NG Bailey

NG Bailey Group Limited and Subsidiary and Associated Companies - Terms and Conditions of Purchase of Goods and/or Services

1. Definitions

1.1 Throughout these Terms and Conditions of Purchase the following terms have the following meanings:

Term	Definition
Buyer	means NG Bailey Group Limited or any subsidiary of NG Bailey Group Limited which issues a Contract, as named in the Order.
Buyer's Location	means any place where the Buyer is working.
Conditions	means these Terms and Conditions of Purchase and any additional terms specifically incorporated into the Contract in writing by the Buyer.
Contract	means the Order and the other Contract Documents.
Contract Documents	• the National Framework Agreement (if applicable); • the Order (or variation of the Order in accordance with Condition 2.1) (excluding any Supplier terms and conditions); • these Conditions (or variation of these Conditions in accordance with Condition 2.1); • the Main Contract (if applicable); • any other documents referenced in and/or attached to the Order; and/or • any quotation from the Supplier which is specifically referred to in the Order (excluding any Supplier terms and conditions).
Delivery Date	means the date or dates for physical delivery of any Goods and/or completion of any Services as set out in the Order.
Goods	means any goods or materials which are or form part of the subject matter of the Contract including without limitation all components and materials, items, articles or things as set out in the Contract.
Intellectual Property Rights	means all intellectual property rights (including without limitation, patents, trademarks, designs, design rights, copyright, inventions, trade secrets, knowhow and confidential information) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Main Contract	means any contract between the Buyer and its client under which the Buyer is employed to provide certain works and/or

	services of which the Goods and/or Services to be provided by the Supplier shall form all or part, or any related agreement between the Buyer and a third party.
National Framework Agreement	means, if applicable, the national framework agreement entered into by NG Bailey Group Limited or any subsidiary of NG Bailey Group Limited and the Supplier which governs the supply and purchase of Goods and Services.
Order	means the written purchase order or written agreement issued by the Buyer which incorporates these Conditions (which, unless agreed otherwise, shall constitute the Buyer's offer).
Practical Completion	means completion of the works under the Main Contract.
Procurement Manager	means the procurement manager of the Buyer who is placing the Contract with the Supplier.
Supplier	means the person, firm or company with whom the Contract is placed.
Services	means any services to be provided by the Supplier as set out in the Contract.
Specification	means the specification or performance requirements of the Goods or Services as set out in the Contract.
Variation	means any instruction which may increase or reduce (descope) or otherwise change the Goods and/or Services to be provided by the Supplier or otherwise change the conditions under which the Goods and/or Services are to be provided.

1.2 Headings are for reference only and do not affect the interpretation of these Conditions.

1.3 Where this Contract refers to ‘costs’ payable by the Supplier to the Buyer or any other member of the NG Bailey group of companies this includes incurred or reasonably anticipated direct or indirect costs, expenses, losses, claims, damages, liabilities, proceedings, legal and professional fees, sums reasonably incurred or paid in settlement of any claim or liability and entitlements lost or otherwise incurred, including loss of profit to the extent recoverable at law.

2. Contract terms

2.1 Unless set out in the National Framework Agreement or otherwise agreed in writing, the Order constitutes an offer by the Buyer to purchase the Goods and/or Services from the Supplier in accordance with these Conditions. The Order shall be deemed to be accepted on the earlier of the Supplier issuing written acceptance of the Order or any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence. Any acceptance of the Order by the Supplier shall be subject to these Conditions and any payment made to the Supplier for the same shall be an interim payment in respect of the price(s) set out in the Order. Any Variation to the Contract shall only have effect if made in a variation order issued by the Buyer in accordance with Condition 6. Any amendments to or Variation of these Conditions shall only have effect if contained within any National Framework Agreement or an Order.

2.2 The Contract constitutes the entire agreement between the Buyer and the Supplier with regard to the Goods and/or Services to the exclusion of all other terms and conditions which the Supplier

may seek to apply (whether or not signed by the Buyer). The Supplier waives any right it may have to rely on all other such terms and conditions. The Contract supersedes all prior negotiations, representations, promises, assurances or agreements whether written or oral unless and to the extent that they are expressly accepted in writing by the Buyer in the Contract Documents. No terms or conditions included in or referred to in any quotation, acknowledgement, delivery note, invoice or other Supplier document shall apply to the Contract unless expressly accepted in writing by the Buyer in the Contract Documents.

2.3 If any term or condition of the Contract is held to be unenforceable, invalid or illegal by any Court or tribunal it shall be deemed severable and shall not affect any other term or condition of the Contract which shall otherwise remain in full force and effect between the parties.

2.4 If either party discovers any conflicts, discrepancies or ambiguities within or between the Contract Documents it shall immediately report any such conflicts, discrepancies or ambiguities to the other. The Buyer shall instruct how the discrepancy is to be resolved and such an instruction from the Buyer shall not constitute a Variation nor give rise to an entitlement to any extension of time for performance or other financial compensation.

2.5 Any agreed schedule of amendments to this Contract shall be incorporated into the Conditions as if set out in full herein, and which shall take precedence over any conflicting Conditions.

3. Notices and communications

3.1 All communications under this Contract shall be in English and submitted in a form that can be read, copied and recorded, except where the form and/or recipient is expressly stated, in which case the expressly stated provision shall apply.

3.2 All communications shall be addressed to the Supplier at its registered address or principal place of business, and to the Buyer at the Buyer's office from which the Contract was issued, marked for the attention of the Procurement Manager.

3.3 If the Supplier is not based in England and Wales, it hereby agrees to accept service of any document or proceedings arising out of or in relation to this Contract at its place of business (if any) in England and Wales.

4. Goods

4.1 The Supplier warrants and represents that the Goods shall conform as to quantity, quality and description with the Specification.

4.2 Without prejudice to the generality of Condition 4.1, it is a condition of the Contract that:

- the Goods shall be new and of best quality and free from defects in design, material and workmanship;
- the Goods accord with the requirements of the Main Contract;
- the Goods shall comply with all applicable laws and with the applicable British and European Standards, if any, and/or relevant trade standards/regulations, including any appropriate foreign or international trade standards/regulations/laws;
- where the Buyer makes known to the Supplier the purpose for which the Goods are to be used, either expressly or by implication, the Goods shall be fit for that purpose;

- the sale or use of the Goods or product of the Services shall not infringe any Intellectual Property Rights of any third parties; and
- the Supplier shall ensure that it does not supply or allow to be supplied any counterfeit, fraudulent or suspect goods or materials for use under this Contract.

4.3 The Supplier shall not substitute or provide alternative Goods or change the quantities to be supplied to the Buyer without the Buyer's prior written consent in the form of a variation order issued pursuant to Condition 6.

4.4 The Buyer (and/or its nominated representative) may inspect all or any of the Goods in the course of production at the premises where the Goods are being produced at any reasonable time and may require the making good, amendment or replacement of anything which is defective or does not comply with the Contract and to reject any Goods of which it reasonably disapproves. The Supplier shall immediately make good, amend or replace such Goods as so required to the Buyer's full satisfaction at the Supplier's own cost. No such inspection, testing, approval or review and no omission to inspect, test, approve or review on the part of the Buyer shall operate in any way to relieve or diminish any duty or liability of the Supplier under the Contract.

4.5 Unless otherwise agreed in writing:

- All Goods shall be securely packed in such a manner as to preserve them as undamaged whilst in transit and whilst stored on site before installation;
- The Goods shall be fully and accurately described in all tickets, labels, invoices, packing and delivery notes, quoting the Buyer's Order number;
- The Supplier shall submit with the Goods full instructions for use and clear warnings with respect to anything which may reasonably be done or omitted to be done in relation to the Goods and which could render them unsafe; and
- The Buyer shall not be liable to return any packaging material or container.

4.6 The Supplier shall ensure that any timber products supplied to the Buyer are from a Forest Stewardship Council ("FSC") or equivalent approved source and carry the FSC or equivalent trademark. The Supplier shall provide documentary evidence (including chain of custody as appropriate) as proof upon request from the Buyer.

4.7 Without prejudice to any other rights or remedies which the Buyer may possess, if any defect in design, specification, materials, workmanship, operating characteristics or otherwise develops in the Goods during the first 24 months from the latest of (1) the Delivery Date or (2) the Goods being put into service by the Buyer or (3) Practical Completion ("Defects Liability Period"), the Supplier shall, without limitation to the Buyer's other legal rights and remedies, carry out, at the site where the Goods are located, all necessary alterations or repairs to the defective Goods at the Supplier's own cost. If the defect in the Goods cannot be corrected the Supplier shall promptly remove and replace the Goods free of charge or at the Buyer's option remove the Goods and refund the full price paid to the Buyer within 14 calendar days.

4.8 The Supplier shall guarantee for a further period of 24 months any replacement, altered or repaired part or parts of the Goods.

4.9 If the Supplier refuses or fails to alter, repair or replace defective Goods when requested, the Buyer may make other arrangements for such alteration, repair or replacement to be carried out by a third party and recover any costs incurred or likely to be incurred from the Supplier by way of deduction or set off or otherwise as a debt.

NG Bailey

4.10 Any Specification, plans, designs or other similar document or data supplied by the Buyer to the Supplier or specifically produced by the Supplier for the Buyer, together with the Intellectual Property Rights therein, shall (as between the parties) be the exclusive property of the Buyer. The Supplier shall not disclose to any third party or use any Specification, plan, design or other similar document or data except, or as required, for the purpose of the Contract.

4.11 By providing any design or other similar document or data the Supplier grants to the Buyer an irrevocable, worldwide, royalty free licence to copy and/or use any drawings, computer discs, software and information (and/or any future modification thereto) contained therein and the Buyer shall be entitled to assign or sub-licence this design or similar document or data to third parties.

4.12 In the case of any Goods which have been designed and manufactured by the Supplier in accordance with drawings and/or specifications or patterns supplied by the Buyer, the Supplier agrees not to sell goods created from the same designs to any person, firm or company except against an Order of the Buyer or with the prior written consent of the Buyer. The Supplier further undertakes not to manufacture quantities in excess of the Order for the purpose of sale or otherwise. Such drawings and/or specifications or patterns shall remain the property of the Buyer and shall be returned by the Supplier to the Buyer on demand and the Supplier shall destroy any further copies.

4.13 The Supplier shall notify the Buyer if the Goods, or any part thereof, are expected to become obsolete within 24 months of the Delivery Date.

4.14 Regardless of any anticipated obsolescence of any Goods, the Supplier warrants to provide, at a fair price to be agreed between the Supplier and the Buyer, spare parts for a period of 10 years or such period as may be prescribed by any government or other relevant authority after the Delivery Date.

4.15 The rights set out in this Condition 4 are in addition to all other rights which the Buyer may have, whether at common law, statute or otherwise.

5. Delivery and performance

5.1 The Supplier shall deliver the Goods DDP INCOTERMS 2020 or perform the Services at the address stated in the Contract and in a manner and sequence that will enable the Buyer to discharge its obligations under the Main Contract.

5.2 Delivery of Goods is deemed to include offloading and placement by the Supplier to the reasonable instructions of the Buyer.

5.3 All Goods shall be accompanied by a delivery note, confirming the items being delivered, clearly identifying that they are being supplied by the Supplier and stating the Buyer's Order number. Where Goods are left at the delivery address without obtaining the signature of an authorised representative of the Buyer on the delivery note, then delivery shall be deemed not to have taken place until accepted and confirmed by the Buyer. Signature of any documentation on delivery shall have no contractual effect, other than confirming the date of delivery.

5.4 Deliveries shall be of the total quantity ordered unless delivery by instalments has been specified by the Buyer. Any Goods delivered in excess of or less than the amount stated in the Contract may be accepted or rejected at the Buyer's option.

NG Bailey

5.5 If delivery of Goods or provision of Services is by instalments, each delivery shall not constitute a separate contract. The failure by the Supplier to deliver or provide any one instalment shall entitle the Buyer to treat the entire Contract as wholly repudiated by the Supplier.

5.6 Time is of the essence for the delivery of the Goods and performance of the Services. No defaults, breaches, acts or omissions of the Buyer shall entitle the Supplier to any extension of time for performance of any obligation under the Contract unless, subject to strict compliance with Condition 5.7, the Buyer's act of prevention is the material cause of the Supplier being unable to meet the obligation, in which case the Buyer shall amend the Delivery Date, but this shall not waive any of the Buyer's other rights under the Contract and time shall remain of the essence for any changed Delivery Date.

5.7 The Supplier shall give notice in writing to the Buyer within 1 week of becoming aware, or from when the Supplier should reasonably have become aware that the delivery of the Goods or performance of the Services is delayed or disrupted or is likely to become delayed or disrupted and that the Goods or Services may not be delivered or performed by the Delivery Date. The notice shall include details of the cause of the delay or disruption and must include both the likely time and financial impact. The Supplier shall not be entitled to any amendment to the Delivery Date or any associated loss and expense or other financial compensation:

- unless it has given notice in the above time scale,
- unless the notice contains all the necessary details as required above,
- unless the notice is communicated separately from other communications, and
- unless it has, and demonstrates that the Buyer is responsible for causing the delay and it has used its best endeavours to mitigate both the time and financial impact.

5.8 If the Supplier does not deliver the Goods or perform the Services in accordance with the requirements of the Contract, or indicates by its actions, inactions or otherwise that it will be unable to deliver the Goods or perform the Services by the Delivery Date, the Buyer may, in its absolute discretion and without prejudice to its other rights and remedies:

- require the Supplier to deliver the Goods or perform the Services as soon as practicable, at the Supplier's own cost;
- obtain alternative Goods or Services from other sources, in which case the quantity of Goods or Services to be provided by the Supplier under the Contract shall be reduced accordingly;
- elect to terminate the Contract forthwith by serving notice on the Supplier;
- supplement the Supplier's labour;
- claim damages for breach of contract; and/or
- require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered.

5.9 In the event of the Buyer exercising its rights under Condition 5.8, the Buyer shall be relieved from any obligation to pay for Goods or Services ordered but not provided. Any costs incurred by the Buyer in exercising its rights under Condition 5.8, including any difference in price between the Goods or Services which should have been provided under the Contract and alternative goods or services, shall be recoverable from the Supplier by way of deduction or set off or otherwise as a debt. The Supplier's obligations under the Contract in connection with Goods and Services supplied previously and Goods and Services which remain to be supplied shall remain in full force and effect. The Supplier shall have no entitlement to recover any costs, losses or expenses it suffers or incurs as a result of the Buyer exercising its rights under Condition 5.8, including (without limitation) any loss of profit or indirect or consequential losses.

NG Bailey

5.10 The Buyer reserves the right to refuse delivery of the whole or any part of the Goods if they are supplied before the Delivery Date and any charges relating thereto shall be the responsibility of the Supplier.

5.11 The Supplier shall not by any act, omission or default cause or contribute to any breach by the Buyer of any of its duties or obligations under the Main Contract or under any Statutory Requirements. The Supplier acknowledges that any such act, omission or default may cause the Buyer or other members of the NG Bailey group of companies to incur costs. The Supplier shall indemnify the Buyer or members of the NG Bailey group of companies against all such reasonably anticipated and/or incurred costs caused or contributed to by:

a) any breach of this Contract by the Supplier, its employees, agents, subcontractors or suppliers;

b) any failure by the Supplier or by its employees, agents, subcontractors or suppliers to comply with all relevant Statutory Requirements or site regulations; or

c) any breach of the Main Contract by the Buyer, but only to the extent that such breach was caused or contributed to by the Supplier or by its employees, agents, subcontractors or suppliers.

All such costs are deemed to have been within the contemplation of the parties at the time of entering into the Contract and are recoverable from the Supplier by way of deduction or set off or otherwise as a debt.

5.12 The Supplier shall be responsible for the co-ordination, integration and compatibility of the Goods and/or Services with the works of the Buyer and/or others.

5.13 The Supplier shall be responsible for the safe storage and disposal of waste generated by the Supplier and in so doing shall comply with all relevant legislation and site regulations.

6. Variations

6.1 The Buyer shall be entitled to instruct, and the Supplier shall accept a Variation to:

- The Delivery Date;
- The quantity and/or Specification of the Goods or Services;
- The address for delivery of the Goods or provision of the Services; and/or
- Any other Variation.

6.2 The Buyer shall fairly assess the effect (if any) of the instruction on the Supplier's costs of providing the Goods or Services and/or the Delivery Date and shall amend the price and/or Delivery Date accordingly. The Buyer may instruct a Variation where it intends to descope the Goods or Services or have the Goods or Services provided, in whole or part, by others or itself. The Supplier shall not be entitled to loss of profits or other compensation for indirect costs on descoped Goods or Services.

6.3 If the Supplier considers itself entitled to a Variation it shall give written notice accordingly to the Buyer within one week of becoming aware of the event giving rise to the Variation, which notice shall include its assessment of the likely valuation of the Variation. The Supplier shall not be entitled to any valuation of a Variation unless it has given notice in accordance with this Condition 6.3 unless, at its absolute discretion, the Buyer otherwise chooses to value the same as a Variation.

NG Bailey

6.4 If requested to do so by the Buyer the Supplier shall provide the Buyer with a quotation for any proposed changes to the Goods and/or Services within one week of the request or such shorter period as the Buyer may instruct. Quotations shall include the Supplier's assessment of the valuation of the Variation and any impact on the Delivery Date.

6.5 Any instructions for a Variation shall only be valid if issued or confirmed in writing as a Variation by the Buyer. For the avoidance of doubt, the Buyer's approval or comment on any drawings or other documents submitted by the Supplier shall not constitute an instruction for a Variation. Any amendments to or variation of these Conditions shall only have effect if contained within any National Framework Agreement or an Order.

7. Surplus goods

7.1 Any Goods that the Supplier supplies to the Buyer in accordance with a Contract which are not required by the Buyer ("Surplus Goods") shall be dealt with in accordance with this Condition 7.

7.2 Any Surplus Goods which the Buyer deems to be re-saleable shall be collected by the Supplier from the Buyer within any timeframe stipulated by the Buyer in writing. A credit note shall promptly be issued to the Buyer for the same value as the price paid by the Buyer for the Surplus Goods.

7.3 The Supplier shall obtain from the Buyer confirmation of the Order number against which it will issue a credit note and the Supplier shall record that Order number on any such credit note.

7.4 The Buyer and the Supplier shall sign an NG Bailey goods return note to confirm the Surplus Goods being returned to the Supplier and credited to the Buyer.

7.5 The Supplier shall never issue cash or other non-credit note refunds for Surplus Goods.

7.6 Should the Supplier fail to collect the Surplus Goods within any timeframe stipulated by the Buyer in writing, the Buyer shall be entitled to dispose of the Surplus Goods as it deems appropriate. For the avoidance of doubt, any action taken by the Buyer in accordance with this Condition 7.6 shall not affect the Buyer's other rights as set out in this Condition 7.

8. Risk and title

8.1 Title to the Goods shall pass to the Buyer when the Goods are delivered to the Buyer in accordance with the Contract, or when payment is made for the Goods, whichever is the earlier.

8.2 The Supplier shall have no right to claim or retake possession of Goods once delivered to, or after any payment has been made for the Goods by the Buyer whichever is the earlier.

8.3 Where any Goods are to be paid for before they are delivered to the Buyer the Supplier shall provide evidence and/or assist the Buyer to visit the premises where the Goods are situated to ensure that the Supplier has set such Goods aside at the place of storage and to check that the Supplier has marked the Goods as belonging to the Buyer or otherwise has recorded the Buyer's interest in them.

8.4 Risk of damage to or loss of the Goods shall pass to the Buyer only when the Goods are delivered to the Buyer in accordance with the Contract.

9. Services

9.1 The Supplier shall provide the Services in accordance with the Contract and all reasonable directions of the Buyer and shall allocate sufficient resources to enable it to comply with this obligation.

NG Bailey

9.2 The Supplier warrants to the Buyer that the Supplier will perform the Services with all reasonable diligence, prudence, care and skill and in accordance with generally recognised best practices, guidance, and standards in the industry for similar services; that the Supplier will use personnel who are suitably skilled and experienced; that the Services will conform with all descriptions and specifications provided to the Buyer by the Supplier, including the Specification (if any); and that the Services will be provided in accordance with all applicable legislation from time to time in force and the Supplier will inform the Buyer as soon as it becomes aware of any changes in that legislation.

9.3 Without prejudice to any other rights or remedies which the Buyer may possess, if any defect in the Services develops or is discovered during the first 24 months from the latest of the date of completion of performance of all the Services or the date of Practical Completion (the "Defects Liability Period"), the Supplier shall, without limitation to the Buyer's other legal rights and remedies, promptly correct or reperform the Services at the Supplier's own cost. If the defective Services cannot be corrected the Supplier shall refund the full price paid to the Buyer within 14 calendar days. The Supplier shall guarantee for a period of a further 24 months any corrected or reperformed Services carried out. If the Supplier refuses or fails to comply with this Condition 9.3 when requested, the Buyer may make other arrangements for the correction or reperformance of the Services or purchase alternative services and recover any costs incurred from the Supplier by way of deduction or set off or otherwise as a debt.

9.4 The Supplier assigns to the Buyer, with full title guarantee and free from all third-party rights, the Intellectual Property Rights and all other rights which are the product of the Services. The Supplier shall, promptly at the Buyer's request, do or procure to be done all such further acts and things and the execution of all such other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Buyer in accordance with this Condition 9.4.

9.5 The Supplier shall obtain waivers of all moral rights in the products of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

10. Price

The price specified in the Contract or Order shall be a fixed price calculated, where applicable, in accordance with the provisions of the National Framework Agreement. The price shall include, where applicable, all charges for packaging, loading, transport, insurance, delivery, offloading and placement of Goods or provision of the Services to the delivery address and any duties or taxes other than value added tax.

11. Payment

11.1 The Supplier shall submit:

a) invoices to the Buyer to its address at Accounts Payable, Ground Floor (Suite T), Arlington Business Centre Building, White Rose Park, Millshaw Park Lane, Leeds, West Yorkshire, LS11 0DL. Each invoice shall clearly identify: the NG Bailey company (the Buyer); the Buyer's Order number; description(s), quantity(ies), and price(s) of the Goods delivered or Services performed which match those on the Order; the total against each line item; and the invoice total including VAT at the prevailing rate. The Supplier shall only submit one invoice for the total quantity of Goods or Services specified in the Contract unless interim or part invoicing has been expressly agreed in the Contract or is required by law. All of the above requirements are to be complied with to constitute a valid invoice.

b) within the first 10 days of each month a statement identifying all of the preceding month's invoices.

11.2 The Buyer shall, subject to these Conditions and the Supplier having submitted a valid invoice in accordance with Condition 11.1, pay the Supplier the amount properly due within 60 days of receipt of the valid invoice.

11.3 The Buyer makes a payment run every week except the two weeks which include Christmas and New Year Bank Holidays. Where the date for payment under Condition 11.2 falls between payment run dates, payment shall be made in the next payment run and shall be deemed to have been paid on the date it fell due under Condition 11.2.

11.4 The Buyer shall be entitled:

a) to set off at any time against any monies due from the Buyer to the Supplier under the Contract any sums owed to the Buyer or any other member of the NG Bailey group of companies by the Supplier, whether under the Contract, any other contract or otherwise; and

b) in the event of any third party upon whom payment to the Buyer is conditional (whether directly or indirectly) becoming insolvent, as defined by Section 113 of the Housing Grants, Construction and Regeneration Act 1996 as subsequently amended, to withhold payment of any amount which is due or may become due under the Contract to the Supplier until such time as the Buyer has received payment in its bank account in respect thereof and then only to the extent of such receipt. Should the Buyer not receive any monetary sums in a manner which clearly identifies the same as relating to the Goods or Services, the Supplier shall only be entitled to payment of a proportion of such amount received as reflects a fair and reasonable proportion of the amount due and owing to the Supplier.

11.5 Except in relation to the lawful enforcement of an adjudicator's decision or judgment by the courts, the Supplier undertakes that neither it nor any business or person to whom it assigns the benefit of the Contract shall initiate a winding up petition or other similar action against the Buyer. If the Supplier or any business or person to whom it assigns the benefit of the Contract does initiate a winding up petition or other similar action against the Buyer in breach of this undertaking and the petition or action is subsequently withdrawn or dismissed, the Supplier shall indemnify the Buyer in respect of the costs that the Buyer may incur in responding to such petition or action.

11.6 The currency of the Contract for payment purposes shall be pounds sterling unless otherwise agreed between the parties.

11.7 It is a condition precedent to the Supplier's entitlement to payment that the Supplier shall have executed and returned this Contract to the Buyer, provided any executed guarantees, bonds, warranties and/or other documents stated in this Contract or the Order to be provided by the Supplier and, where applicable, provided accurate CIS verification details, including its unique taxpayer reference ("UTR") and payment status.

11.8 To the extent that the Contract, or any part of it, comprises construction operations within the meaning of Part 3 Chapter 3 of the Finance Act 2004, or construction services to which the VAT domestic reverse charge for construction and building services applies, payments for that part of the Goods and/or Services shall be subject to those requirements. The Supplier shall promptly provide to the Buyer such information and supporting evidence as the Buyer may reasonably require to determine the correct CIS and VAT treatment of the Goods and/or Services, including details of the Supplier's CIS verification status, unique taxpayer reference, payment status, if any, and the proper allocation between labour, materials and any other elements in any application for payment or invoice. The Supplier warrants that the information provided by it in compliance with this Condition shall be complete and accurate in all material respects. If the Supplier does not provide information required by the Buyer to decide the correct CIS or VAT treatment, the Buyer may assess the sum due based on the information then available to it and may make such

deductions and withholdings as are required or permitted by law. Nothing in this Condition requires the Buyer to operate CIS or the VAT domestic reverse charge where it does not apply by law. This Condition 11.8 is without prejudice to the Supplier's obligations under Conditions 13.4 and 19.3.

11.9 If the Contract makes provision for the deduction of retention from the price, the Buyer shall be entitled to deduct and retain from sums otherwise due to the Supplier a retention at the percentage stated in the Contract until the later of delivery of the Goods and/or completion of performance of the Services and any applicable first retention release date stated in the Contract. Until the later of the end of the Defects Liability Period, the date when all notified defects in the Services and/or Goods have been rectified to the Buyer's satisfaction and any second retention release date stated in the Contract, the Buyer shall be entitled to deduct and retain half the retention percentage. If there are uncorrected defects at the end of the Defects Liability Period then the Buyer may, in its absolute discretion, correct them in which case the cost to the Buyer shall be deducted from the retention and the balance paid to the Supplier or by the Buyer when known.

11.10 If without just cause, either party fails to make any payment of any sum due to the other by the final date for payment as stated in this Contract and the other party gives notice to that effect within 7 days of such failure the other party shall be entitled to be paid interest on the overdue amount from the final date of payment up to the date of actual payment at a rate equivalent to the Bank of England's base rate plus 2% which the parties agree represents a substantial remedy for late payment.

11.11 The Buyer shall have no liability for indirect or consequential loss including loss of profits, loss of opportunity and/or loss of contracts. This Condition 11.11 shall survive termination of this Contract. For the avoidance of doubt, this Condition 11.11 does not limit any liability of the Supplier under any indemnity or other provision of this Contract.

12. Cancellation and Termination

12.1 The Buyer reserves the right to cancel the Order in whole or part for convenience by giving written notice to the Supplier. The Buyer recognises that cancellation may cause loss and expense to the Supplier and, therefore, provided that the Supplier establishes to the reasonable satisfaction of Buyer that it has suffered such loss and expense, the Buyer shall reimburse the Supplier, subject to such reimbursement not exceeding 25% of the value of the Order cancelled. Such reimbursement shall constitute the Buyer's sole liability for cancellation.

12.2 The Buyer shall be entitled to terminate the Contract immediately without liability to the Supplier by giving notice to the Supplier at any time if the Supplier commits a Fundamental Breach of the Contract. Fundamental Breach includes:

12.2.1 in the Buyer's reasonable opinion, failing to proceed or being likely to fail to proceed regularly and diligently with, or refusing to carry out or suspending the carrying out of all or part of the Contract or any Variation without just cause, or otherwise acting in default of any obligation under this Contract which may impair proper performance of the Contract and/or the Main Contract;

12.2.2 being in fundamental breach of any other contract between the Buyer and the Supplier including but not limited to any applicable National Framework Agreement;

12.2.3 failing to comply with any policies and procedures in the Contract and/or any Statutory Requirements applicable to the Goods and/or the performance of the Services or the Contract, other than those addressed in Conditions 12.2.4 and 12.2.5;

12.2.4 in the Buyer's reasonable opinion, committing a significant breach of any health, safety and environmental laws, statutes, regulations, codes, order, bye-laws and policies;

12.2.5 committing any offence or breach under the Bribery Act 2010, the Economic Crime and Corporate Transparency Act 2023 or the Criminal Finances Act 2017 or any other act of

fraud or corruption (which includes without limitation any anti-competitive conduct); committing an offence under the Modern Slavery Act 2015; or committing a breach of the IR35 requirements at Condition 13.5;

12.2.6 acting in default of its confidentiality obligations at Condition 20;

12.2.7 assigning or subcontracting performance of this Contract in whole or part without the Buyer's prior written consent; and/or

12.2.8 entering (voluntarily or involuntarily, knowingly or unknowingly) into an adverse financial position, of which the following are non-exhaustive examples: insolvency, cessation of business, change in ownership or control or legal status or partners, presentation of a winding up petition, liquidation, bankruptcy, appointment of an administrator or administrative receiver, entry into administration, entering into a voluntary arrangement or other restructuring arrangement with its creditors, applying for a moratorium, failure to pay its employees or suppliers on time, shortage of funds.

12.3 If the Contract is terminated pursuant to Condition 12.2 the Buyer's costs associated with any such termination shall be allowed (by way of deduction or set off) or paid by the Supplier as a debt.

12.4 The Contract shall automatically terminate if:

12.4.1 the employment of the Buyer is terminated under the Main Contract for any reason, and/or

12.4.2 the Buyer terminates the National Framework Agreement for a reason other than for a fundamental breach by the Supplier and which allows the Buyer to terminate the Contract.

12.5 If the Contract is terminated pursuant to Condition 12.2.3, the Supplier shall be entitled to be paid for any part of the Goods and/or Services satisfactorily completed up to the date of termination plus demobilisation costs reasonably and necessarily incurred but shall not be entitled to receive any other financial compensation of whatsoever nature.

12.6 In the event of the termination of the Contract, whether under Condition 12 or otherwise, no further payment (if any) shall be due to the Supplier until the Buyer has prepared and issued (within one year of the termination) a final account detailing the amount due by each party to the other ("Termination Final Account") which (except for claims made against the Buyer or members of the NG Bailey group of companies by third parties) shall become final and conclusive as to the price unless the Supplier objects in writing within 28 days of its issue by commencing either adjudication or court proceedings. The due date for payment shall be the date of issue of an application for payment by the payee for the balancing amount due as detailed in the Termination Final Account and the final date for payment shall be 28 days after the due date.

12.7 Termination of the Contract, however arising, shall not affect the rights of the Buyer accrued up to the date of termination.

13. Compliance

13.1 The Supplier shall comply and shall ensure that its employees, agents and subcontractors comply with all applicable laws, statutes, regulations, codes, order, bye-laws and policies having the force of law, including but not limited to health and safety matters, the Construction Design and Management Regulations ("CDM") and the Building Safety Act and associated Building Regulations ("BSA"), from time to time in force (collectively referred to herein as "Statutory Requirements") and with all health, safety, site and environmental policies issued by the Buyer and/or the Main Contractor or its employer as from time to time revised, amended or updated. Conditions 13.2 to 13.5 are without prejudice to the generality of this Condition 13.1.

13.2 The Supplier shall promptly and at no charge co-operate with and comply with all directions and requirements of the Buyer and/or the principal designer and/or the principal contractor under CDM and/or BSA relating to the supply of all documents and information necessary to ensure compliance

with those Statutory Requirements. If in the course of providing the Goods and/or carrying out the Services the Supplier becomes aware of any issue that relates to compliance with the requirements of the CDM and/or BSA, the Supplier shall immediately notify the Buyer of that issue.

13.3 The Supplier shall comply with and ensure that its employees, agents and subcontractors comply with the standards of integrity, transparency and ethical conduct as set out in NG Bailey's Code of Integrity for Business Partners, and, in addition, with:

a) the Bribery Act 2010 and the Economic Crime and Corporate Transparency Act 2023, any of the Buyer's published policies on bribery, corruption and unethical business conduct;

b) the Modern Slavery Act 2015 and any of the Buyer's published policies on modern slavery;

c) the UK General Data Protection Regulation, the Data Protection Act 2018 and, where applicable, the General Data Protection Regulation 2016/679, together with any Buyer's published policies on data protection, including NG Bailey's Supplier Data Processing Addendum;

d) the anti–tax-evasion facilitation, CIS and IR35 obligations as applicable; and

e) the Buyer's Social Values Commitment Policy and any social values standards specified in the documents forming part of this Contract,

as from time to time revised, amended or updated. Copies of the Buyer's codes, policies and standards are available at www.ngbailey.com or otherwise as set out in the Contract Documents.

13.4 In relation to anti-facilitation of tax evasion:

a) The Supplier shall not engage and shall ensure that any persons associated with the Supplier do not engage in any activity, practice or conduct which would constitute either:

- A UK tax evasion facilitation offence under Section 45(5) of the Criminal Finances Act 2017; or
- A foreign tax evasion offence under Section 46(6) of the Criminal Finances Act 2017.

b) The Supplier shall ensure that it and any persons associated with the Supplier have in place written prevention procedures which accord with any guidance issued under Section 47 of the Criminal Finances Act 2017 to prevent the facilitation of any UK or foreign tax evasion facilitation offences.

c) Where the Contract, or any part of it, comprises construction operations within the meaning of Part 3 Chapter 3 of the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005 and any associated or similar legislation (the "CIS"), the Supplier shall comply and shall ensure that any person associated with the Supplier who is performing the Services in connection with this Contract complies with all obligations under the CIS.

d) The Supplier shall immediately notify the Buyer in writing if its CIS status, including its payment status, changes or if it becomes aware, or ought reasonably to become aware, of any HMRC enquiry, investigation, sanction, withdrawal, cancellation or other matter affecting its CIS compliance status or the CIS compliance status of any subcontractor, supplier, agent or other person associated with the Supplier who is performing the Services in connection with this Contract.

e) For the purposes of Condition 13.4, a person associated with the Supplier includes any subcontractor, supplier, agent or other person engaged by or on behalf of the Supplier in connection with the performance of this Contract.

NG Bailey

13.5 The following provisions apply in relation to IR35:

a) The parties agree that the UK tax resident personnel engaged in the supply of Services to the Buyer, or any personnel engaged in the supply of Services in the UK to the Buyer, shall not be contracted (directly or indirectly) through an "Intermediary" (as defined in Section 61N(9), (10) and (11) of the Income Tax (Earnings and Pensions Act) 2003 ("ITEPA")), and shall have PAYE and National Insurance Contributions applied to their earnings (whether by the Supplier, agency or third party).

b) The Supplier warrants that it is not itself an Intermediary and confirms that it will notify the Buyer within 30 days if at any point following entering this Contract the Supplier becomes an Intermediary.

13.6 The Supplier shall have, maintain and enforce its own policies and procedures to ensure and record compliance with the matters set out in Conditions 13.1 to 13.5 which may be subject to audit by the Buyer. For the avoidance of doubt, such audit may include inspection of, or the requirement to provide copies or extracts from downstream contracts and confirmations as reasonably required by the Buyer to verify compliance with Conditions 13.1 to 13.5 and 19.3.

13.7 Where the Supplier is required to visit a Buyer's Location, the Supplier shall also:

a) three weeks before a visit to perform a Service provide a risk assessment and method statement in respect of the Service;

b) ensure all of its staff hold valid CSCS cards;

c) ensure all its staff sign in and out with the Buyer each day;

d) ensure any accidents, safety incidents or near misses are reported to the Buyer and are recorded.

14. Insurances and Indemnity

14.1 The Supplier shall be liable for and shall indemnify the Buyer and any member of the NG Bailey group of companies against all costs awarded against, brought against, incurred or paid by the Buyer or any member of the NG Bailey group of companies to the extent caused or contributed to by:

a) any breach by the Supplier of any term or condition of the Contract of any warranty given by the Supplier in relation to the Goods or Services;

b) any act, omission, default, negligence or breach of statutory duty by the Supplier or its employees, agents, subcontractors or suppliers in supplying, delivering, installing, testing, commissioning or setting-to-work of the Goods or in performing the Services;

c) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the Goods or the Services except to the extent arising from any design, specification or instruction provided by the Buyer; or

d) any claim made against the Buyer by any third party, including the Buyer's customer or employees, to the extent caused or contributed to by any breach of this Contract or negligent performance or breach of statutory duty by the Supplier in the provision of the Goods or Services.

The indemnity in this Condition 14.1 is in addition to, and does not limit, any indemnity or other right or remedy of the Buyer under any other provision of this Contract.

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14.2 Without prejudice to the Supplier's obligations to indemnify the Buyer under Condition 14.1, the Supplier shall maintain in place during the term of the Contract (and in respect of professional indemnity insurance, for a period of at least 12 years after the later of completion of the Services and Practical Completion) employer's liability, product liability, public liability and professional indemnity insurance in respect of potential liabilities to the Buyer and to third parties arising out of the Contract or otherwise for an amount sufficient to cover its potential liabilities. The Supplier shall at the request of the Buyer produce evidence to the satisfaction of the Buyer that such insurances are in place. The Supplier's professional indemnity insurance cover shall apply to any one claim or series of claims arising from the same originating cause provided that such insurance is available at commercially reasonable rates and terms.

14.3 Such policies shall contain an "Indemnity to Principals" clause, which shall be so worded as to provide the Buyer with joint insurance status and entitlement to the full benefit of those policies, subject to the Buyer complying with the terms and conditions. The Supplier shall supply the Buyer with copies of the relevant policy wording before starting work and immediately on being notified of any shortcomings in such wording, shall rectify the same forthwith at its own expense. The Supplier shall immediately notify the Buyer in writing of any cancellation, avoidance, non-renewal, suspension or material amendment of any insurance required under this Contract and of any claim or circumstance that materially reduces or may materially reduce the available limit of indemnity under any such insurance.

14.4 For the avoidance of doubt, the provisions of this Condition 14 shall survive termination of the Contract, however arising.

15. Performance security

The Supplier shall forthwith upon the request of the Buyer which may be made at any time:

- procure that the Supplier's holding company (as defined by section 1159 of the Companies Act 2006) shall guarantee to the Buyer (via the provision of a parent company guarantee) the due performance by the Supplier of its obligations under the Contract and indemnify the Buyer against all costs arising from a breach thereof, such guarantee and indemnity to be given as a deed in a form satisfactory to the Buyer; and/or
- provide collateral warranties in favour of any third parties acquiring an interest in the Goods and/or Services. The terms of such collateral warranties shall be as set out or referred to in the Contract Documents or as otherwise provided by the Buyer to the Supplier.

16. Non waiver of rights

No relaxation, forbearance, delay, failure or indulgence by the Buyer in enforcing any right or remedy of these Conditions or otherwise, or the granting of time by the Buyer to the Supplier, or tolerance of the Supplier's breaches of its obligations shall prejudice, affect or restrict the rights of the Buyer under the Contract, nor waive any other right or remedy, nor shall it prevent or restrict the further exercise of any right or remedy by the Buyer, nor shall any waiver by the Buyer of any breach by the Supplier operate as any waiver of any subsequent or continuing breach thereof.

17. No partnership or agency

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

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18. Third party rights

The parties do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999, except that:

- any third parties acquiring an interest in the Goods and/or Services shall be entitled to enforce the Supplier's obligations set out in the second bullet point of Condition 15;
- any company which is, from time to time, a subsidiary or holding company of the Buyer, or is a subsidiary of the Buyer's holding company (as those terms are defined in section 1159 of the Companies Act 2006) shall be entitled to enforce any of the rights conferred on the Buyer in the Contract as if they were a party to the Contract.

19. Assignment and Subcontracting

19.1 The Supplier shall not, without the prior written consent of the Buyer (such consent not to be unreasonably withheld or delayed), assign the benefit or burden of this Contract or sub-contract the whole or any part of the provision of the Goods and/or Services. In the event the Supplier subcontracts the whole or any part of the provision of the Goods and/or Services without such consent, the Buyer shall be entitled to exclude any persons so subcontracted from providing the Goods and/or Services with immediate effect and (without prejudice to any other rights or remedies the Buyer may possess), the Buyer shall be entitled to withhold any payment to which the Supplier would otherwise be entitled for such subcontracted element of the Goods and/or Services. The Buyer may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. Where the Supplier subcontracts the whole or any part of the Goods and/or Services, whether with or without the Buyer's permission, the Supplier shall remain fully responsible in all aspects for the safe and proper provision of the Goods and/or Services and for all acts, omissions and defaults of its subcontractors, suppliers, agents and other persons engaged by or on behalf of the Supplier as if they were the acts, omissions and defaults of the Supplier.

19.2 If the Supplier's employment under the Contract is terminated for any reason, or the Supplier is in any other respect in breach of its obligations under the Contract, the Supplier shall if requested to do so forthwith and at no cost assign to the Buyer the benefit of any or all agreements for the supply of Goods and/or the provision of any Services for the purposes of the Contract and the Buyer may pay any supplier or sub-contractor of the Supplier under such agreements for any Goods delivered or Services provided for the purposes of the Contract after such assignment. Payments made under this Condition 19.2 may be deducted from any sum due or to become due to the Supplier or shall be recoverable by the Buyer by way of deduction or set off or otherwise as a debt.

19.3 The Supplier shall ensure that any subcontractor, supplier, agent or other person engaged by or on behalf of the Supplier who is performing Services in connection with this Contract does so only on the basis of a written deed which imposes on and secures from that person terms equivalent to those imposed on the Supplier under this Contract, including but not limited to Conditions 13.1 to 13.5 and 11.8 where relevant to the Services being performed. The Supplier shall be responsible for the observance and performance by such persons of all such terms and for the acts, omissions and defaults of such persons and shall indemnify the Buyer against any costs caused by any breach by such persons. The Supplier shall, within one week of the Buyer's request, provide the Buyer with such copies, extracts, certificates, confirmations and other evidence as the Buyer may reasonably require to verify compliance with this Condition 19.3, provided that the Supplier may redact commercially sensitive information not relevant to such verification.

19.4 The Supplier shall ensure that any downstream contract referred to in Condition 19.3 contains provisions which enable the benefit of that arrangement to be assigned or transferred to the Buyer, or to any third party nominated by the Buyer, if this Contract is terminated for any reason or if the Supplier is in breach of this Contract. The Supplier shall not agree any term with any subcontractor,

supplier, agent or other person engaged by or on behalf of the Supplier which would prevent or materially restrict the Buyer from exercising its rights under this Condition 19.

20. Confidentiality

The Supplier agrees to keep and shall ensure that its personnel, servants, agents and employees keep all or any confidential information in connection with the Buyer and any member of the NG Bailey group of companies, the Contract and the Main Contract secret and confidential. This Condition shall be in addition to and shall not override any obligations contained in any non-disclosure agreement entered into between the parties.

21. Governing law, jurisdiction and limitation

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be read and interpreted according to English Law and the parties submit to the exclusive jurisdiction of the English courts. Without prejudice to any claims permissible by statute, including in relation to latent defects, fraud or concealment, any claim for breach of this Contract may be brought at any time within 12 years from the later of delivery of the Goods, completion of performance of the Services and Practical Completion and neither party shall assert or otherwise rely on any shorter period of limitation that would apply under the Limitation Act 1980, as amended, supplemented or replaced, in respect of such claim.

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A. Supplementary conditions in relation to construction operations

If the Contract includes construction operations as defined in the Housing Grants, Construction and Regeneration Act 1996 as amended ("HGCRA"), Condition A10 (Adjudication) shall apply to that part of the Contract which comprises construction operations. If the Contract includes construction operations and the duration exceeds 45 days, Conditions A1 to A9 shall also apply to that part of the Contract which comprises construction operations and shall apply in place of Conditions 11.2 and 11.3 in respect of that part:

A1 The Supplier shall be entitled to receive interim valuations until the valuation date in the month immediately following the month of completion of performance of all the Goods and/or Services comprising construction operations under the Contract. The interim sum due shall be the total of the following applicable at the relevant valuation date: the value as calculated by the Buyer of the Services including Variations properly executed; less: the amount of retention calculated in accordance with the Order, less the amount of all previous payments made to the Supplier, and less any amount that may be allowed to the Buyer under this Contract or otherwise.

A2 The following definitions apply:

- The interim application date shall be the 28th of each calendar month (should the 28th be a weekend or bank holiday the application date shall be the final working day prior to the 28th),
- The valuation date shall be the final calendar day of each calendar month,
- The due date for payment shall be 45 days after the valuation date for the applicable application, and
- The final date for payment shall be 15 days after the due date for the applicable application.

A3 The Supplier shall, no later than each application date, make an application for payment (in a format agreed with the Buyer) which specifies the amount the Supplier considers to be or to have been due on the due date for payment and the basis on which that sum is calculated and which details the Supplier's forecast of the remaining cost for completion of the Goods and/or Services comprising construction operations. The Buyer shall take this application into account when calculating the value in accordance with Condition A1. It is a condition precedent to the validity of an application for payment that it is sent no later than the relevant application date and via any prescribed method that has been notified, in advance, by the Buyer.

A4 The Buyer shall issue to the Supplier no later than 5 days after the due date for payment a payment notice specifying the sum the Buyer considers to be or have been due to the Supplier on the due date for payment and the basis on which that sum is calculated. Should the Supplier have failed to issue an application in accordance with Condition A3 the interim sum due shall default to the amount of all previous payments made to the Supplier, unless at its absolute discretion the Buyer chooses to issue a payment notice confirming a different amount. If the Buyer fails to issue a payment notice, the Supplier shall remind the Buyer before acting further.

A5 If the Buyer intends to pay less than the sum stated in the payment notice, the Buyer shall issue to the Supplier no later than 1 day before the final date for payment a pay less notice specifying the sum that the Buyer considers due to the Supplier and the basis on which that sum is calculated. The Buyer shall pay the sum stated in the pay less notice on or before the final date for payment.

A6 If a payment notice issued by the Buyer pursuant to Condition A4 specifies a sum that the Buyer considers to be or have been due from the Supplier to the Buyer on the due date for payment and the basis on which that sum is calculated, the Supplier shall pay the sum stated in the payment notice on or before the final date for payment.

A7 Subject to Condition 12, the Supplier shall submit to the Buyer its calculation of the final account including all supporting documentation reasonably required, no later than 4 weeks after completion

of performance of all the Goods and/or Services comprising construction operations. If the Supplier fails to submit its calculation of the final account within the stated period, or if Buyer does not accept the Supplier's calculation of the final account, the Buyer shall prepare a final account and issue it to the Supplier, which shall become final and conclusive as to the sum due under the Contract unless the Supplier objects in writing within 28 days of its issue by implementing either adjudication or court proceedings.

A8 The due date of any final payment due to the Supplier in respect of the final account shall be the date 4 weeks after the later of the end of the Defects Liability Period and the date when all notified defects in the Goods and/or Services comprising construction operations have been rectified to the Buyer's satisfaction. The final date for payment shall be 4 weeks thereafter.

A9 If the Buyer fails to pay any sum due to the Supplier by the final date for payment and no pay less notice has been issued then the Supplier shall be entitled to suspend the Goods and/or Services comprising construction operations. This entitlement may not be exercised without first giving a minimum of 14 days' written notice to the Buyer. This entitlement to suspend ceases when payment is made.

A10 Any dispute arising under the Contract may be referred at any time by either party to adjudication and such adjudication shall be conducted under the statutory Scheme for Construction Contracts 1998 (as amended from time to time) and the adjudicator shall be nominated by the Royal Institution of Chartered Surveyors. The adjudicator shall be required to give reasons for his decision. If the adjudicator requires expert or legal advice, the costs of the same shall be approved by the parties in advance.