

## 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 ASH's Quotation set out all the rights and obligations of the parties each to the other and no other terms or conditions shall be implied save to the extent that such terms or conditions are implied by statute.
- 1.2 Unless otherwise expressly agreed, collection or acceptance of Goods or acceptance of Services by the Customer shall signify acceptance of these terms and conditions. For the avoidance of doubt ASH do not intend to enter into contract on any terms and conditions other than those set out herein.
- 1.3 If the Contract includes any installation work or other Services, it is agreed between the parties that all the Contract Works shall be construction operations for the purposes of The Housing Grants, Construction and Regeneration Act 1996, Part II, which Act shall apply to contract.
- 1.4 All quotations by ASH shall be open for acceptance for 30 days unless expressly stated otherwise or unless withdrawn or revised by ASH.
- 1.5 All quotations for the sale of Goods and conditional on availability of the said Goods to ASH.

### 2 DEFINITIONS

- 2.1 The following terms shall have the following meanings:
- (i) 'ASH' means All Seasons Hire Limited its successors and assigns.
  - (ii) The 'Customer' means the Customer of ASH to whom this document is addressed and includes successors or others for whom the said Customer is responsible.
  - (iii) The 'Goods' means the Goods supplied by ASH as described in ASH's Quotation.
  - (iv) 'Services' means the Services provided by ASH as described in ASH's Quotation.
  - (v) 'Contract Works' means Goods and Services where both are provided under the Contract.
  - (vi) '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.
  - (vii) 'Site' means the area within which the Goods are to be installed together with any other area which ASH shall be permitted to use in connection with the Contract Works.
  - (viii) '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 by the Customer or others for whom it is responsible.
  - (ix) 'Contract Price' means the sum stated in ASH quotation as the price payable to ASH for performance of the Contract Works.
  - (x) 'CDM Regulations' means the Construction (Design and Management) Regulations 1994.

### 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 ASH under the Contract notwithstanding other Services may be provided by ASH in connection with the Goods.
- Delivery
- 3.2 The Goods are delivered to the Customer when ASH makes them available to the Customer or any agent of the Customer or any carrier (who shall be the Customer's agent whoever pays its charges) at ASH's premises or other place of delivery agreed by ASH.
- 3.3 Risk in the Goods passes when they are delivered to the Customer.
- 3.4 ASH may at its discretion deliver the Goods by instalments in any sequence.
- 3.5 When the Goods are delivered by instalments no default or failure by ASH in respect of any one or more instalments shall vitiate the contract in respect of the Goods previously delivered or which remain undelivered.
- 3.6 Any dates quoted by ASH 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 ASH no regard has been paid to any quoted delivery dates.
- 3.7 If the Customer fails to take delivery of the Goods or any part of them on the due date or to provide any instructions or documents required to enable the Goods to be delivered on the due date, ASH 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 ASH all costs and expenses including storage and insurance charges arising from its failure.
- 3.8 ASH shall not be liable for any penalty loss injury damage or expense arising from any cause at all, nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance or to repudiate the contract.
- Acceptance and Notice of Complaint
- 3.9 The Customer shall be deemed to be satisfied with and have accepted the Goods on delivery UNLESS it shall have complied with the provisions of this Clause 3.
- 3.10 Any claim that the Goods or any part of them have been delivered damaged or are not of the correct quantity or do not comply with their description shall be notified by the Customer to ASH by written endorsement on the delivery note in respect of such Goods and in writing to ASH within 48 hours of their delivery.
- 3.11 Any claim that the Goods or any part of them have been lost in transit or are defective or in the case of Services of a defect in workmanship shall be notified by the Customer to ASH within 7 days of delivery of the Goods or completion of the Services.
- 3.12 Any claim under this condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective Goods or part thereof.

3.13 ASH 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 ASH promptly return any of the Goods the subject of any claim and any packing materials securely packed and carriage paid to ASH for examination.

3.14 ASH shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these conditions.

3.15 The customer agrees and accepts that any item purchased from ASH will be installed by a competent, qualified installer. Failure to adhere to this could invalidate the manufacturers warranty.

**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 the supply of Goods and Services including installation Services by ASH at the Site.

4.2 The Customer shall allow access to the Site to enable ASH to carry out and complete the Contract Works.

4.3 Any dates quoted by ASH for delivery of Goods or completion of any service are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of ASH no record has been paid to any such dates.

4.4 ASH 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 ASH considers it has substantially completed the supply of Goods and installation Services including testing and initial commissioning where appropriate, ASH shall notify the Customer that the Contract Works are complete providing that there may be Goods and Services remaining to be supplied or completed including:

- (i) Goods and/or Services of a de minimus nature
- (ii) Manuals instructions information to be provided (if any) in pursuance of ASH obligations under the CDM Regulations or otherwise under the Contract.
- (iii) Completion of testing and/or commissioning which is prevented by circumstances beyond ASH control including but not limited to climatic conditions or conditions on the Site.

4.6 In the event that supply of Goods or Services referred to in Clause 4.5 (i) to (iii) remains to be completed after the time notified by ASH under Clause 4.5, ASH shall complete the said supply in a reasonable time having regard to all the circumstances.

4.7 On receipt of notice by ASH under Clause 4.5 the Customer shall forthwith inspect the work on the Site and the Customer shall be deemed to be satisfied with and have accepted the Contract Works save in respect of matters referred to in Clause 4.5 (i) to (iii) notified to the Customer, UNLESS it immediately notifies ASH of its dissatisfaction in writing giving reasons.

4.8 In the event that ASH does not agree with the Customer that the work on Site is not substantially complete within the meaning of Clause 4.5, either party may refer the matter to adjudication under Clause 20.1.

4.9 The parties agree that on such referral under Clause 4.8 all further work including matters notified by ASH as incomplete may be suspended without further notice until the Adjudicator's Decision is received by both parties and notwithstanding the Adjudicators decision as to his costs, each party will bear its own cost in respect of suspension of the work. the right to suspend the work shall cease 4 days after receipt by ASH of the Adjudicator's Decision.

4.10 If any Defect appears or becomes apparent within 6 months following acceptance of the works under Clause 4.5, the Customer shall immediately notify ASH and afford ASH reasonable opportunity to inspect, to investigate the cause, and to correct the Defect.

On receipt of notification of a Defect, ASH shall within a reasonable time inspect the Defect and may at its discretion investigate and correct the defect at its own cost.

**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 ASH.

5.2 No Variation shall vitiate the Contract.

5.3 ASH may require the basis of charging any Variation to be agreed in writing before any Goods or Service comprising a Variation is provided to the Customer.

5.4 In the event that the basis of charging a Variation is not agreed as provided in Clause 5.3 ASH 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 ASH accepts a Variation without first having agreed the basis of charging, then the Variation shall be valued as the work contained therein proceeds on a fair and reasonable basis having regard to all the relevant circumstances including any prices for similar Goods or Services contained in the Contract.

**6 INFORMATION PROVIDED BY CUSTOMER AND ASSUMPTIONS**

Information Provided by Customer

6.1 Where in ASH quotation any information or document is identified as provided by the Customer, ASH shall be entitled to rely on such information or document for the purpose of discharging its obligations under the Contract.

6.2 If the said information or document contains any error or inconsistency, the correction of which would affect performance of the Contract Works in any way whatsoever and if such correction is required in writing by the Customer or is necessary for performance of the Contract Works, any resulting effect on the Contract Works shall be carried out by ASH and otherwise it shall be treated as though it were a Variation.

Assumptions made by ASH

6.3 Where in ASH quotation it is stated that an assumption has been made, the Goods and/or Services specified and the prices therefore included in the Contract Price are based on such assumption being correct.

6.4 If at any time any said assumption is found to be incorrect and correction would affect the performance of the Contract Works in any way whatsoever, and if such correction either is requested in writing by the Customer or is necessary for performance of the Contract Works, any resulting effect on the Contract Works shall be carried out by ASH 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 ASH quotation.

7.2 If after the date of ASH quotation ASH costs are increased by any increase in the prices or rates to ASH of materials, plant, equipment, transport, labour and any part of ASH 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, ASH 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 ASH quotation are nett and no provision is made for the Customer to be allowed discount.

8 **PAYMENT AND SET OFF**

Payment (Supply only)

8.1 If the Contract does not include installation of the Goods by ASH at the Site:

- (a) ASH may invoice for Goods supplied immediately after delivery. If the contract provides for delivery in instalments, ASH may invoice for the relevant Goods immediately after delivery of each instalment.
- (b) All invoices for the price of the Goods and Services are payable without discount of any kind in pounds sterling within 30 days of date of invoice at ASH's premises stated on the invoice and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason at all.

Payment (Supply and Installation)

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

- (a) ASH 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 ASH under the Contract, at one month intervals throughout and at the end of and commencing after the start of the Contract Period.
- (b) Payment of the proper amount payable shall be made within a period of 25 days starting 5 days after receipt by the Customer of ASH's invoice.
- (c) Not later than 7 days after the receipt of ASH invoice the Customer shall notify ASH in writing giving details of the amount to be paid against the said invoice and the basis on which it is calculated.
- (d) If in respect of any invoice submitted by ASH to the Customer, the Customer intends to withhold payment (or part thereof) of a sum previously notified as due under Clause 8.2(c), the Customer shall give written notice of such intention not later than 7 days before the latest date for payment under Clause 8.2(b), giving details of each amount to be withheld and the grounds for withholding each amount.

8.3 Should the Customer default in making full payment in accordance with the foregoing provisions whether by non-payment or where applicable by failing to serve an effective notice to withhold payment under Clause 8.2 without prejudice to any other right or remedy under the contract:

- (i) ASH may charge interest on all outstanding monies at the rate of 4 per cent per annum above the base rate of National Westminster Bank plc from time to time prevailing charged on a daily basis compounded monthly until payment.
- (ii) ASH may suspend performance of its obligations under the Contract, providing it first gives written notice to the Contractor stating the grounds on which the suspension is intended and the date on which it intends to suspend performance being not earlier than 7 days after the date of the notice.
- (iii) ASH may continue suspension of its performance under sub-clause (ii) hereof until 3 days after the Customer makes full payment of the amount due.
- (iv) In respect of suspension of its performance under sub-clauses (ii) and (iii) ASH shall be entitled to appropriate relief from any of its obligation under the Contract connected with time limits for its performance of the Contract Works.
- (v) In the ASH shall have a lien on all the Customer's property in the possession of ASH 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 ASH and the costs of sale or disposal ASH shall be discharged of any liability in respect of the Customer's property.

8.4 The Customer indemnifies ASH against all direct legal and other costs including but not limited to the cost of ASH employees incurred in the recovery of any sum which becomes overdue for payment and any loss and/or expense suffered by ASH resulting from action taken in accordance with the provisions contained in Clause 8.3.

Counter Claims and Set Off

8.5 Under no circumstances shall monies owed by ASH to the Customer under this or any other contract between the parties be set off against monies properly due to ASH 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 ASH and shall store or mark them so that they can at all times be identified as the property of ASH.

9.2 ASH may at any time before title passes and without any liability to the Customer repossess and dismantle and use or sell any of the Goods and by doing so terminate the Customer's right to use sell or otherwise deal in them and for the purpose of determining what if any of the Goods are held by the Customer and inspecting them enter any premises of or occupied by the Customer.

9.3 Until title to the Goods passes to the Customer the entire proceeds of sale of the Goods shall be held in trust for ASH 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 ASH's money.

9.4 ASH may maintain an action or the price of the Goods notwithstanding that title in them has not passed to the Customer.

9.5 The Customer grants ASH 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 ASH under Clause 9.1 hereof. ASH shall not be responsible for and the Customer shall indemnify ASH against liability in respect of damage caused to such vehicles or premises in such repossession and removal being damage it was not reasonably practicable to avoid.

9.6 The Customer must ensure that if the Goods are or become affixed to any land or building they shall be capable of being identified as the property of ASH and removed without material injury to such land or building and to take all necessary steps to prevent title to the Goods from passing to the landlord of such land or building. The Customer warrants to repair and make good any damage caused by the affixation of the Goods or their removal from any land or building and to indemnify ASH against all loss damage or liability it may incur or sustain as a result of such affixation or removal.

9.7 If the Goods are affixed by ASH to any land or building in performance of the Contract, ASH 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 ASH shall mark the Goods so affixed as the property of ASH in such a manner that such mark shall not damage the Goods and may be removed by the Customer when title to and property in the Goods has passed to it.

9.8 The Customer's right to possession of the Goods shall cease if it does anything or fails to do anything which would entitle an administrator or administrative receiver to take possession of any assets or would entitle any person to present a petition for winding-up.

10 **EXTENT OF LIABILITY**

Generally

10.1 Unless otherwise provided in these Terms and Conditions under no circumstances shall ASH have any liability of whatever kind for:

- (a) Any fault or imperfection resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions of ASH or the manufacturer of any of the Goods, or neglect, or from any instructions or materials provided by the Customer.
- (b) Any of the Goods which have been adjusted modified or repaired except by ASH.
- (c) The suitability of any of the Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions was known by or communicated to ASH.
- (d) Any substitution by ASH of any materials or components not forming part of any specification of the Goods agreed in writing by ASH.
- (e) Any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by ASH contained in ASH's catalogues, sales literature, price lists, or elsewhere since they are merely intended to represent a general impression of the Goods and not to form part of the contract or be treated as representations.
- (f) Any technical information recommendation statements or advice furnished by ASH its servants or agents not given in writing in response to a specific written request from the Customer before the contract is made.
- (g) Any variations in the quantities or dimensions of any of the Goods or changes of their specifications or substitution of any materials or components if the variation or substitution does not materially affect the characteristics of the Goods and the substituted materials or components are of a quality equal or superior to those originally specified.
- 10.2 Except as expressly provided elsewhere, ASH shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the contract or any negligence, breach of statutory or other duty on the part of ASH, or in any other way out of or in connection with the performance or purported performance of or failure to perform the contract except for death or personal injury resulting from the negligence of ASH.
- 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, ASH 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, ASH 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 ASH's manufacture assign to the Customer (so far as ASH is able to do so) any warranties given by the manufacturer of the Goods to ASH.
- 10.5 Clause 10.4 shall not apply unless:
- (a) If so required by ASH all defective Goods are first returned to ASH's premises carriage paid by the Customer, and
- (b) The Goods have not been altered in any way whatsoever, nor have they been subjected to misuse or unauthorised repair
- (c) The Goods have been properly and correctly stored or installed or connected (unless ASH carried out such installation and connection) and used by the Customer in accordance with the manufacturer's instructions, and
- (d) In the case of Goods requiring service or maintenance the Customer has entered into a contract for their maintenance with ASH.
- 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 ASH.
- 10.7 The delivery of any repaired or replacement Goods shall be at ASH's premises or other delivery point specified for the original Goods.
- 10.8 No claim against ASH shall be entertained for any defect arising either from any design or specification provided or made by the Customer, or from any adjustments alterations or other work done to the Goods or Services by any person except ASH.
- 10.9 ASH 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 ASH at the prices ruling at the date of despatch and shall be a Variation.
- 10.10 In no circumstances shall the liability of ASH to the Customer under this condition exceed the invoice value of the Goods or Services
- 10.11 Except as expressly provided elsewhere in the Contract ASH 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 ASH or on the part of any of its employees agents or others for whom it is responsible in connection with or arising out of the supply of the Goods or the Services or the installation repair or maintenance of the Goods or in connection with any statement given or made, or failure to give advice or warning by or on behalf of ASH except that such exclusion shall not apply to any implied term as to quality or fitness for any general or particular purpose where the Customer deals as a Consumer as defined in Section 12 of the Unfair Contract Terms Act 1977.
- Design
- 10.12 To the extent that the Contract Works includes the provision by ASH of design Services, ASH shall supply such Services using reasonable professional care and skill.
- 10.13 Unless otherwise provided in the Contract, ASH 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, ASH 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 ASH bona fide believes that any of those events may occur. In the case of termination any deposit paid by the Customer to ASH shall be forfeited
- 12 **HEALTH AND SAFETY**
- CDM Regulations
- 12.1 Except if the Customer deals as a Consumer and the Site is a domestic dwelling, ASH draws the Customer's attention to the provisions of the Construction (Design and Management) Regulations 1994 and any subsequent amendments, and to the associated Approved Code of Practice.
- 12.2 In particular ASH draws the Customer's attention to the duties of the Client, if the Contract Works are subject to the CDM Regulations, to appoint specified duty holders to act under the said Regulations and to make a Declaration to the Health and Safety Executive in accordance with Regulation 4.
- 12.3 The Customer shall notify ASH if the Contract Works are subject to the CDM Regulations and warrants to ASH that if necessary the duty holders required by the said Regulations have been or will be appointed by the Customer.
- Health and Safety Generally

- 12.4 The Customer's attention is drawn to the provisions of Section 6 of the Health and Safety at Work etc. Act 1974 (The 1974 Act). ASH will make available to the Customer such information as is appropriate relating to the Goods as is in its possession to ensure that as far as reasonably practicable they are safe and without risk to health when properly used.
- 13 **SERVICES**
- 13.1 This Clause 13 shall apply if the Contract is for supply of Goods and Services including installation Services by ASH at the Site.
- 13.2 ASH shall be entitled to carry out the Services during normal working hours. If the Customer requests ASH to perform Services outside normal working hours such request shall be a Variation under Clause 5.1.
- 13.3 Unless otherwise provided expressly in ASH's Quotation the Services shall exclude the following :-
- (a) All electrical mains power supplies and cables necessary for the Services, suitably rated fused switch isolator between the incoming mains distribution board and ASH's tools plant and equipment.
  - (b) 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 ASH 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.
  - (c) All necessary Planning Approvals or other consents required for the performance of the Services.
  - (d) Any craneage, hoisting gear, scaffold, ladders and moveable platforms
- 13.4 Goods delivered to Site which remain unfixd 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 ASH 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 ASH shall approve the full value of the Goods and/or the Services, including ASH'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 ASH on demand the policy or policies under which such insurance is effected together with the latest premium receipts. If the Customer shall default in effecting insurance ASH may effect the same on behalf of the Customer and the cost thereof shall be reimbursed by the Customer to ASH on demand.
- 13.5 If the Services are to be performed at the premises of the Customer or at its request at the premises of any other person then the Customer warrants and undertakes to ASH throughout the term of the contract as follows :-
- (a) That the Customer has full power and authority to enter into the contract and to permit ASH to perform the Services and that all necessary Planning Approvals or other Consents authorising the Services have been obtained.
  - (b) To grant to ASH's employees agents and contractors full and unrestricted safe access to the site as ASH shall from time to time require in order to discharge its obligations under the contract.
  - (c) To make available free of charge at the Site such facilities as ASH shall reasonably require to enable the Services to be performed safely expeditiously and without any interruption by any activity of the Customer including but without limitation adequate and safe working space, storage, office furniture equipment and all electrical mains power water and/or other fuel supplies and cables necessary for the Services, suitably rated fused switch isolator between the incoming mains distribution board and ASH's tools plant and equipment, any craneage hoisting and/or lowering gear specialist lifting tackle scaffolding ladders and moveable platforms.
  - (d) To provide adequate protection of all the Goods tools plant and equipment and materials on site.
  - (e) To provide prior to commencement of installation and at the Customer's cost all builder's work including but without limitation foundations, drilling of holes through reinforced walls, special support slabs, cutting and weathering of roofs, cutting away and making good as required and ready availability of all plant and equipment so as to ensure that premises are in a fit state for the Contract Works.
  - (f) To take all reasonable precautions to protect the health and safety of ASH's employees agents and contractors while carrying out the Services.
  - (g) To allow ASH's employees agents and contractors reasonable access to the Customer's employees for the purpose of investigation and discussion in connection with the Services and to communicate the identity of the employee who shall act as the contact point and channel of communication with ASH in the provision of the Services.
- 13.6 Without prejudice to any other right or remedy it possesses under the Contract, ASH may claim the amount of any loss and/or expense incurred by it resulting from any breach by the Customer of its obligations under Clause 13.1 to 13.5.
- 14 **CONFIDENTIALITY**
- 14.1 The Customer shall not at any time whether before or after completion or termination of the contract divulge or use any unpublished technical information deriving from ASH or any other confidential information in relation to ASH's affairs or business.
- 15 **CANCELLATION BY CUSTOMER**
- 15.1 Orders for Goods which have to be made specially for the Customer and/or for which ASH 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 ASH, but if cancellation is received after such Goods or components have been so allocated or set aside by ASH then a reasonable packing and handling charge will be payable by the Customer.
- 16 **STATUTORY COMPLIANCE**
- 16.1 The Customer warrants and represents to ASH that it will 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.
- 17 **FORCE MAJEURE**
- 17.1 ASH shall not be liable for any failure in performance of any of its obligations under the contract caused by factors outside its control.
- 18 **NOTICES**
- 18.1 To be served effectively, any notice or communication in writing required to be given pursuant to these Conditions shall in the case of a notice or communication to ASH be sent to it at its address stated on ASH's Quotation and shall in the case of a notice or communication to the Customer be sent to the Customer at its registered office if the Customer is a company and in any other case to the address of the Customer last known to ASH. Any such notice or communication may be given by registered or recorded delivery post or facsimile transmission. To prove service in the case of a notice given by facsimile transmission it shall

be sufficient to show that it was despatched to the correct facsimile number. Service shall be deemed to have been effected 24 hours after despatch by post or facsimile transmission.

19 **GENERAL**

19.1 ASH may subcontract the performance of the contract in whole or in part.

19.2 The Customer shall not assign or sublet the contract in whole or in part, without first obtaining ASH's written consent which consent shall not be unreasonably withheld.

19.3 If the Goods are manufactured or supplied or other Services performed in accordance with any design or specification provided or made by the Customer the Customer shall indemnify ASH against and shall compensate ASH in full on demand for all claims expenses and liabilities of any nature in connection therewith including any claim whether actual or alleged that the said design or specification infringes the rights of any third party.

19.4 All tools patterns materials drawings specifications and other data provided by ASH 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 ASH, save to the extent that the Contract Works stated in Schedule 1 expressly provides otherwise.

19.5 If any provisions contained in these Conditions shall be deemed to be invalid for any reason the condition shall be read as if the invalid provision had to that extent been deleted therefrom and the validity of the remaining provisions of these Conditions shall be affected thereby.

20 **SETTLEMENT OF DISPUTES**

20.1 Should any dispute or difference arise between the parties under the contract at any time including after its completion and whether before or after the termination, abandonment or breach of the contract then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. For the avoidance of doubt, the following conditions are drafted to comply with Section 108 of the Housing Grants, Construction and Regeneration Act 1996 and any doubts or ambiguities shall be construed accordingly. Nothing in this clause shall be construed to deprive either party of its rights to commence proceedings in the Courts.

20.2 If any such dispute 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 named in ASH's Quotation or if not so named, forthwith either upon his identity being subsequently agreed or upon him being appointed under Clause 20.4 below as the case may be.

20.4 In the event that no Adjudicator is named in the contract, then the parties shall within four days of the Notice being served upon the Respondent agree upon a suitable Adjudicator. Failing agreement the Applicant shall and the Respondent may apply for an appointment to the Academy of Construction 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) and with the object of securing the appointment of and the referral of the dispute to the Adjudicator within seven days and requiring a Decision by him within twenty-eight days of such referral.

22 **LAW**

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