

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 13.

1. INTERPRETATION

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

CDM Regulations: The Construction (Design and Management) Regulations 2015.

Commencement Date: has the meaning set out in clause 2.3.

Clays: SIPS@Clays LLP registered in England and Wales with company number OC306155 and whose registered office address is at Scale Hill House, Skipton, North Yorkshire, BD23 6ER.

Clays' Materials: has the meaning set out in clause 8.1(i).

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.4.

Contract: the contract between Clays and the Customer for the Goods and/or Services in accordance with the Contract Order and these Conditions.

Contract Order: the Customer's order for the supply of Goods and/or Services, as set out in the contract order form appended to the Conditions.

Contract Sum: the amount stated in the Contract Order or such other sum as may become payable under the Contract

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010 and the expression **change of Control** shall be construed accordingly.

Customer: the person or firm who purchases the Goods and/or Services from Clays and who is so named in the Contract Order.

Customer Default: has the meaning set out in clause 8.2.

Delivery Location: has the meaning set out in clause 4.1.

Force Majeure Event: has the meaning set out in clause 17.1.

Goods: the goods (or any part of them) supplied by Clays as set out in the Contract Order.

Goods Specification: any description or specification for the Goods contained in the Contract Order or which may be set out in documents appended to the Contract Order.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

Services: the services supplied by Clays as set out in the Contract Order.

Service Specification: any description or specification of the Services contained in the Contract Order or which may be set out in documents appended to the Contract Order.

Site: the site address as described in the Contract Order.

Specification: the Goods Specification and the Services Specification, individually and collectively.

Staged Payment: means any of the stage payments set out and contemplated in accordance with clause 10.2.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

- 2.1 The Contract Order constitutes an offer by Clays to provide the Goods and/or Services as therein specified in accordance with these Conditions.
- 2.2 The Contract Order shall only be deemed to be accepted when the Customer has signed and returned a copy of the Contract Order or when the Customer communicates in writing its acceptance of the Contract Order.
- 2.3 Subject to the Contract Order specifying otherwise, the earlier of the date that the Customer signs and returns a copy of the Contract Order or communicates in writing its acceptance of the Contract Order shall be the date the Contract commences ("the Commencement Date").
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Clays, and any descriptions or illustrations contained in Clays' website, catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by Clays in a Contract Order is only valid for a period of 90 calendar days.
- 2.7 Any quotation given by Clays that is not specified by Clays in a Contract Order shall not constitute an offer.

3. GOODS

- 3.1 The Goods are described in the Goods Specification.
- 3.2 The Customer shall indemnify Clays against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Clays in connection with

any claim made against Clays for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

- 3.3 Clays shall have the right to make any changes to the Goods which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods.

4. DELIVERY OF GOODS

- 4.1 Clays shall deliver the Goods to the Site or such other location as the parties may agree (**Delivery Location**) at any time after Clays notifies the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Clays shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Clays with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and/or Services.
- 4.4 If Clays fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Clays shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Clays with adequate delivery instructions for the Goods or any other instructions that are relevant to the supply of the Goods and/or Services.
- 4.5 If 30 Business Days after Clays notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Clays reserves the right to charge the Customer for the reasonable costs of storing the Goods.

5. QUALITY OF GOODS

- 5.1 Clays warrants that on delivery the Goods shall:
 - (a) Conform in all material respects with the Goods Specification;
 - (b) Be free from material defects in design, material and workmanship; and
 - (c) Be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 It is the Customer's responsibility to inspect the quality of the Goods on delivery.
- 5.3 Subject to clause 5.4, if:
 - (a) the Customer gives notice in writing within 30 Business Days of delivery that the Goods do not comply with the warranty set out in clause 5.1;
 - (b) Clays is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by Clays) returns such Goods to the Clays' place of business at the Customer's cost, Clays shall, at its option, repair or replace the defective Goods, or refund the Price of the defective Goods in full.
- 5.4 Clays shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
 - (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.3;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or good trade practice;
 - (c) the defect arises as a result of Clays following any drawing, design or Goods Specification supplied or approved by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of Clays;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.5 Except as provided in this clause 5, Clays shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6 The terms of these Conditions shall apply to any repaired or replacement of Goods supplied by the Supplier under clause 5.3.

6. SUPPLY OF SERVICES

- 6.1 Clays shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 6.2 Clays shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.
- 6.3 Clays warrants to the Customer that the Services will be carried out in a proper and workmanlike manner, in accordance with relevant statutory requirements and using reasonable care and skill.
- 6.4 Where the Services include design services or design work then Clays shall use reasonable skill and care in the carrying out of the design and in the selection of goods or materials for incorporation therein.
- 6.5 Clays shall have and maintain insurance in relation to the Services as set out in the Contract Order.
- 6.6 Clays shall comply with its obligations under the CDM Regulations.

7. TIME FOR PERFORMANCE

- 7.1 Clays may commence the Services on the Commencement Date.
- 7.2 Clays shall use all reasonable endeavours to meet any performance dates specified in the Contract Order, but any such dates shall be estimates only and time shall not be of the essence for providing the Goods and/or Services.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
 - (a) ensure that the terms of the Contract Order and any information contained in the Specification are complete and accurate;
 - (b) before Clays commences manufacture of the Goods, ensure that any information, specifications, figures and representations contained in the plans and documentation being used by Clays in manufacturing the Goods are complete and accurate;

- (c) co-operate with Clays in all matters relating to the Goods and Services;
- (d) provide Clays, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Clays to supply the Goods and Services;
- (e) provide Clays with such information and materials as Clays may reasonably require in order to supply the Goods and Services, and ensure that such information is accurate in all material respects;
- (f) prepare the Customer's premises for delivery of the Goods and the carrying out of the Services;
- (g) provide unobstructed access to the Site for delivery of the Goods and the carrying out of the Services;
- (h) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start and provide copies to Clays;
- (i) keep and maintain all materials, equipment, documents and other property of Clays ("**Clays' Materials**") at the Customer's premises in safe custody at the Customer's own risk, maintain Clays' Materials in good condition until returned to Clays, and not dispose of or use the Clays' Materials other than in accordance with Clays' written instructions or authorisation;
- (j) comply with any additional obligations as set out and/or contained in the Specification; and
- (k) be responsible for the discharge of any planning conditions relevant to the Services.
- 8.2 If Clays' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- (a) Clays shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Clays' performance of any of its obligations;
- (b) Clays shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Clays' failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse Clays on written demand for any costs or losses sustained or incurred by Clays arising directly or indirectly from the Customer Default.
- 9. TITLE AND RISK**
- 9.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 9.2 Where the Contract Order is for the supply of Goods only, then title to the Goods shall not pass to the Customer until the earlier of:
- (a) Clays receives payment in full (in cash or cleared funds) for the Goods; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 9.5; and
- 9.3 Where the Contract Order is also for the installation of Goods then title to the Goods shall not pass to the Customer until completion of the installation.
- 9.4 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Clays' behalf from the date of delivery;
- (b) notify Clays immediately if it becomes subject to any of the events listed in clause 14.4(b) to clause 14.4(c); and
- (c) give Clays such information relating to the Goods as Clays may require from time to time.
- 9.5 Subject to clause 9.6, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Clays receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as Clays' agent; and
- (b) title to the Goods shall pass from Clays to the Customer immediately before the time at which resale by the Customer occurs.
- 9.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.4(b) to clause 14.4(c), then, without limiting any other right or remedy Clays may have, the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately.
- 10. PRICE, CHARGES AND PAYMENT**
- 10.1 Unless otherwise agreed by Clays in writing and subject to clauses 10.4 and 10.5, the price for the Goods and Services shall be the Contract Sum plus the amount of any changes to the Goods or Services provided for in clauses 3.3 or 6.2 and/or Additional Services and/or any Variation together with any VAT and delivery costs ("**the Price**").
- 10.2 Unless otherwise agreed in writing by Clays and subject to clause 10.3, the Price shall be paid by the Customer to Clays under following payment mechanism:
- (a) 5% of the Price is due before Clays will commence any design services ("**First Payment**");
- (b) A further 35% of the Price is due before Clays will commence manufacture of the Goods, making the cumulative amount paid by the Customer 40% of the Price ("**Second Payment**");
- (c) A further 50% of the Price is due before Clays will deliver any Goods to the Site, making the cumulative amount paid by the Customer 90% of the Price ("**Third Payment**");
- (d) The balance of the Price is due on completion of the installation of the Goods at the Site, making the cumulative amount paid by the Customer 100% of the Price ("**Final Payment**").
- 10.3 Where the Customer has not entered into a Contract for the supply of installation services, clause 10.2(c) is amended to provide that a further 60% of the Price is due before Clays will deliver any Goods to the Site, making the cumulative amount paid by the Customer 100% of the Price.
- 10.4 The Price, and the cost of any changes to the Goods or Services provided for in clauses 3.3 or 6.2 and/or Additional Services and/or any Variation, is based on the costs of materials, labour, sub-contracts, transport, taxes and duties and all other relevant costs at the date of the Contract Order and on the work being done in normal working hours.
- 10.5 Clays reserves the right to vary the Price, and the cost of any changes to the Goods or Services provided for in clauses 3.3 or 6.2 and/or Additional Services and/or any Variation, prior to the supply of the Goods and/or Services, to take account of any deviation (howsoever arising) in these costs or the imposition of any new taxes or duties between the Contract Order date and the completion date.
- 10.6 Clays will not supply the relevant Goods and/or Services until Clays has received payment of the Price in accordance with any due Staged Payment.
- 10.7 In addition to the Price, the Customer shall pay for any additional:
- (a) goods and/or services required as a result of any matter that Clays did not know existed at the date of the Contract Order and Clays could not reasonably have foreseen; and
- (b) goods and/or services and/or costs as a result of the Customer providing inadequate or inaccurate instructions, information or drawings to Clays or as a result of the Customer failing to comply with any of the terms of the Contract ("**Additional Services**").
- 10.8 Where Additional Services are required Clays shall not be liable for any delay in performance.
- 10.9 Where Additional Services are required Clays has the right to terminate the Contract where it reasonably decides that it is unable to provide the Additional Services.
- 10.10 The Customer acknowledges that any Additional Services required will form part of the Contract and will not be treated as a separate contract for goods and/or services.
- 10.11 Clays shall invoice the Customer in accordance with the Staged Payments.
- 10.12 Subject to clause 10.13, any invoice issued by Clays shall detail the total amount due and the final date for payment which will not be less than 10 Business Days from the date of issue of the invoice.
- 10.13 Where no final date for payment is specified in an invoice, the final date for payment will be 10 Business Days from the date of issue of the invoice.
- 10.14 If any payment that has become due under the Contract is disputed by the Customer, the Customer shall give notification to Clays no less than 3 Business Days before the final date for payment of the dispute ("**the Payless Notice**"). In the Payless Notice the Customer shall specify the grounds of the dispute and details of any amount to be withheld.
- 10.15 A dispute or disagreement involving a validly issued Payless Notice may be referred to adjudication by either party in accordance with clause 18.10.
- 10.16 Where the Customer disputes the amount specified in an invoice in accordance with clause 10.14, the Customer shall still pay any amounts that the Customer agrees are due by the final date for payment specified in the invoice.
- 10.17 Subject to clause 10.14, the Customer shall pay the Price specified in any invoice issued in full and in cash or cleared funds to a bank account nominated in writing by Clays by the final date for payment.
- 10.18 Time for payment shall be of the essence of the Contract.
- 10.19 Without prejudice to any of its other remedies, if any amount due from the Customer is not paid in accordance with the Contract by the final date for payment, Clays may do all or any of the following:
- (a) Treat the Contract as repudiated by the Customer;
- (b) Without notice suspend or cancel supply of the Goods and/or Services, until the Customer pays the outstanding amount(s) in full;
- (c) Appropriate any payment made by the Customer under any other Contract with Clays to pay for any outstanding amounts as Clays may, in its sole discretion, think fit; or
- (d) Charge interest on the overdue amount at the rate of 5% per cent per annum above the Royal Bank of Scotland PLC base rate from time to time. Such interest shall accrue on a daily basis from the final date for payment until actual payment of the overdue amount. The Customer shall pay the interest together with the overdue amount.
- 10.20 The Customer shall pay all amounts due under the Contract by the final date for payment in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Clays may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Clays to the Customer.
- 11. INTELLECTUAL PROPERTY RIGHTS**
- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and Services shall be owned by Clays.
- 11.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Clays obtaining a written licence from the relevant licensor on such terms as will entitle Clays to license such rights to the Customer.
- 11.3 All of Clays' Materials are the exclusive property of Clays.
- 12. DEFECTS**
- 12.1 If any defects or other faults in the Goods and/or Services appear within 10 Business Days of Clays' purported delivery of the Goods or, where applicable, completion of the Services due to any failure of Clays to comply with its obligations under this Contract:
- (a) such defects and other faults shall be specified by the Customer in a schedule of defects which the Customer shall deliver to Clays as an instruction as soon as possible and not later than 15 Business Days after Clays' delivery of the Goods or, where applicable, purported completion of the Services; and
- (b) prior to issue of that schedule, the Customer may whenever it considers it necessary issue instructions requiring any such defect, shrinkage or other fault to be made good, provided no instructions under this clause 12.1 shall be issued after delivery of that schedule or more than 15 Business Days after Clays' delivery of the Goods and, where applicable, purported completion of the Services.
- 12.2 Within a reasonable time after receipt of a schedule or instructions received in accordance with clause 12.1, the defects, shrinkages and other faults shall at no cost to the Customer be made good by Clays unless the Customer shall

otherwise instruct. For the avoidance of doubt, if the Customer instructs otherwise, no deduction will be made from the Contract Sum in respect of the defects, shrinkages or other faults not made good.

12.3 When the defects, shrinkages or other faults in the Services which under clause 12.1 the Customer has required to be made good have been made good, Clays shall issue a notice to that effect (a 'Notice of Completion of Making Good'). Completion of that making good shall for the purpose of this Contract be deemed to have taken place on the date stated in that notice.

13. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1 Nothing in the Contract shall limit or exclude Clays' liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law;
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

13.2 Subject to clause 13.1, Clays shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits, loss of fees, loss of chance or other similar losses;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of damage to goodwill;
- (g) any indirect or consequential loss; and
- (h) any costs, expenses, disbursements or losses.

13.3 Subject to clause 13.1, Clays' total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to £2,000,000.00 (Two Million Pounds only).

13.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.5 This clause 13 shall survive termination of the Contract.

14. TERMINATION

14.1 Without limiting its other rights or remedies, the Customer may terminate the Contract after becoming liable for the payment required at clause 10.2(a) but before becoming liable for the payment required at clause 10.2(b) by giving Clays written notice.

14.2 Where the Customer terminates the Contract in accordance with clause 14.1, Clays will not be obligated to refund to the Customer any amounts previously paid or due under the Contract.

14.3 Without limiting its other rights or remedies, Clays may terminate the Contract by giving the Customer not less than five Business Days' written notice.

14.4 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by Contract Order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases, or threatens to cease, to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.5 Without limiting its other rights or remedies, Clays may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than five Business Days after being notified to make such payment; or
- (b) there is a change of Control of the Customer.

14.6 Without limiting its other rights or remedies, Clays may suspend the provision of the Goods and/or Services under the Contract or any other contract between the Customer and Clays if the Customer becomes subject to any of the events listed in clause 14.4(b) to clause 14.4(d) or Clays reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the final date for payment.

15. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Clays all of Clays' outstanding unpaid invoices and interest and, in respect of the Goods, the work performed on the Goods and/or the Services carried out but for which no invoice has been submitted, Clays shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Clays' Materials and (where practicable) any Goods which have not been fully paid for. If the Customer fails to do so, then Clays may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

(c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(d) clauses which expressly or by implication survive termination shall continue in full force and effect.

16. VARIATION TO THE GOODS AND/OR SERVICES

16.1 The Customer may without invalidating this Contract issue written instructions requiring an addition to, omission from, or another change in the Goods and/or Services or the order or manner in which they are carried out (a "Variation").

16.2 The Customer and Clays shall endeavour to agree a price prior to Clays carrying out the Variation instruction.

16.3 Failing agreement under clause 16.2, any instruction for a Variation and any matters that are to be treated as a Variation shall be valued by Clays on a fair and reasonable basis using any relevant prices contained in the Contract Order. Such valuation shall include any direct loss and/or expense incurred by Clays due to the regular progress of the Goods and/or Services being affected by compliance with the Variation instruction.

17. FORCE MAJEURE

17.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Clays including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Clays or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

17.2 Clays shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

17.3 If the Force Majeure Event prevents Clays from providing any of the Goods and/or Services for more than 6 calendar months, Clays shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

18. GENERAL

18.1 Assignment, subcontracting and other dealings.

(a) Clays may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any subcontractor, third party or agent, without the consent of the Customer being required.

(b) The Customer shall not, without the prior written consent of Clays, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

18.2 Confidentiality.

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 18.2(b).

- (b) Each party may disclose the other party's confidential information:
 - (i) to its legal advisors or insurance providers;
 - (ii) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 18.2; and
- (iii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

18.3 Entire agreement.

(a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

18.4 **Variation.** No variation of the Contract, save for any changes to the Goods or Services provided for in clauses 3.3 or 6.2 or a Variation in accordance with clause 16, shall be effective unless it is in writing.

18.5 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
 - (b) prevent or restrict the further exercise of that or any other right or remedy.
- 18.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

18.7 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 18.8 **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- 18.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 18.10 **Adjudication:** In the event of a dispute under the Contract either party may refer the dispute to adjudication. The Scheme for Construction Contracts (England and Wales) Regulations 1998 shall apply and the nominating body shall be the Royal Institute of Chartered Surveyors.
- 18.11 **Jurisdiction.** Subject to clause 18.10, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.