delegate the supply of the Goods (or any part thereof) at any time and without notice to or the consent of the Customer.
- 15.3. The Customer shall not be entitled to contend that any person to whom this Contract or all or any part of Roe Bros' interest or rights in this Contract is assigned is precluded from recovering under this Contract any sums of any nature whatsoever including any damages, expenses, costs or losses relating to any breach of this Contract (whenever happening) by reason that such person is an assignee and not the original party or by reason that the original party or any intermediate assignee of this Contract did not incur any (or the same) sums of any nature whatsoever including any damages, expenses, costs or losses relating to any such breach.
- 15.4. The Customer shall not, without the prior written consent of Roe Bros;
  - 15.4.1. assign this Contract or all or any part of the Customer's interest or rights in this Contract to any person;
  - 15.4.2. transfer or charge this Contract or all or any part of the Customer's interest or rights in this Contract to any person; or
  - 15.4.3. create a trust of this Contract or all or any part of the Customer's interest or rights in this Contract in favour of any person.

## **16. Miscellaneous Matters**

- 16.1. This Contract comprises the whole agreement and entire understanding of the parties and there are no other arrangements or understandings between the parties relating to the subject matter of this Contract intended to form part of this Contract and this Contract supersedes any previous arrangement, understanding or agreement between the parties relating to the subject matter of this Contract.

- 16.2. The Customer acknowledges that, in entering into this Contract, it does not rely on any statement, representation, assurance or warranty made by or on behalf of Roe Bros other than as expressly set out in this Contract. The Customer acknowledges that it shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Contract. Nothing in this clause shall limit or exclude any liability for fraud.
- 16.3. No delay or omission by the Roe Bros to exercise any right, power or privilege under this Contract shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of any other right, power or privilege. The rights and remedies of Roe Bros provided for in this Contract are cumulative and in addition and not exclusive of any rights or remedies provided by law.
- 16.4. Any samples, drawings or advertising issued by Roe Bros are issued or published for the sole purpose of giving an approximate concept of the goods described in them and shall not form part of this Contract or be relied on by the Customer.
- 16.5. The invalidity, illegality or enforceability in whole or in part of any provisions of this Contract shall not affect the validity, legality or enforceability of the remaining part of provisions of this Contract. If a court or any other competent authority finds that any provision of this Contract (or part of any provision) is invalid, illegal or otherwise unenforceable by law, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected. If any invalid, illegal or unenforceable provision of this Contract would be valid, legal or enforceable if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it valid, legal and enforceable.
- 16.6. Nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 16.7. No change or amendment to this Contract shall be effective unless it is confirmed in writing by Roe Bros.

## **17. Calculation of Time**

- 17.1. Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England, that day shall be excluded.

## **18. Governing Law**

- 18.1. This Contract and any dispute, difference or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes, differences or claims) shall be governed by and construed in accordance with the law of England.

## 19. Dispute Resolution

- 19.1. If any dispute or difference arises out of or in connection with this Contract, any party may serve an ADR Notice and the parties shall;

19.1.1. arrange a meeting between senior representatives of the parties to seek to negotiate a commercially acceptable settlement to the dispute or difference. The persons attending the meeting should have authority (or be able to obtain authority) to agree a settlement of the dispute or difference. The meeting should take place as soon as practicable and in any event within 5 Business Days of the service of the ADR Notice; and

19.1.2. attempt to settle the dispute or difference by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the date of this Contract. The parties shall agree the identity of a mediator within 7 days of service of the ADR Notice and if the mediator is not agreed within that time period, the mediator shall be nominated by CEDR on application of any party. The mediation meeting shall take place not later than 28 Business Days after the date of the ADR Notice;

provided always that the service of an ADR Notice and/or any ongoing process under this clause shall not prevent any party commencing an adjudication or court proceedings at any time or from continuing with any adjudication or any court proceedings already commenced.

- 19.2. If a dispute or difference arises out of or in connection with this Contract, any party may refer the said dispute or difference to adjudication in accordance with the provisions of The Technology and Construction Solicitors Association (TeCSA) Adjudication Rules (2015 Version 3.2.1) and pursuant to those rules the nomination shall be made by the Chairman of TeCSA or such other committee member thereof as is authorised to deputise for the Chairman of TeCSA.

- 19.3. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and determine any suit, action or proceeding, and to settle any dispute, difference or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes, differences or claims). Any court proceedings shall be commenced in the Technology and Construction Court of the High Court of Justice, London.

SPW January 2017

