

DESIGN & BUILD AGREEMENT

THIS DEED is made on

BETWEEN:

ALBERT BARTLETT & SONS (AIRDRIE) LIMITED,
a limited liability company established under English Law,
having its registered office at New Monkland, 251 Stirling Road, Airdrie, North Lanarkshire
ML6 7SP, United Kingdom and company registration number SC037896, represented by
Mr. Alan ROBERTS, in its capacity as Added Value Managing Director (email address:
alan.roberts@albertbartlett.com).

(hereinafter referred to as the "Employer"), and

ALHEEMBOUW NV,
a limited liability company established under Belgian law,
having its registered office at 8840 Oostnieuwkerke, Roeselarestraat 205, Belgium and
company registration number 0428.936.572, for the purpose of this Agreement duly
represented by Beehive BV, a limited liability company established under Belgian Law,
having its registered seat at 8840 Oostnieuwkerke, Roeselarestraat 205, and company
registration number 0728.450.99, Director, in this capacity having as permanent
representative Mr. Peter TEMMERMAN (email address:
peter.temmerman@alheembouw.be).

(hereinafter referred to as the "Contractor" or "ALHEEMBOUW"),

hereinafter jointly referred to as the "Parties" and each of them individually as a "Party".

WHEREAS:

- (A) The Employer is owner of the Site and wishes to have the Contractor construct on the Site a new highbay freezer with automated storage and retrieval system;
- (B) The Contractor is a general contractor both in private and public projects and is thus active as a sustainable building partner for the design and construction of offices, logistic- and production buildings;
- (C) The Employer has agreed to engage the Contractor for the design, manufacture, delivery to Site, installation, testing and completion of the Works and the remedying of defects in the Works in accordance with this Agreement;
- (D) The Contractor concluded with the Employer a Memorandum of Understanding on August 14th, 2024 based upon an offer with respect to preparatory design works and a preliminary technical description of the Works and an indicative financial quotation;
- (E) The Contractor will engineer, design, construct and complete the Works subject to and in accordance with the terms and conditions of this Agreement;

- (F) The Contractor has concluded a cooperation agreement with Ceratec with respect to the design, engineering, procurement and installation of the Plant and who will act as the Automation Subcontractor of the Contractor in the performance of the Works;
- (G) Upon completion of the Works, the Works shall be handed over to the Employer in accordance with the provisions stipulated in this Agreement;
- (H) Accordingly, the Parties wish to enter into this Agreement for the purpose of setting forth their mutual understanding and the terms and conditions on which the Contractor shall engineer, design and construct the Works.

NOW, THEREFORE, THE FOLLOWING HAS BEEN AGREED UPON BY THE PARTIES:

SECTION I. DEFINITIONS AND INTERPRETATION

CLAUSE 1. Definitions - Interpretation

- 1.1. For the purposes of the present Agreement, including its appendices, the expressions set forth below shall have the meaning indicated next to them:
 - a. **"Adverse Weather Conditions"** means the following events:
 - 1. **Wind:** Wind speeds exceeding 72 km/h for a continuous period of at least four (4) hours during designated lifting hours (06:00 to 18:00), as measured by the on-site wind meter or crane-mounted anemometer; and/or
 - 2. **Rainfall:** Accumulated precipitation of at least twenty-five (25) millimeters within any continuous twenty-four (24) hour period, regardless of the Day boundaries, as recorded by the nearest official weather station; and/or
 - 3. **Frost:** Ambient temperature below minus ten degrees Celsius (-10 °C) at 06:00 and remaining below minus five degrees Celsius (-5 °C) thereafter, subject to the specific material usage conditions and the nature of the Works. Temperature readings shall be taken from the nearest official weather station; and/or
 - 4. **Snowfall:** Snow accumulation of at least three (3) centimetres within a twenty-four (24) hour period, affecting outdoor construction activities of the Works, whereby measurements shall be based on data from the nearest official weather station;
 - b. **Agreement:** means the present "Design and Build Agreement" including Clauses or Clauses these and the Appendices;
 - c. **Agreement Date:** means the date of this Agreement first mentioned above;
 - d. **Automation Equipment:** means the plant more particularly described in the Technical File, which the Contractor intends to include within the scope of the Automation Subcontractor;
 - e. **Automation Subcontractor:** means Ceratec NV, a limited liability company established under Belgian law, having its registered seat at 7783 Comines-Warneron, Touquetstraat 228, registered under company number 0428.822.152, acting within the Works as Automation Subcontractor, in view of the design, engineering, procurement and installation of the Automation Equipment, also referred to as "Ceratec".
 - f. **Background:** means a Party's technologies, know-how, business secrets, property rights and applications for property rights existing on the date and prior to the conclusion of the Agreement;

- g. **Bank Guarantee:** means the bond or guarantee issued by a first rank bank or insurance company approved by the Employer on behalf of the Contractor in accordance with Clause 16.6 hereof;
- h. **Building:** means a logistics and operational facility, with accompanying infrastructure, more particularly described in the Technical File to be constructed on the Site in accordance with this Agreement;
- i. **Building Regulations:** means the Building Regulations 2010;
- j. **Business Day:** means every day, except for Saturday, Sunday and every bank holiday in England;
- k. **Changes:** means any alterations, modifications and changes of the Works which affect the essential characteristics of the Works (including as set forth in the Description), the functionality of the Works, its status, aesthetics and the designated use or the Price or Time Schedule or any of them;
- l. **CDM Regulations:** means the Construction (Design and Management) Regulations 2015;
- m. **Competence:** means the skills, knowledge, experience and behaviours necessary and the organisational capability (and has identified an individual within the organisation who has the required skills, knowledge and experience), in relation to relevant duties under the CDM Regulations and the Dutyholder Regulations;
- n. **Consents:** means all approvals, permissions, consents, licences, permits, registrations and authorisations (whether statutory or otherwise) which are required from time to time for the purposes of providing the Works, including any Plant and materials or equipment to be transported, imported or exported or otherwise required by any applicable laws for the Contractor to provide the Works in accordance with this Agreement, including the Employer Consents and the Contractor Consents;
- q. **Day:** means a calendar day;
- r. **Defects:** any work done or Plant supplied or materials used by the Contractor or any Sub-Contractor is or are defective or not in accordance with this Agreement, or that such part is defective or does not fulfil the requirements of the Agreement;
- s. **Employer's Consents:** means
 - Planning permission dated July 28th, 2025, reference PF/24/2474;
 - Building permits;
- t. **Dutyholder Regulations:** means Part 2A of the Building Regulations 2010 as inserted by regulation 6 of the Building Regulations etc. (Amendment) (England) Regulations 2023, SI 2023/911;
- u. **Technical File** means all the descriptive documents of the Works forming Appendix 1 including:
 - 1. Organizational chart;
 - 2. Layout;
 - 3. Technical Specifications;

5. Time Schedule

- v. **Construction Design:** has the meaning ascribed to it in Clause 4 hereof;
- w. **Early Access:** means the Employer's requirement to have access to the Building under construction before Handover as set forth in Clause 12 hereof;
- x. **Effective Date:** means the date on which the Contractor will be granted access to the Site pursuant to a permission from the Employer;
- y. **Employer's Site Information:** means the description of the location of the high voltage electrical feed to the effluent-plant;
- z. **Execution File:** means the set of documents, which shall be assembled by the Contractor during the planning and erection of the Works and will reflect the planned or the actual state of execution of the Works and which shall include, among others, the execution plans, copy of the correctly kept building journal and the detailed "tender documents" for the construction of the Works;
- aa. **Guarantee Period:** means the period of one (1) year starting from Handover;
- bb. **Handover:** means the Provisional Acceptance of the Building and the Plant followed by the complete transfer of the risk in relation to the Works, the Building and the Site from the Contractor to the Employer, in accordance with Clause 14 hereof;
- cc. **Hazardous Substances:** means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) capable of causing harm to the environment and/or harm to the health of living organisms or other interference with the ecological systems of which they form part and/or harm to property;
- dd. **Industrial Facility:** means the entire production plant of which the Site is part;
- ee. **Plant:** means machinery, computer hardware and software, apparatus, materials, articles and things of all kinds to be provided by the Contractor under the Agreement, relating to the Automation Equipment;
- gg. **Premises:** means the Building on the Site and the Site together;
- hh. **Representatives:** means the persons nominated by the Employer, and who shall have the power and authority to represent the Employer in respect of this Agreement and who shall be authorised to take all decisions of a technical nature during the realisation of the Works;
- ii. **Scheme:** means Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998;
- jj. **Site:** means the parcel of land at Worstead, North Walsham, Norfolk, NR28 9RX, shown or described in the Technical File or as otherwise agreed by the Parties;
- kk. **Start of Construction:** means the date on which the construction of the Works is to start;

- ll. **Subcontractor:** means a subcontractor hired by the Contractor to perform any part of the Works under the Contractor's supervision and at the Contractor's own cost;
 - mm. **Time for Completion:** means the period of time for completion of the Works as stated in the Time Schedule at the date of this Agreement or as extended under Clause 7 hereof;
 - nn. **Time Schedule:** means the time schedule for the carrying out and completion of the Works including the Time for Completion as described in further detail in the Technical File;
 - oo. **Third Partie(s):** means any person(s) other than the Employer or the Contractor;
 - pp. **Variation Order:** has the meaning as ascribed to it in Clause 11 hereof;
 - qq. **Variation Order Price:** has the meaning as ascribed to it in Clause 11 hereof;
 - rr. **Works:** means, the landscaping, design, engineering and construction of the Building and design, engineering and construction of the Plant by the Contractor on the Site in accordance with this Agreement. The Works also include temporary constructions and any other activities that are necessary for the proper and timely execution of the Works, including provision of manufacturing documentation, test reports, certificates, inspection and other reports, declarations of conformity of products and equipment. The Works mean the performance of the construction to the extent described in the Technical File. Supply of the Works covers also all other activities necessary for the proper and timely execution of the Works, in particular, (i) issuance or the provision of design and other documentation, opinions and other similar documents necessary for the realisation of the Works, (ii) performance of engineering activities required for the initiation and execution of the construction, (iii) preparation or provision of the as-built documentation (including inspection reports, test reports, construction diaries, as-built drawings, maintenance instructions, data sheets and manuals);
- 1.2. In this Agreement and appendices and/or amendments thereto, references to any enactment, code of practice or legislative provision shall include such enactment, code of practice or legislative provision as amended from time to time, whether before, during (only in the case of re-enactment or consolidation without substantive amendment) or after the date of signature of this Agreement, and shall be deemed to include provisions of earlier legislation which have been re-enacted (with or without modification) or replaced (directly or indirectly) by such provision, and shall further include all implementing regulations and ordinance from time to time made pursuant thereto;
- 1.3. In this Agreement and its appendices and/or amendments:
- a. the masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa;
 - b. references to persons shall include individuals, legal entities, unincorporated associations, body corporate and partnerships;
 - c. the headings are inserted for convenience only and shall not affect the construction and interpretation of this Agreement;
 - d. references to recitals, Clauses, appendices, annexes and its subdivisions hereof, unless a contrary intention appears, shall be the references to the recitals, Clauses, appendices, annexes and its subdivisions of this Agreement;
- 1.4. The recitals, Clauses, appendices and amendments form part of this Agreement and shall be construed as having the same full force and effect as if they would be expressly set forth in the body of this Agreement;

SECTION II

CLAUSE 2. GENERAL OBLIGATIONS OF THE CONTRACTOR AND THE EMPLOYER

- 2.1. The Employer entrusts to the Contractor, and the Contractor undertakes to complete the Works within the Time for Completion.
- 2.2. Subject to the terms and conditions of this Agreement, the Contractor shall design, engineer, manufacture, deliver to Site, construct and manufacture the Building, install and test the Plant, and carry out all ancillary and finishing works, in accordance with the Consents, all statutory provisions, this Agreement any and all appendices to this Agreement (hereinafter referred to as "Appendices"), the technical knowledge, applicable technical standards, and the Technical File. The Contractor shall also make good Defects in the Work. Upon completion of the Works, the Works shall be handed over to the Employer under the terms and conditions set forth in this Agreement.
- 2.3. The following documents shall be deemed to form and be read and construed as part of this Agreement:
 1. The Clauses; and
 2. The Appendices

In case of conflict or contradiction as between the Clauses and the Appendices, the Clauses will be given priority.
- 2.4. The following Appendices form an integral part of the Agreement:
 1. Technical File (Appendix 1)
- 2.5. The Contractor undertakes to fully, properly and in a timely manner execute the Works. The Contractor has been afforded the opportunity to inspect the physical and other conditions affecting the Site and its surroundings and all existing structures thereon and shall be deemed to have fully acquainted himself with the same and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the design and construction of the Works or the Price.
- 2.6. Without prejudice to the generality of the Contractor's obligations to comply with all statutory requirements, the Contractor shall, insofar as they relate to the Site and/or the Works (1) comply with all notices, requirements, instructions, requisitions, orders, and directions issued in respect of the Site or any Hazardous Substances attributable to the Site by any local authority or any statutory undertaker which has any jurisdiction with regard to the Site and/or Works, and/or any Consents which require assessment, treatment, removal, mitigation of harm caused by and/or remediation of any Hazardous

Substances in/on/under/over, or migrating to or from, the Site, and (2) irrespective of the provisions elsewhere in the Agreement to the contrary where any such local authority or statutory undertaker wishes to recover costs incurred by it in carrying out any investigation, assessment, monitoring, removal, remedial or risk mitigation works under any statutory requirements in respect of the Site or any Hazardous Substances in/on/under/over, or migrating to or from, the Site, be solely responsible for the payment of these costs.

Notwithstanding anything in the Agreement to the contrary, the Contractor accepts and confirms that there shall be no addition to the Price or any extension of time for completion of the Works in respect of such assessment, treatment, removal, mitigation of harm caused by and/or remediation referred to in this Clause regarding any Hazardous Substances in/on/under/over, or migrating to or from the Site.

Any pollution of the Site and its underground, which has not been caused by the Contractor or those for whom it is responsible (including pollution present before the start of the Works) and the consequences therefrom are considered to be responsibility of the Employer and entitle the Contractor to compensation and extension of time for completion and consequently results in a revision of the Price in the Contractor's favour

- 2.7. The Contractor will assist and cooperate with the preparation of the application for the Employer Consents.
- 2.8. The Contractor will execute all activities and works, which are necessary to design and construct the Works and will complete the Works and hand over the Building to the Employer within the Time for Completion.
- 2.10. The Parties shall cooperate with each other in an appropriate and timely manner and the Parties shall act in a spirit of mutual trust and cooperation.

CLAUSE 3. TECHNICAL FILE

- 3.1. The Contractor shall carry out the Works in accordance with the Technical File.
- 3.2. The Employer will supplement the Technical File with declarations, agreements and documents, issued or concluded by the Employer with utility suppliers with regard to the conditions which need to be met to make the supply of utilities to the Building possible and so far as the Employer's responsibility in accordance with the Technical File.

CLAUSE 4. CONSTRUCTION DESIGN

- 4.1. For the purpose of this Agreement "Designs" shall include all designs including construction design and executive design and as-built designs, all other design works, diagrams, drawings, notes of meetings, photographs, plans, programmes, reports, all CAD materials calculations (also on electronic carriers of information) prepared or to be prepared by or on behalf of the Contractor for the Works and in accordance with this Agreement.
- 4.2. The Contractor undertakes that it has the appropriate knowledge, experience and resources to design the Works on the Site and prepare all necessary Designs in accordance with all statutory provisions, Consents, all standards, ordinances and norms, as well as in accordance with this Agreement.
- 4.3. The Contractor has examined all contract documents and is satisfied as to the feasibility and practicality of designing and executing the Works. Without prejudice to the generality hereof, the Contractor shall be fully responsible and liable to the Employer for all aspects of design of the Works regardless of by whom, for whom or when the same has been or is prepared including such detailed development as may be required, selection of goods and materials and satisfaction of performance specifications.
- 4.4. The Contractor undertakes to prepare all necessary Designs required by statutory law, all standards, ordinances and UK norms and this Agreement, in particular those Designs which are to be enclosed with the Application for any Employer Consents on the basis of the Technical File and the relevant parts of the Description.
- 4.5. The Contractor hereby grants as beneficial owner and with full title guarantee in respect of copyright and all other intellectual property rights in the same (or shall procure that the beneficial owner who can grant with full title guarantee in respect thereof shall grant) to the Employer an irrevocable, royalty-free and non-exclusive licence or licences to use and reproduce the Designs for the following purposes:
 - (a) production of copies of Designs - with the use of specific technology, including printing, reprographics, magnetic recording and digital technology;
 - (b) use of the Designs for the purpose of repairs and maintenance of the Works, respective installations, fixtures, or any other subject matter under this Agreement;
 - (c) use of the Designs for the purpose of development and extension of the Works;
 - (d) use of the Designs for the purpose of rebuilding or other amending of the Works, including adaptations of relevant installations, fixtures or any other subject of this Agreement;
 - (e) use of the Designs for marketing, advertising and promotional purposes;
 - (f) use of the Designs for the purpose of obtaining or amending consents/authorisations regarding the Works;

The Contractor shall transfer or procure that a Third Party transfers to the Employer the right to give permission to use and dispose of works which are derivative with respect to the Designs, including developments, adaptations, changes and alterations, in the fields of exploitation specified Clause in 4.5 above.

The Contractor transfers to the Employer the right to give permission to use and dispose of Works which are derivative with respect to the Design, including developments, adaptations, changes and alterations, in the fields of exploitation Clause specified in 4.4. above.

- 4.6. The Contractor hereby waives its moral rights (as referred to in the Copyright Design and Patents Act 1988) in the Designs.
- 4.7. The Contractor warrants that it will obtain permission from the authors of the Design to waive their moral rights (as referred to in the Copyright Design and Patents Act 1988) in the Designs.
- 4.8. The Contractor warrants that the use of the Designs for any purpose specified in this Clause will not infringe the rights of any third persons. If the use of the Designs for any purpose specified in this Clause is found to infringe the rights of any third person, the Contractor shall indemnify the Employer against all resulting costs, damages and expense.

CLAUSE 7. TIME SCHEDULE

- 7.1. The Contractor undertakes to execute all Works to achieve Handover within the Time for Completion. The Contractor shall supply and update the Time Schedule.
- 7.2. If the Contractor has been delayed in the completion of the Works, unless such delays can be prevented by the Contractor using its best endeavours, due to:
 - (a) delays caused by a Third Party and not controlled or otherwise connected to the Contractor which have an adverse effect on the progress of the construction process.
For the avoidance of doubt, any person or entity connected to the Contractor, his

sub-contractors and his suppliers are considered as a party which is controlled by the Contractor;

- (b) a Force Majeure Event preventing the Contractor from fulfilling its obligations pursuant to this Agreement;
- (c) Variation Orders;
- (d) any impediment, prevention or default whether by act or omission by the Employer or any person employed, engaged or authorised by the Employer excluding the Contractor and any Third Party controlled or otherwise connected to the Contractor, except to the extent caused or contributed to by any default, whether by act or omission of the Contractor;
- (e) Delays in receipt of any necessary permission or approval of any statutory body which the Contractor needs for the due performance of the Works;
- (f) the execution of the Works being wholly or partially impeded or delayed due to Adverse Weather Conditions ;

then provided the Contractor notifies the Employer of such a delay event as soon as reasonably practicable and in any event within four weeks of becoming aware that the event has happened, with full supporting details, the Employer shall on receipt grant the Contractor from time to time in writing such extension of the Time for Completion as may be reasonable but at least equal to the amount of Business Days the delaying event has caused.

The Contractor shall not become entitled to any extension of time for completion of the Works or any part thereof where the circumstances arise by reason of any error, omission, negligence, or default of the Contractor or any party controlled by the Contractor.

- 7.3. If the Contractor fails to achieve Handover in accordance with the Agreement, save as regards his obligations under Clause 19 (Defects), within the applicable Time for Completion, there shall be deducted from the Price or paid to the Employer by the Contractor liquidated damages for the period between the Time for Completion and the date of Handover at the following rate: EUR (€) 4.000 per Day. ("Liquidated Damages")

The Parties agree that all Liquidated Damages payable under this Agreement represent a genuine pre-estimate of the costs, losses and expenses that the Employer may suffer as a result of such failure and are not a penalty. It is further agreed that the Liquidated Damages are proportionate given the interests of both Parties.

The Liquidated Damages under this Clause 7.3 are considered as Employer's sole remedy in respect of delay to the Time for Completion, but that without prejudice to any costs and damages payable in respect of termination by the Employer of this Agreement due to breach of the Agreement by the Contractor, and without prejudice to Clause 20.3 of this Agreement.

The aggregate amount of all Liquidated Damages applied under this Clause 7.3 cannot exceed and hence is capped at ten (10)% of the Price.

CLAUSE 8. EXECUTION FILE

- 8.1. The Contractor undertakes to arrange for the Execution File.

- 8.2. The Contractor shall be responsible for the construction of the Works on the Site, free of Defects, in accordance with this Agreement.
- 8.3. The Contractor shall inform the Employer in writing about the completion of the Execution File and shall provide the Employer, for information purposes, with one copy of the same.
- 8.4. The Employer is entitled to comment on possible mistakes, errors and omissions in the Execution File in writing, referred to in the previous paragraph.
- 8.5. The Contractor shall examine the comments made by the Employer and correct any mistakes, errors and omissions in the Execution File.

CLAUSE 9. SUBCONTRACTORS

- 9.1. The Contractor shall not subcontract the whole of the Works. Except otherwise provided by this Agreement, the Contractor shall not sub-contract any part of the Works without the prior consent of the Employer.
- 9.2. The Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor as fully as if they were the acts, defaults and neglects of the Contractor.
- 9.3. The Contractor shall ensure that its Subcontractors at all times fully comply with all relevant provisions of this Agreement. The Contractor shall ensure that these Subcontractors are duly qualified and comply with all applicable health, work safety, social security and labour legislation. In the event the Employer, acting reasonably, concludes that a particular Subcontractor does not qualify as stated above in this Clause, the Employer has the right to require the Contractor to replace the concerned Subcontractor in which case the Parties shall, acting in good faith, agree on a reasonable solution.
- 9.4. The Parties undertake not to recruit, or attempt to recruit, staff and labour amongst the other Party's personnel (including the Parties' Subcontractors).
- 9.5. Employer accepts Ceratec as the Contractor's Automation Subcontractor.

SECTION III

CLAUSE 10. CONSTRUCTION OF THE WORKS

- 10.1. The Contractor undertakes to begin to construct the Works on the Site in accordance with this Agreement and the Description on giving the Employer no less than two (2) weeks notice.
- 10.2. The Contractor undertakes to conduct the Works in accordance with all statutory provisions, all applicable technical standards, this Agreement and the technical knowledge.
- 10.3. For the purposes of the CDM Regulations, the Contractor is the Principal Designer and the Principal Contractor.
- 10.4. For the purposes of the Building Regulations, the Contractor is the Principal Designer and the Principal Contractor.
- 10.5. The Contractor undertakes to organize the entire construction process and to assure that the construction process is managed by a construction manager, supervised by a supervision inspector according to the relevant laws.

- 10.6. All activities, works, materials and appliances will be carried out with new materials having all required certificates and technical approvals.
- 10.7. The Contractor shall:
- comply with all applicable health- and safety laws and regulations;
 - provide fencing and lighting of the Works until Handover; and
 - provide any temporary works (including roadways, footways and fences) which may be necessary, because of the performance of Works, for the use and protection of the public and of owners and occupiers of adjacent land;
- 10.8. The Parties acknowledge and agree that they shall meet to discuss and consult on the coordination of daily operations of the Industrial Facility and the actual execution of the Works by the Contractor. To facilitate this coordination, daily site meetings shall be held during which the Contractor shall present and discuss the Works scheduled to be executed on that day with the Employer or its representatives.
In addition, weekly site meetings shall be organized to consider the Contractor's work schedule for the upcoming week. These meetings are intended to ensure effective communication and alignment between the Parties regarding the planning and execution of the Works. Coordination, programming and execution of the Works remains the responsibility of the Contractor.
- 10.9. The Contractor undertakes that in relation to the Works and the Site that it will duly comply with the applicable CDM Regulations and the Dutyholder Regulations.
- 10.10. The Contractor shall comply with regulations 8 to 10 and 15 of the CDM Regulations and regulations 11F, 11J and 11L of the Dutyholder Regulations, and where he is Principal Contractor, with regulations 12 to 14 of the CDM Regulations and regulations 11H and 11N of the Dutyholder Regulations.
- 10.11. The Contractor warrants that:
- (a) as at the date of this Agreement the Contractor has the Competence required to discharge his duties under the CDM Regulations and the Dutyholder Regulations
 - (b) it has not been the subject of a serious sanction by the Building Safety Regulator and/or another Local or Public Authority within the 5 years ending on the date of this Agreement
 - (c) it shall notify the Employer pursuant to regulation 11I of the Dutyholder Regulations where he or any of his sub-contractors ceases to have the Competence required to discharge its duties under the Dutyholder Regulations.
- 10.12. The Contractor shall at all times prevent any trespass and shall use all reasonable endeavours to avoid public or private nuisance in the normal performance of Works (including, without limitation any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights and activities of any adjoining or neighbouring owner, tenant or occupier or any statutory undertaker or utility provider or utility infrastructure provider whether public or private bodies arising out of the carrying out of the Works and shall assist the Employer in defending any action or proceedings which may be instituted in relation thereto. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such trespass, nuisance or interference.
- 10.13. The Contractor will not use or specify in the construction of the Works materials which are generally known at the time of specification or use to be as posing a threat to the health and safety of any person; or posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or not being in accordance with any relevant British

Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or having been supplied or placed on the market in breach of the Construction Products Regulations or being deleterious to health and safety or to the durability of the Works or any part thereof in the particular circumstances in which they are used or are not in accordance with current British and/or European standards or codes of practice or good building practice or techniques, (such including any identified as deleterious, unsatisfactory or unsuitable in the relevant circumstances in the Guidance "Good Practice in the Selection of Construction Materials" published by the British Council for Offices as amended from time to time).

- 10.14. The Parties confirm that, at the explicit request of the Employer, the Contractor's Works does not include the provision of fire fighting systems, which specifically means that no sprinklers are to be installed and no oxygen reduction will be implemented.
- 10.15. The Contractors vehicles shall leave the Site by the designated HGV route.

CLAUSE 11. MODIFICATIONS – CHANGE OF LAW

- 11.1 The Employer shall be entitled, even during the construction phase of the Works, to require in writing that the Contractor makes certain Changes.
The Contractor shall carry out such Changes and be bound by this Agreement in so doing as though the Changes were stated in this Agreement. If such Changes require the performance of additional works, the Employer accepts all the financial consequences and the additional period for execution of works that may be necessary as a result of any such changes and provided that all necessary permits, authorizations and licenses required for such changes shall be obtained and provided at the expense of the Employer unless otherwise agreed. If such a Change means the reduction of the works to be carried out by
- the Contractor, the Contractor will reduce the Price accordingly.
- 11.2 The modifications and/or changes requested according to Clause 11.1. above, shall be subject to a notice being given by the Employer ("Variation Order") and may not be performed until such Variation Order is executed by both Parties.
- 11.3 The Variation Order shall describe (i) the anticipated impact of such modifications and/or changes to the construction and the occupancy and the use of the Works, (ii) the price payable by the Employer to the Contractor for such modification or change, in addition to the Price ("**Variation Order Price**") and (iii) the impact on the Time for Completion. If the Parties are not able to agree the price and time impacts, the Employer, acting reasonably, shall make a fair assessment of the same.
- 11.4 If, after the Agreement Date, there is any change due to enactment, amendment or repeal of any applicable laws, regulations, decrees that could not have been foreseen by a competent contractor prior to the Agreement Date and whereby such change affects the Time for Completion, the Price, or any other obligation of the Contractor to perform the whole or part of the Works or the execution of this Agreement (a "**Change of Law**"), the Contractor shall notify the Employer as soon as reasonably practicable and in any event within three (3) weeks of becoming aware of the Change of Law, specifying the nature and anticipated consequences of the Change of Law.

The Parties shall negotiate in good faith to determine reasonable adjustments to the Time for Completion, the Price or other affected terms or obligations of the Contractor and the Change of Law. shall be treated as a written change of the Employer in accordance with Clause 11.1.

Any agreed modification resulting from a Change of Law shall be set out in a written Variation Order.

CLAUSE 12. ACCESS TO THE SITE - OBSERVATIONS

- 12.1. On the Effective Date, the Employer shall transfer to the Contractor the possession and custody of all parts of the Site necessary for the purposes of any necessary construction Works. At this moment the risk of damages concerning the Site is being transferred to the Contractor.
- 12.2. The Employer shall use reasonable endeavours to give the Contractor right of access to all other parts of the Site for which it has not been given possession in accordance with Clause 12.1 above, for the entire period of the Agreement including extensions, if any.
- 12.3. The Contractor shall be deemed to have been satisfied itself as to the suitability and availability of access routes to the Site. The Contractor shall prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's personnel or Subcontractors. These efforts shall include the proper use of appropriate vehicles and routes. The Contractor shall indemnify the Employer in respect of any damage solely caused by the Contractor and in respect of all related proceedings, damages, costs, charges and/or expenses.
- 12.4. The Contractor shall ensure that the Representatives and the persons appointed and/or authorised by the Employer, have access to the Site during the construction phase of the Works, for the purpose of verifying whether the Works are carried out in accordance with this Agreement. In particular the Employer is entitled to appoint a supervision inspector who will be entitled to have the mentioned access and to make his comments and objections in the name of the Employer as to the way the construction process is conducted by the Contractor.
- 12.5. The above described inspections may be held whenever the Employer deems this necessary or useful and will be notified to the Contractor's site manager in advance.
- 12.6. In accordance with the progress of Works, regular (at least bi-weekly) meetings will be organized between the Representatives and/or the persons appointed for such purpose by the Employer and the Contractor's site manager, for the purpose of verifying and discussing whether the Works are carried out in accordance with this Agreement.
- 12.7. In the event that the Employer informs the Contractor of observations of the Representatives and the persons appointed for such purpose by the Employer concerning mistakes, errors or omissions in the Works, the Contractor shall closely review such observations and shall take all appropriate measures in that respect.
- 12.8. The Employer shall ensure that Representatives and the persons appointed for such purpose by the Employer present at the Site, fully respect all reasonable safety and security rules and measures imposed by the Contractor.

CLAUSE 13. INDEMNITIES AND INSURANCE

- 13.1. In the event that any part of the Works shall suffer loss or damage whilst the Contractor has responsibility for its care, that part of the Works shall be made good by the Contractor at his own expense except to the extent that such loss or damage is caused by the negligent act or omission of the Employer. The Contractor shall also at his own expense make good any loss or damage to the Works occasioned by him in

the course of operations carried out by the Contractor for the purpose of completing any outstanding work or of complying with his obligations under Clause 19.

- 13.2. Except as mentioned in this paragraph the Contractor shall be liable for and shall indemnify the Employer against all claims in respect of personal injury or death or in respect of loss of or damage to any property (other than property forming part of the Works not yet taken over) which arises out of or in consequence of the execution of the Works whilst the Contractor has responsibility for the care of the Works and against all demands, costs, charges and expenses arising in connection with such claims. The Contractor shall not be liable under this sub-clause for, and the Employer shall indemnify him from and against, any claims in relation to death or personal injury or loss of or damage to property to the extent that any such claim is caused by an act or neglect of the Employer.
- 13.3. The Contractor shall indemnify the Employer against all actions, suits, claims, demands, costs, charges and expenses arising in connection with the death of or injury to any person employed by the Contractor or his Sub-Contractors for the purposes of the Works. This indemnity shall not apply to the extent that any death or injury results from any act or default of the Employer, his employees, Sub-Contractors, agents or other contractors for whom he is responsible. The Employer shall indemnify the Contractor against all claims, damages, costs, charges and expenses to such extent.
- 13.4. The Contractor shall, prior to the commencement of any work on the Site by the Contractor pursuant to this Agreement, insure in an amount not being less than EUR 15.000.000,- (fifteen million euro) against his liability for damage or death or personal injury occurring before all the Works have been taken over to any person (including any employee of the Employer) or to any property (other than property forming part of the Works) due to or arising out of the execution of the Works. The terms of the policy shall include a provision whereby, in the event of any claim being made against the Employer in respect of which the Contractor would be entitled to indemnity under the policy, the insurers will indemnify the Employer against such claims and any costs, charges and expenses in respect of such claim.
- 13.5. The Contractor shall insure and shall maintain insurance against its liability under Clause 13.3. The terms of any such policy shall also include the provision to indemnify the Employer mentioned in Clause 13.2 provided always that in respect of any persons employed by any Sub-Contractor, the Contractor's obligation under this sub-clause shall be satisfied if the Sub-Contractor has insured against the liability in respect of such persons in such manner that the Employer is indemnified under the policy, but the Contractor shall require such Sub-Contractor to produce to the Employer when required satisfactory evidence of insurance cover and receipts for the premiums.
- 13.6. At the latest before the Start of Construction, the Contractor shall take out insurance for the Works and the Contractor's plant and equipment for its full replacement value against all loss or damage from whatever cause arising (the "CAR insurance"), valid until 2 years after Handover.

The insurance contract for all building site risks should cover the activity of all entities, including natural and legal persons, and organisational units without legal personality, participating in erecting the Works, in particular the Contractor, Subcontractors and all entities executing drawings and executing the Works, as well as the Representatives of the Employer and all persons that may appear on the Site. The insurance shall be in the joint names of the Parties, including the Parties as composite insured and under which the insurers have no right of recourse against any person named as an insured or recognised as an insured thereunder.

The Contractor shall be the beneficiary of the insurances mentioned under this Clause 13.6, provided that with respect to damage or destruction to or of the Works, whether or not under construction, the Contractor undertakes to use the proceeds paid by such an insurance ("**Insurance Proceeds**") (i) to repair and/or rebuild the damage

and/or destruction or (ii) indemnify the Employer, following what the Employer, at his sole discretion decides in this respect. In the event the Employer decides to repair and/or rebuild the damage and/or destruction, the Insurance Proceeds will be used to rebuild and restore the damage and/or destruction. In the event the Employer decides not to repair and/or restore the damage, the Insurance Proceeds will be used to indemnify the Employer.

- 13.7. The insurance contracts referred to in Clause 13.4, 13.5 and 13.6 shall be effected with an insurer and in terms to be approved by the Employer, should be valid and the insurance premiums should be paid by the Contractor at least until the Handover has occurred, provided that the performance of the Works remedying the Snagging List items must remain duly insured in accordance with the requirements of this provision
- 13.8. The Contractor shall provide the Employer with certificates issued by the relevant insurers, evidencing the Contractor's entering into the insurance policy(ies) as mentioned above and indicating the validity period of the concerned insurance policy(ies) as well as the insured liabilities. Such certificates must be provided at the latest by the date upon which the corresponding policies ought to be concluded according to this provision.
- 13.9. The Contractor shall maintain professional indemnity insurance covering (inter alia) all its liability hereunder in respect of defects or insufficiency in design and/or professional negligence upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, insure in an amount of not being less than EUR 15.000.000,- (fifteen million euro) per event or in the aggregate per annum over the entire coverage period, whereby the coverage period begins prior to the payment by the Employer of the Advance Payment and will end 12 (twelve) years after the date of Handover in respect of the Works provided always that such insurance is available at commercially reasonable rates and terms and further provided that the Contractor's claims record shall be disregarded when determining whether such insurance is available at commercially reasonable rates and terms.

Any increased or additional premium required by insurers by reason of the Contractor's own claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.

The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of the Agreement, or determination of the Contractor's employment hereunder, in either case for any reason whatsoever, including (without limitation) breach by the Employer.

CLAUSE 14. TRANSFER OF OWNERSHIP AND RISK – TEST & HANDOVER - COMMISSIONING

- 14.1. Plant, goods and/or materials to be supplied pursuant to this Agreement shall become the property of the Employer at whichever is the earlier of the following times: (a) Handover pursuant to the Agreement and (b) when the Contractor becomes entitled to receive payment for the value of the plant, goods or materials in question.
- 14.2. The Contractor shall be responsible for the care of the Works until the date of Handover. The Contractor shall also be responsible for the care of any outstanding work which the Contractor has undertaken to carry out during the Guarantee Period until such outstanding work is complete. In the event of termination of this Agreement in accordance with these Clauses, responsibility for the care of the Works shall pass to the Employer upon expiry of the notice of termination
- 14.3. The Contractor shall carry out the commissioning and test the Automation Equipment, including the functional and safety tests, in accordance with the provisions of the Technical File. ("Commissioning") Following successful Commissioning, the trial run

(the go live) shall commence, which means that the Contractor will fully operate the Automation Equipment and devices itself but this will take place in the presence and under the observation of the Employer, whereby the Contractor shall assist and train (the personnel of) the Employer in the use of the Automation Equipment under real conditions, in accordance with the conditions as described in the Technical File. ("Trial Run" or "Go Live")

- 14.4. If the Works or any part fails to pass the Commissioning and/or the Trial Run, the Contractor shall take whatever steps may be necessary to enable the Works to pass the Commissioning and/or the Trial Run and shall then repeat them. If any part of the Works fails to pass any tests comprised within the Commissioning and/or Trial Run, those tests shall be repeated by the Contractor within a reasonable time upon the same terms and conditions and the Contractor shall be responsible for all costs which the Employer may incur in attending the repetition of such test. If the Employer nevertheless insists on additional testing he will take these costs at charge.
- 14.5. "Provisional Acceptance" shall mean and shall occur when the following conditions are met in accordance with the descriptions set out in the Technical File:
- (a) Successful completion of Commissioning and Trial Run;
 - (b) Validation and certification of all safety-related equipment;
 - (c) Delivery of draft operator manuals, maintenance instructions, as-built documentation, and certificates (including UKCA) relating to the Automation Equipment to the Employer;
- 14.6. On or before the Provisional Acceptance, the Employer and the Contractor shall jointly prepare a snagging list identifying any minor defects, incomplete Works, or non-critical issues that do not impede the safe and effective operation of the Works. (the "Snagging List"). The Contractor undertakes to remedy the items of the Snagging List within the period agreed upon between the Parties in the Snagging List or if no time is stated or agreed, as soon as reasonably practicable. All works related to the remediation of the Snagging List shall be considered as included in the Works. For the avoidance of doubt, the existence of the Snagging List shall not prevent the Provisional Acceptance and thus the Handover.
- 14.7. Complete transfer of the risk of loss or damage in respect of the Works from the Contractor to the Employer shall happen immediately upon Handover. The Contractor shall at his own expense procure that any and all manufacturers guarantees relating to equipment, materials, goods and components shall, if required by the Employer be assigned to the Employer on completion of the Works.
- 14.8. At least 12 (twelve) Business Days prior to the completion of the construction of the Works, including completion of Commissioning, the Contractor shall invite the Employer in writing to a meeting on the Site for the purpose of inspection of the actual status of the Works and accepting the due performance thereof by the Employer in accordance with the procedure contemplated in this Clause 14. The Contractor shall advise the Employer of the date of proposed Handover which shall be not less than 12 (twelve) Business Days after the date of the Contractor's invitation. The proposed date for Handover cannot be refused by the Employer without justification, acting reasonably, sent to the Contractor prior to such proposed date.
- 14.9. Subject to Clause 14.8 and any refusal of Handover by the Employer, the Parties hereby each undertake to proceed with the Handover on the date proposed for Handover upon fulfilment on the condition that the Works have been completed in accordance with this Agreement, the applicable laws and regulations and the Technical File, without defects and arrears preventing or restricting the use of the Works for the intended purpose.
- 14.10. When Handover has been achieved in accordance with this Agreement the Employer shall issue the Handover Certificate to the Contractor. The Employer shall in the

Handover Certificate certify the date of Handover upon which the Works passed the Commissioning and satisfied the requirements of the Agreement and were complete.

- 14.11. If the Employer refuses the proposed Handover, the Employer shall advise the Contractor of all defects and/or outstanding works justifying, in the opinion of the Employer, such refusal. The Employer shall indicate the time frame within which such defects and/or outstanding works must be remedied by the Contractor, to be agreed upon between Parties acting reasonably in view of the situation at hand. All such required remediation works shall be considered as included in the Works.
- 14.12. The approval procedure for the acceptance of the works carried out for the purpose of resolving the Snagging List items shall be mutatis mutandis the same as described with respect to the Handover above.
- 14.13. Within a period of 30 (thirty) Days as from the date of Handover, the Contractor shall hand over to the Employer the originals of all documents regarding the Work and the construction process in its possession, in particular:
- 1) all reports of the official bodies of control;
 - 2) all architectural plans "as built" in paper and electronic form;
 - 3) all plans of technical installations "as built" in paper and electronic form;
 - 4) all technical files in paper and in electronic form;
 - 5) all manuals and maintenance instruction books in paper and in electronic form;
 - 6) all files documenting the involvement of the safety coordinator (if any);
 - 7) all manufacturers' quality warranties obtained by the Contractor during the construction process.
- 14.14. The Final Acceptance shall take place immediately upon expiry of the Guarantee Period.

CLAUSE 15. MAINTENANCE

- 15.1. The Contractor shall be responsible for remedying any Defects in the Works identified during the Guarantee Period, without prejudice to the Contractor's obligation to remedy the Defects and Snagging identified at Handover.
- 15.2. The Employer shall determine such maintenance arrangements as it may wish to enter into related to the Works after Handover. These costs for the maintenance shall entirely be borne by the Employer.

CLAUSE 16. PRICE

- 16.1. The Employer will pay to the Contractor the Price on the terms and conditions stipulated in this Agreement.
- 16.2. The Works will be performed for the Price. The Price at the Agreement Date is the Price specified in the Contractor's Quotation formed from the aggregate of the items mentioned in the Contractor's Quotation, all of which shall be specified as being at a lump sum price.
- 16.3. The Price is stated in EURO and will be invoiced and paid in EURO (EUR).
- 16.4. No amendments of the Price will be accepted except through the application of Variation Orders as set forth under Clause 11 hereof, in which event the Price will be amended by the Variation Order Price stated therein. Notwithstanding the foregoing, if after the date of signing this Agreement, there is any increase in import duties payable by the Contractor due to a Change of Law as described in Clause 11.4 of this Agreement, such Change of Law shall be treated as a written change instruction of the Employer given in accordance with Clause 11.1.
- 16.5. The Employer will pay a proportion of the Price to the Contractor on a monthly basis, on *pro rata* basis against the progress of the completed Work, in accordance with the provisions of Clause 17 below.

by the Contractor due to a Change of Law as described in Clause 11.4 of this Agreement, such Change of Law shall be treated as a written change instruction of the Employer given in accordance with Clause 11.1.

- 16.5. The Employer will pay a proportion of the Price to the Contractor on a monthly basis, on *pro rata* basis against the progress of the completed Work, in accordance with the provisions of Clause 17 below.
- 16.6. The Contractor undertakes that on or before Agreement Date it will procure the grant of an unconditional, irrevocable and callable on first demand "Bank Guarantee" for an amount of 10% of the Price to the Employer, from a first rank bank or insurance company acceptable to the Employer, acting reasonably, guaranteeing the due performance by the Contractor, in a form to be agreed by the Parties acting reasonably. The value of the Bank Guarantee shall be reduced at the time of Handover to 5% of the Price. The remaining 5% shall be released upon expiry of the Guarantee Period. Unless a Bank Guarantee is provided in terms of this Clause then the Employer shall be entitled to retain out of monies becoming due to the Contractor a sum equal to the amount of the Bank Guarantee. In the event that the Bank Guarantee has a fixed validity period and the Agreement does not allow the Bank Guarantee to be released when such validity period would elapse, the Contractor will procure the prolongation of the validity period or provide a replacement Bank Guarantee before the current validity period elapses, without which the Employer is entitled to draw down under the Bank Guarantee.
- 16.7. Each month, the Contractor shall submit to the Employer the Works progress report ("**Works Progress Report**") containing the detailed description of the Works executed in the preceding four weeks, indicating for each item listed in the Contractor's Quotation the ratio between the performed and remaining parts of the Works ("**Completion Ratio**") and valuating the relevant Works on basis of 100% of the Price, 100% of the Variation Order Prices and the Completion Ratio of each item specified in the Contractor's Quotation.
- 16.8. The Employer shall review the Work Progress Report and return it to the Representative of the Contractor with any remarks within 5 Days as from the day of receipt and give simultaneously its decision on the related invoicing.
- 16.9. The Contractor will provide, together with each monthly Works Progress Report, statements, provided by the Contractor's Subcontractors, confirming that their invoices, due and payable 30 days before the date of establishment of the Works Progress Reports, are settled. The Contractor undertakes to the Employer to require same confirmation from its Subcontractors regarding the settlement of the invoices of their own subcontractors and shall hold the Employer harmless from claims resulting from the Contractor's breach of this obligation.
- 16.10. In the event Parties do not agree on the content of a Works Progress Report either Party may submit the dispute for resolution in accordance with Clause 23 hereof;
- 16.11. The Parties confirm that submitting a matter for dispute resolution will not suspend the performance of the Works.

CLAUSE 17. PAYMENT TERMS

- 17.13. Save as expressly provided for elsewhere in this Agreement, the Contractor shall pay all taxes, duties and fees as are required by applicable laws and regulations in force at the time of signing of this Agreement, in relation to the design, supply and installation of the Works, the remedying of any defects and the performance of the Contractor's obligations under this Agreement, and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so. In the event of a Change of Law as described in Clause 11.4 of this Agreement any and all costs, charges, or fees arising as a result of such Change of Law—including but not limited to those affecting taxes, duties, fees, levies, or other similar financial obligations—shall be borne entirely by the Employer.

CLAUSE 18. EARLY TERMINATION

- 18.1. Parties agree, and waive any rights in that respect, that this Agreement cannot be terminated by either Party except in the events described in this Clause 18.
- 18.2. Both Parties may terminate the Agreement immediately, in case the other Party becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with its creditors, or, being a corporation, commences to be wound up (not being a members' voluntary winding up for the purposes of amalgamation or reconstruction) or has an administration order made against him or carries on business under an administrator, a receiver, trustee or manager for the benefit of his creditors or if any similar event occurs which has a similar effect to any of these events under any applicable law. This will be considered as a case of termination of the Agreement by default of the Agreement by the relevant Party.

- 18.3. Termination by the Employer not due to breach of the Agreement by the Contractor:

The Employer may unilaterally and at its sole discretion decide to terminate this Agreement at the Employer's convenience. In the event the Employer decides to terminate the Agreement the Employer will pay the Contractor the Price for all Works performed, the costs the Contractor incurs, acting reasonably, due to this early

termination (such as but not limited to cancellation costs of ordered materials or subcontractors and demobilisation costs;

- 18.4. Termination by the Employer due to breach of the Agreement by the Contractor

The Employer will be entitled to terminate this Agreement with immediate effect by giving notice in writing to the Contractor, without incurring any liability towards the Contractor, in any event described below:

- a) if the Contractor fails substantially to fulfil any of his obligations under the Agreement;
- b) if the Contractor has abandoned this Agreement or the Works;
- c) if the Contractor has without reasonable excuse suspended the progress of the Works for 10 days after receiving from the Employer written notice to proceed;

- d) despite a previous warning in writing from the Employer, if the Contractor is not executing the Works in accordance with the Agreement, or is failing to proceed with the Works with due diligence or is neglecting to carry out his obligations under the Agreement so as to affect adversely the carrying out of the Works;
- e) if the Contractor assigns this Agreement, or sub-lets the whole of the Works without the consent of the Employer;
- f) if the cap on liability for liquidated damages specified in Clause 7.3 is reached;

In the events as stipulated in Clause 18.4 (a) the Employer may issue a default notice requiring the Contractor to make good the failure and to remedy it immediately, within 30 (thirty) Days at the latest. If the Contractor fails to present to the Employer an acceptable remediation plan within these 30 (thirty) Days, the Employer may terminate the Contractor's employment under this Agreement with immediate effect;

In the events as stipulated in Clause 18.4 (d) the Employer may issue a default notice requiring the Contractor to make good the failure and to remedy it immediately, within 14 (fourteen) Days at the latest. If the Contractor fails to present to the Employer an acceptable remediation plan within these 14 (fourteen) Days, the Employer may terminate the Contractor's employment under this Agreement with immediate effect;

In the events as stipulated in Clause 18.4 (b), (c), the Employer may issue default notice requiring the Contractor to make good the failure and to remedy it immediately, within 7 (seven) Days at the latest. If the Contractor fails to present to the Employer an acceptable remediation plan within these 7 (seven) Days, the Employer may terminate the Contractor's employment under this Agreement with immediate effect;

In the events as stipulated in Clause 18.4 (e) and (f) the Employer may issue a default notice terminating the Contractor's employment under this Agreement with immediate effect;

Upon the expiry of such notice the Employer may without prejudice to any other remedy under this Agreement forthwith terminate the Agreement and enter the Site and expel the Contractor from the Site but in doing so without releasing the Contractor from any of his obligations or liabilities which have accrued under this Agreement and without affecting the rights and powers conferred by this Agreement on the Employer. Upon such termination the Employer may himself complete the Works or may employ any other contractor so to do, and the Employer shall have the free use of any Contractor's plant and equipment for the time being on the Site.

As soon as practicable after the Employer has terminated this Agreement, the Employer shall, after making such enquiries as he thinks fit, value the part of the Works executed prior to the date of termination and all sums then due to the Contractor as at the date of termination (the 'Termination Value'). The cost of execution and all other expenses incurred by the Employer in completing the Works is the 'Cost of Completion'.

If the Cost of Completion when added to the Termination Value exceeds the total amount which would have been payable to the Contractor for the execution of the Works, the Employer shall be entitled to payment by the Contractor of the amount of such excess. Any such excess shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly. This Clause shall be without prejudice to Clause 20.3 of this Agreement.

18.6. Effect of termination and transfer of ownership in the event of a termination

After a default notice has taken effect, the Contractor shall promptly cease the execution of the Works and shall remove all materials from the Site, unless required by the Employer as specified above.

CLAUSE 19. DEFECTS AND THE CONTRACTOR WARRANTIES

- 19.1. The Contractor shall be responsible for making good by repair or replacement with all possible speed at his expense any defect which may appear or occur during the Guarantee Period.
- 19.2. If any such defect appears or damage occurs the Employer shall forthwith inform the Contractor stating in writing the nature of the Defect. The provisions of this Clause shall apply to all repairs or replacements carried out by the Contractor to remedy defects and damage as if the repairs or replacements had been taken over on the date they were completed; however the Guarantee Period in respect of any repair or replacement shall not extend beyond two years from the date of Handover.
- 19.3. The Guarantee Period shall be extended by a period equal to the period during which the Works (or that part of the Works in which the Defect to which this clause applies has appeared or occurred) cannot be used by reason of that Defect.
- 19.4. If any such defect or damage is not remedied within a reasonable time, the Employer may proceed to do the work at the Contractor's risk and expense provided that he does so in a reasonable manner and notifies the Contractor of his intention so to do. The cost reasonably incurred by the Employer shall be deducted from the Price or be paid by the Contractor to the Employer.
- 19.5. The Contractor shall, if required by the Employer in writing, search for the cause of any Defect, under the direction of the Employer.
- 19.6. The Contractor shall react on notices of defects, shrinkages or faults of the Employer upon receipt of such notification as follows:

B) with respect to the cooling installation:

i) for critical defects shrinkages and other faults (whereby a defect, shrinkage or fault shall be understood to mean here: the failure to achieve the predetermined temperature) within 8 (eight) hours from the time of the notice of defects, shrinkages and other default, in the event the notice is received within the normal business hours and on a Business Day provided that the reaction of the Contractor can still be carried out within the normal business hours on the same Business Day, in the event the notice is received outside the normal business hours and/or Business Days, within 8 (eight) hours starting from the next Business Day and the normal business hours after receipt of the notice;

ii) for any other defects, shrinkages and other faults not referred to in Clause 19.6(B, i), the Contractor shall react within 14 (fourteen) days from the time of receipt of the notice.

C) with respect to the other parts:

i) for critical defects shrinkages and other faults: as soon as reasonably possible after receipt of the notice;

ii) for any other defects, shrinkages and other faults not referred to in Clause 19.6(C, i), the Contractor shall react within 14 (fourteen) days from the time of receipt of the notice.

CLAUSE 20. EMPLOYER'S AND CONTRACTOR'S LIABILITIES - LIQUIDATED DAMAGES

- 20.1. The following are Employer's liabilities:

- Claims and proceedings from Third Parties which are due to negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed or contracted to the Employer except the Contractor;
- A fault of the Employer or any person employed or contracted to them except the Contractor;
- Except to the extent insured under the insurance policies to be effected by the Agreement in accordance with this Agreement, loss or damage to the Works due to:
 - war, civil war rebellion, revolution, insurrection, military or usurped power;
 - strikes, riots and civil commotion not confined to the Contractor's employees;
 - radioactive contamination
- Loss of or damage to the parts of the Works taken over by the Employer;
- Loss of or damage to the Works by the Employer after a termination;
- Loss of or damage to property owned or occupied by the Employer other than the Works.

20.2. The Contractor's liabilities are any liabilities other than the Employer's liabilities stated in Clause 20.1.

20.3. Except as expressly provided in this Agreement for the payment or deduction of Liquidated Damages, as described in Clause 7.3, the Contractor shall not be liable for or liable to compensate the Employer for any indirect or consequential damages (including but not limited to damages due to loss of profits, loss of sales, loss of income or loss of production).

The total maximum contractual and non-contractual liability of the Contractor for all damages arising under or in connection with this Agreement shall at all times be limited to the Price even in the event of gross misconduct, this without prejudice to the aforementioned exclusion of indirect and consequential damages.

20.4. The aforementioned exclusions from and limitations of liability shall apply to the same extent to executive bodies, legal representatives, employees and other vicarious agents of the Contractor.

20.5. The limitations of liability in this Clause 20 shall not apply to any damage due to:

- a) liability for death or personal injury caused or contributed to by the Contractor
- b) fraud
- c) deliberate default
- d) willful tortious acts
- e) willful misconduct

CLAUSE 21. COLLATERAL WARRANTIES

21.1. Whenever the Employer from time to time requires, the Contractor shall execute and delivers a deed or deeds of collateral warranty in favour of the Employer and any Third Party with an interest in all or part of the Site or the Works in the form to be agreed upon by the Parties acting reasonably.

21.2. Whenever the Employer from time to time requires, the Contractor shall ensure that each Subcontractor executes and delivers a deed or deeds of collateral warranty in

favour of the Employer and any Third Party with an interest in all or part of the Site or the Works in the form to be agreed upon by the Parties.

- 21.3. If the Contractor appoints any professional consultant to carry out the design of all or part of the Works then whenever the Employer from time to time requires, the Contractor shall ensure that each such design consultant executes and delivers a deed or deeds of collateral warranty in favour of the Employer and any Third Party with an interest in all or part of the Site or the Works in a form to be agreed by the Employer.

SECTION IV. GENERAL PROVISIONS

CLAUSE 22. APPLICABLE LAW

This Agreement shall be governed by and interpreted in accordance with the laws of England.

CLAUSE 23. DISPUTE RESOLUTION

- 23.1. The Parties will attempt to resolve amicably and in good faith any and all disputes that may arise in connection with this Agreement.
- 23.2. If a dispute or difference arises under this Agreement which either party wishes to refer to adjudication, the Scheme shall apply, subject to the following:
- a) For the purposes of the Scheme, the nominating body for the Adjudicator shall be the Chartered Institute of Arbitrators,
 - b) The Adjudicator shall give reasons for any decision.

CLAUSE 24. INVALIDITY

- 24.1. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
- 24.2. With respect to the provisions of this Agreement, which are held to be invalid or unenforceable, in whole or in part, the Parties shall negotiate in good faith with the intention to replace the void provision with a valid one that in its economic effect complies best with the void provision in a manner consistent with their joint intention as expressed herein.

CLAUSE 25. NO WAIVER

- 25.1. Neither Party shall be deemed to have waived any right, power, authority or privilege under this Agreement or any provision hereof, unless such a waiver is duly executed in writing and acknowledged by the Party to be charged by such waiver.
- 25.2. The failure of a Party at any time to require performance of any provision of this Agreement shall not in any way affect the validity of this Agreement or any part thereof, nor the right of that Party to require performance of that provision or any other provision of this Agreement in the future.
- 25.3. No direction, admission, approach, consent, approval, confirmation, comment, sanction, acknowledgement or advice made or given by the Employer shall, unless expressly stated, in any way relieve the Contractor from its liabilities or obligations

under the Contract, nor shall such liabilities or obligations be restricted or qualified in any way.

CLAUSE 26. ASSIGNMENT

- 26.1. Neither Party may assign its rights and/or obligations under this Agreement in whole or in part to any third party, except in the event that the other Party accepts such assignment beforehand in writing.
- 26.2. However, the Employer may assign its rights and/or obligations under this Agreement to its affiliate or legal successor upon prior notice to the Contractor and otherwise with the consent of the Contractor, not to be unreasonably withheld or delayed.

CLAUSE 27. ENTIRE AGREEMENT

This Agreement, which cancels and supersedes all previous arrangements or agreements between the Parties with respect to the subject matter hereof, constitutes the entire Agreement between them with respect to the subject matter hereof and shall not be changed or modified in any manner except by an instrument in writing signed by duly authorized officers or Representatives of the Parties.

CLAUSE 28. NOTICES

- 28.1. Except as specified otherwise in this Agreement, all notices, declarations, demands, requests, and other communications required under, or otherwise referred to in, this Agreement shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by registered mail or if sent by prepaid "overnight delivery" via DHL or other internationally recognized air courier or if sent by email when receipt is confirmed by the recipient and in any case addressed to the respective Parties at their address set forth above or the email addresses stated below, as applicable or at such other address as such Party may hereafter designate by notice to each of the other Parties as herein provided.
- 28.2. If personally delivered in the form specified herein, notices, declarations, demands, requests, and other communications under this Agreement shall be deemed to have been given and received and shall be effective when personally delivered.
- 28.3. If sent by e-mail in the form herein specified, notices, declarations, demands, requests, and other communications under this Agreement shall be deemed to have been given and received and shall be effective when received in fully legible form by the Party to which the notice is addressed, which shall be deemed to occur upon completion of the transmission unless (a) such transmission is made on a day which is not a Business Day or on a Business Day but outside regular business hours, in which case the notice shall be deemed received at 9:00 A.M. on the next succeeding Business Day, or (b) the Party to which the notice is addressed then notifies the other Party by return facsimile that the copy received is illegible in whole or in part.

CLAUSE 29. INTELLECTUAL PROPERTY RIGHTS AND RIGHTS OF USE

- 29.1. Without prejudice to Clause 4, the Parties agree on the following rules regarding the use, exploitation of and title to intellectual property rights, proprietary rights, know-how and/or other results, other than copyrighted works.

- 29.2. The Background of the Contractor shall remain with the Contractor. This sole right or title of Contractor includes also all intangible property rights to any services Contractor has provided in connection with this Agreement.
- 29.3. In terms of this Agreement, intangible property rights include in particular:
- Industrial property rights (trademark rights, design rights, patent rights or utility model rights etc.;
 - Patentable inventions;
 - Know-how, being defined as the total of non-patented, practical knowledge gained through experience and experiments which is secret, essential and identified.
 - Business and trade secrets, being defined as commercial or technical facts related to the company and which must be kept secret in the Contractor's economic interest.
- 29.4. The Employer is obliged to refrain from registering any property rights for the information and/or documents as well as know-how received from the Contractor or from having third parties register such property rights.
- 29.5. Joint developments do not form part of this Agreement. If the Parties intend to create joint developments, the Parties undertake to conclude a separate contract.
- 29.6. For the purpose of the contractual use of the system, beginning on the utilisation commencement date, the Contractor grants the Employer a non-exclusive (transferable for the operation of the system), continuing, irrevocable right to use the system at the specified location and for the specified purpose, and to use all plans, documents and any know-how as well as the scope of supply and services accordingly. The Employer may transfer that right to third parties exclusively to the extent being required for the operation or necessary maintenance and servicing work of the system.

CLAUSE 30. THIRD PARTY BENEFICIARIES – NO PARTNERSHIP

- 30.1. Except as expressly otherwise provided for in this Agreement, nothing in this Agreement is aimed at creating any rights or obligations in favour of persons or entities that are not a party to this Agreement, including employees or former employees of either Party, or at conferring rights to indemnification or repair on persons or entities other than the Parties hereto and their heirs, successors and respective legal successors.
- 30.2. Nothing in this Agreement shall be deemed to constitute a partnership or personal association between the Parties hereto, or shall be deemed to make one of the Parties a Representative of the other Party for any reason whatsoever, and none of the Parties hereto shall have the authority or power to contractually engage or bind the other Party or create a liability on account of the other Party, for whatever reason.

CLAUSE 31. LANGUAGE

- 31.1. This Agreement has been entered into in the English language and, except as expressly otherwise agreed between the Parties and/or otherwise required by applicable law and regulations, English shall be the controlling language for all announcements, communications and procedures between the Parties in connection with the present Agreement.

- 31.2. All other documents, appendices and/or documentary materials relating to the realisation of the Work shall be prepared in the English language.

CLAUSE 32. NON-DISCLOSURE CLAUSE

The Contractor shall not be entitled to disclose to any Third Party any information regarding the Works and the Site or this Agreement (e.g. name of the Employer nor the nature and destination of the Works), unless the Employer gives in writing its express prior consent.

CLAUSE 33. FORCE MAJEURE

- 33.1. Neither Party shall be liable to the other for any act or omission to the extent that such act or omission shall result from the occurrence of Force Majeure as described in Clause 33.4 of this Agreement.
- 33.2. Each party agrees:
- a) to use reasonable efforts to foresee and avoid any occurrence of Force Majeure;
 - b) to notify the other party within 3 (three) days of any occurrence of Force Majeure;
 - c) to provide reasonable details regarding the event, its anticipated duration, and the measures taken to mitigate its effects.
 - d) to use reasonable efforts to resume full performance of its obligations hereunder as expeditiously as possible;
 - e) If the Force Majeure event or circumstance continues for more than one hundred and twenty(120) days in the aggregate and prevents either Party from substantially performing its essential obligations despite its genuine efforts, either Party may, upon written notice, request that the Parties consult in good faith with a view to adapting the Agreement to the new situation. If no mutually acceptable solution is reached within sixty (60) days following such notice, either Party may terminate the Agreement without liability.
- 33.3. If a case of Force Majeure occurs, the timeframes for the performance of the obligations under is Agreement shall be extended by agreement of the Parties hereto and in case of failure to reach such agreement, shall be extended at least according to the duration of Force Majeure. The Parties hereto shall be released from any liability to perform, or delays in performance, of their obligations caused by occurrence of Force Majeure.
- 33.4. For the purposes of this Agreement, "Force Majeure" means any event or circumstance, or combination of events and circumstances, which is beyond the reasonable control of the affected Party, was not reasonably foreseeable and which excessively prevents, hinders, or delays the performance of this Agreement in whole or in part, which neither Party could prevent and which an experienced contractor would have judged at the Agreement Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it, which without prejudice to and subject to the foregoing, may include but is not limited to:
- acts of God, natural disasters, extreme weather conditions that, based on objective data, occur only once every ten years, climate-related events;
 - epidemics, pandemics, public health emergencies, and any governmental restrictions or measures taken in response thereto;
 - war, hostilities (declared or undeclared), terrorism, armed conflicts, civil war, riot, strikes, invasion, act of foreign enemies, revolution, lockouts, labour disputes or industrial disturbances;

- ionising radiations, or contamination by radio-activity for any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component;
- pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

- acts or omissions of public authorities, changes in applicable law, regulation, permits, or their interpretation by competent authorities after the Agreement Date;

- supply chain disruption, embargoes, export or import restrictions, blockades, or any interruption in logistics or transportation;

- cyberattacks, large-scale IT system failures, or significant disruption of telecommunications or critical infrastructure, but only to the extent that all reasonable, proportionate, and industry-standard preventive measures have been taken to prevent or mitigate such events;

- social, political or institutional crises materially affecting performance, including mass migrations, sanctions regimes, or systemic economic crises;