

CLARKE ENERGY LIMITED

GENERAL CONDITIONS FOR THE SUPPLY OF SUB-CONTRACT GOODS AND WORKS

1.0 Definitions

1.1 In these Conditions and in any term of the Contract the following expressions shall have the following meanings:

1.1.1 **“Clarke Energy”** means Clarke Energy Limited whose registered office is situated at Power House, Senator Point South Boundary Road, Knowsley, Industrial Park, Liverpool L33 7RR

1.1.2 **“Commencement Date”** means the date for commencement of any Works as stated in the Contract or, if none is stated, the date for commencement notified by Clarke Energy.

1.1.3 **“Completion”** means acceptance and takeover of the Works by Clarke Energy as evidenced by Clarke Energy in writing in accordance with the Specification.

1.1.4 **“Conditions”** means these general conditions for the supply of Goods and Works.

1.1.5 **“Confidential Information”** means all financial, business and technical or other data and all other confidential information (whether written, oral or in electronic form or on magnetic or other media) concerning Clarke Energy.

1.1.6 **“Contract”** means a contract for the sale and purchase of the Goods and/or the supply and acquisition of the Works on the terms of the Conditions, the Order and any attachments or appendices to the Order.

1.1.6 **“Employer”** means any employer, owner or other party with whom Clarke Energy has contracted with under the terms of the Main Contract.

1.1.7 **“Goods”** means, in relation to any Contract, any and all material, goods, equipment and other items (including any instalment of them or any part of them) which are the subject of that Contract.

1.1.8 **“Main Contract”** means the main contract entered into by Clarke Energy to which an Order is placed as a sub-contract.

1.1.9 **“Order”** means:

(i) a Clarke Energy official order addressed to the Supplier and requesting the supply of goods or Works by the Supplier to Clarke Energy duly signed on behalf of Clarke Energy, or

(ii) any other order for the supply of Goods or Works by the Supplier to Clarke Energy made on behalf of Clarke Energy.

1.1.10 **“Price”** means the price for the Goods and/or the charge for the Works.

1.1.11 **“Programme”** means any programme or times for the carrying out of any works or for the delivery of any Goods as stated in the Contract. In the absence of any programme, the supplier shall carry out the Works or deliver the Goods with all due diligence and expedition and in accordance with any reasonable requirements notified by Clarke Energy.

1.1.12 **“Site”** means the location at which any Works are to be carried out or any Goods are to be delivered, as stated in the Order.

1.1.13 **“Specification”** means any plans, drawings, data, samples or other descriptions or information relating to the Goods or Works attached to the Order.

1.1.14 “**Supplier**” means, in relation to any Contract, the provider of the Goods and/or Works on the terms of that Contract.

1.1.15 “**Systems**” means the Works and all monitoring and control systems related to them.

1.1.16 “**Works**” means, in relation to a Contract, any and all services to be carried out or Works to be performed by the Supplier pursuant to that Contract, or any person on behalf of the Supplier, and, where the context permits, shall include any and all Goods supplied in connection therewith.

1.1.17 “**Writing**” means any written communication, including facsimile transmission.

1.2 Any reference in these Conditions or elsewhere in the Contract to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended from time to time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2.0 The Contract

2.1 These Conditions shall apply to all contracts for the supply of Goods and/or Works pursuant to an Order unless otherwise agreed between Clarke Energy and the Supplier and will supersede all previous communications or agreements between the Supplier and Clarke Energy whether oral in writing relating to any Works or any Goods.

2.2 The Order constitutes an offer by Clarke Energy to purchase the Goods and/or acquire the Works referred to therein on the terms of the Contract.

2.3 The acceptance in Writing of the order or the commencement of any work or any other conduct which is consistent with acceptance of the Order by the Supplier shall constitute acceptance by the Supplier of the Order and all of the terms of the Contract.

2.4 No variation to the terms of the Contract shall be binding unless agreed in Writing between the authorised representatives of Clarke Energy and the Supplier. The Supplier shall not unreasonably withhold or delay its consent to a variation proposed by Clarke Energy.

2.5 No indulgence shown by either party shall prevent that party subsequently insisting upon its rights and remedies and no waiver by Clarke Energy of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.

2.6 Clarke Energy shall have the right to delegate any of its rights or powers under the Contract by written notice to the Supplier.

2.7 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

2.8 If the Goods are to be delivered, or the Works are to be performed, by instalments, the Contract will be treated as a single contract and not severable.

3.0 Communications

Any notice required or permitted to be given by either party to the other under the contract shall be in Writing addressed to that other party at its registered office or principal place of business or other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notices given by facsimile or personal delivery shall be deemed to be received on the day of service (if within business hours) and on the next working day (if outside working hours). Notices served by first class post shall be deemed to be received on the second day after posting.

4.0 Price of the Goods and Works

- 4.1 The Price of the Goods and the Works shall be as stated in the Order and, unless otherwise stated shall be:
- 4.1.1 exclusive of any applicable value added tax (which shall be payable by Clarke Energy subject to receipt of a VAT invoice).
 - 4.1.2 inclusive of all charges for packaging (and return), packing, shipping, carriage, insurance and delivery and off-loading of the Goods to the Site and any duties, imposts or levies other than value added tax.
- 4.2 No increase in the Price may be made without the prior consent of Clarke Energy in Writing, whether such increase may be on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise howsoever arising.
- 4.3 Clarke Energy shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not notified to Clarke Energy.
- 4.4 If the Goods are not delivered, or the Works are not performed, on the due date then, without prejudice to any other remedy, Clarke Energy shall be entitled to deduct from the Price or (if Clarke Energy has paid the Price) to claim from the Supplier by way of liquidated damages for delay one per cent (1%) of the Price for every week's delay, up to a maximum of ten per cent (10%) or such other liquidated damages as are specified in the Order. In the event that any delay is of a period of ten (10) weeks or more Clarke Energy may terminate the Contract and the procedure in Condition 13.5 shall be followed.

5.0 Terms of Payment

- 5.1 Unless otherwise stated in the Order, the Supplier shall be entitled to invoice Clarke Energy on or at any time after delivery of the Goods or Completion of the Works, as the case may be, and each invoice shall quote the number of the Order where an Order number has been notified to the Supplier.
- 5.2 Unless otherwise agreed in Writing between Clarke Energy and the Supplier, a retention of twelve and a half per cent (12.5%), will be applied where the price of Works exceeds ten thousand pounds (£10,000). The retention shall be increased to fifteen per cent (15%) for Contracts where the Price of Works exceeds fifty thousand pounds (£50,000). The retention will reduce to two and a half percent (2.5%) and five percent (5%) respectively on total completion of all snagging, with the remaining two and a half percent (2.5%) or five percent (5%) respectively released after twelve months from completion of snagging or at the end of the period referred to in Condition 9.1. Separate invoices must be submitted for the three stages of payment (completion of the works, Completion of Snagging and Final Retention.)
- 5.3 Unless otherwise stated in the Order Clarke Energy shall pay the Price of the Goods and the Works sixty (60) days after the receipt of a proper invoice or, if later, after acceptance of the Goods or Works in question by Clarke Energy.
- 5.4 Clarke Energy shall be entitled to set off against the price any sums owed to Clarke Energy by the Supplier, whether under the Contract or any other contract or arrangement.

6.0 Liability

- The Supplier shall indemnify Clarke Energy in full against all liability, loss, damages, costs, claims, proceedings and expenses (including legal expenses) whatsoever awarded against or incurred or paid by Clarke Energy as a result of or in connection with:
- 6.1 Negligence, breach of warranty or breach of statutory duty by the Supplier in relation to the Goods or the Works and/or any liability arising in respect of the Goods and/or Works under any statutory or contractual provision or under any regulations relating thereto including a liability arising under condition 7.3.

- 6.2 Any claim that the Goods infringe, or their importation, use or resale, infringes the patent, copyright, design right, trade mark, or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by Clarke Energy and the facts giving rise to the claim were notified by Clarke Energy prior to commencement of the Works or supply of the Goods, and
- 6.3 Any damage to property, death, personal injury or other loss suffered by any person as a result (direct or indirect) of any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods in connection with the performance of the Works.

7.0 The Main Contract

- 7.1 The Supplier shall be deemed to have full knowledge of the provisions of the Main Contract (other than the details of Clarke Energy's prices thereunder as stated in the bills of quantities or schedules of rates and prices, as the case may be), and Clarke Energy shall, if so requested by the Supplier provide the Supplier with a true copy of the Main Contract other than details of Clarke Energy's price and other such details referred to above.
- 7.2 Save where the provisions of the Contract otherwise require, the Supplier shall so execute, complete and maintain the Works so that no act or omission of his under the Contract shall constitute, cause or contribute to any breach by Clarke Energy of any of its obligations under the Main Contract and the Supplier shall, save as above, assume and perform under the Contract all the obligations and liabilities of Clarke Energy under the Main Contract in relation to the Works.
- 7.3 The Supplier shall indemnify Clarke Energy against every liability which Clarke Energy may incur under the Main Contract to any other person whatsoever and against all claims, demands, proceedings, damages, costs and expenses made against or incurred by Clarke Energy under the Main Contract by reason of any breach by the Supplier of the Contract.
- 7.4 The Supplier hereby acknowledges that any breach by it of the Contract may result in Clarke Energy committing breaches of and becoming liable in damages under the Main Contract and other contracts made by it in connection with works under the Main Contract and may occasion further loss or expense to Clarke Energy in connection with any works under the Main Contract and all such damages loss and expense are agreed to be within the contemplation of the parties as being the probable result of any such breach by the Supplier.

8.0 Supplier's Responsibilities in Relation to Works

- 8.1 Where the Supplier is undertaking Works pursuant to a Contract, the Supplier shall carry out and complete the Works in accordance with the Contract including the selection of appropriate specifications and standards for all materials, goods and workmanship to be used in the Works, so far as these are not otherwise described in the Contract. In particular the Supplier shall be fully responsible for all aspects of the design of the Works save as set out in the Specification provided that the Supplier shall notify Clarke Energy promptly in Writing in the event that the Supplier becomes aware of any defects in the Specification or any respect in which the Works to be undertaken are unlikely to meet requirements.
- 8.2 The Supplier shall be responsible for giving all notices legally required and for paying all fees legally payable in connection with the Works and the carrying out of the Works at the Site.
- 8.3 The Supplier shall be responsible for promptly notifying to Clarke Energy:
- 8.3.1 any requirement for obtaining consents for the Works and for complying with all such consents; and
 - 8.3.2 any claim, or circumstances which are likely to lead to a claim for the payment of any sum in excess of the Price by Clarke Energy in relation to the Works. Failure by the Supplier to notify in accordance with this Condition 8.3.2 shall result in the Supplier being deemed to have waived any such claim.
- 8.4 The Supplier shall be given access to the Site on the Commencement Date and shall thereupon proceed regularly and diligently with the Works in accordance with the Programme. The Supplier

shall ensure that where the Works and/or Goods integrate with that of other suppliers and/or subcontractor's full co-operation is maintained during the execution of the Works with that of others. In the event of any extra expense being caused by the failure of the Supplier to programme and arrange its work so that it fully integrates with that of others, the Supplier will be liable for any additional costs thereby incurred. The Supplier may be required to install, test and/or commission certain sections of the Works to achieve the Programme. The Price is deemed to include any costs in connection with complying with this requirement.

8.5 If the Works are not properly completed in accordance with the Programme (adjusted pursuant to this Condition) the Supplier shall indemnify Clarke Energy against all losses, claims and expenses thereby suffered or incurred by Clarke Energy.

8.6 Once delivered Goods shall not be removed from the Site without Clarke Energy's consent.

8.7 The Works shall be executed by the due date for completion specified in the Contract.

9.0 Defects in Works

9.1 Any defects or deficiencies which appear within eighteen (18) months of Completion or twelve (12) months from handover by Clarke Energy to Employer or such other period as is agreed between Clarke Energy and the Supplier in Writing shall be made good by the Supplier entirely at its own cost promptly following notification in Writing of any such defects or deficiencies provided that such notification is given to the Supplier during the said eighteen (18) months from Completion or twelve (12) months from handover by Clarke Energy to the Employer. If the Supplier shall fail to make good defects or deficiencies promptly as required above, Clarke Energy may engage others to carry out the necessary work and the Supplier shall indemnify Clarke Energy against all such costs incurred.

9.2 In the event that Clarke Energy exercises its right to make good any defects or deficiencies in accordance with Condition 9.1 above, such work shall be deemed to have been carried out by the Supplier and the liability of the Supplier in relation to the Goods and/or Works shall be unaffected thereby.

10.0 Supplier's Responsibilities in Relation to Goods

Where the Supplier is supplying Goods pursuant to the Contract:

10.1 The Goods shall be delivered to the Site on the date or within the period and in accordance with the requirements stated in the Contract and/or in accordance with any programme stated in the Contract, in either case during Clarke Energy's usual business hours.

10.2 Where the date of delivery of the Goods is to be specified after the placing of the Order, the Supplier shall give Clarke Energy reasonable notice of the specified date.

10.3 Where physically possible, a packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.

10.4 Clarke Energy shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until Clarke Energy has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

10.5 The Supplier shall supply Clarke Energy in good time with any instructions or other information required to enable Clarke Energy to accept delivery of the Goods and performance of the Works.

10.6 Clarke Energy shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any goods are accepted by Clarke Energy.

10.7 The Supplier warrants Clarke Energy that the Goods will:

- 10.7.1 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier (expressly or by implication) on or before the time the Order is placed;
 - 10.7.2 be free from defects in design, material and workmanship;
 - 10.7.3 correspond with any relevant Specification or sample;
 - 10.7.4 comply with all statutory requirements and regulations relating to the sale of the Goods;
 - 10.7.5 not infringe the rights of third parties.
- 10.8 The quantity, quality and description of the Goods shall, subject as provided in these Conditions, be as specified on the order and/or in any applicable Specification supplied by Clarke Energy to the Supplier or agreed in Writing by Clarke Energy. Any Specification supplied by Clarke Energy to the Supplier, or specifically produced by the Supplier for Clarke Energy, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of Clarke Energy. The Supplier shall not (without Clarke Energy's approval in Writing) disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.
- 10.9 The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.
- 10.10 The Supplier shall not unreasonably refuse any request by Clarke Energy to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and the Supplier shall provide Clarke Energy or any person to whom this right has been delegated by Clarke Energy with all facilities reasonably required for inspection and testing.
- 10.11 If as a result of inspection or testing Clarke Energy is not satisfied that the Goods will comply in all respects with the Contract and Clarke Energy so informs the Supplier within fourteen (14) days of inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance. When the Goods have achieved satisfactory results in Tests, the Supplier shall provide to Clarke Energy certificates indicating the tests which have been performed in relation to the Goods and the results achieved.
- 10.12 The Goods shall, where possible, be marked in accordance with Clarke Energy's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course. There must also be prominently displayed on the packaging of the Goods any storage requirements or lifting hazards.
- 10.13
- 10.13.1 Title to the Goods supplied pursuant to these Conditions shall become the property of Clarke Energy at whichever is the earlier of the following times:
 - (a) when Goods are delivered pursuant to these Conditions;
 - (b) when the Supplier becomes entitled to have the value of the Goods in question including in an interim certificate of payment.
 - 10.13.2 Where, prior to delivery, the property in the Goods passes to Clarke Energy, the Supplier shall, so far as is practicable, set the Goods aside and mark them as Clarke Energy's property in a manner reasonably required by Clarke Energy. Until the Goods have been so set aside and marked Clarke Energy shall be entitled to withhold any interim certificate of payment to which the Supplier might otherwise be entitled.
 - 10.13.3 The Supplier shall permit Clarke Energy at any time upon reasonable notice to inspect any Goods which have become the property of Clarke Energy and shall grant Clarke Energy access for such

purpose to the Supplier's premises or procure the grant to Clarke Energy of access for such purpose to any other premises where such Goods may be located.

- 10.13.4 All such Goods shall be in the care and possession of the Supplier solely for the purposes of the Conditions and shall not be within the ownership or disposition of the Supplier.
- 10.13.5 No interim certificate of payment issued by Clarke Energy shall prejudice their right to reject Goods which are not in accordance with the Conditions. Upon any such rejection the property in the rejected Goods shall immediately revert to the Supplier.
- 10.13.6 All Suppliers equipment shall, when brought on to the Site, be deemed to be intended exclusively for the execution of the Works. The Supplier shall not thereafter remove the same or any part thereof from the Site without the consent of Clarke Energy, which shall not be withheld in the case of Suppliers equipment not currently required for the execution of the Works on Site.
- 10.13.7 The Supplier shall be liable for loss of or damage to any of the Supplier's equipment which may occur otherwise than through the default of Clarke Energy.
- 10.13.8 The Supplier shall be responsible for maintaining the Supplier's equipment on Site in safe working order.

11.0 Insurance and Risk

- 11.1 The Supplier warrants that he has insurance which is adequate to cover the risks specified in Condition 6 and that such insurances will be maintained in force throughout the period of the carrying out of the Works and the warranty period specified in Condition 9.1.
- 11.2 Without prejudice to Condition 11.1, the Supplier shall maintain a public liability insurance policy with a limit of indemnity of not less than five million pounds (£5,000,000) unless Clarke Energy agrees in Writing to a lower figure.
- 11.3
 - (a) All free issue items provided by Clarke Energy, plant, parts, equipment and materials used in the execution of the Works shall be at the sole risk of the supplier until Completion. Until Completion the Supplier shall be responsible for, and shall reinstate to Clarke Energy's satisfaction, all loss or damage to the Works, Goods, equipment and such free issue items, howsoever caused, and the Supplier shall maintain insurance for their full reinstatement value.
 - (b) Subject to paragraph (a) above, risk of damage to or loss of the Goods shall pass to Clarke Energy upon delivery to the Site and (if applicable) Completion. The property in the Goods shall pass to Clarke Energy upon delivery, unless payment for the Goods (less any retention money) is made prior to delivery, when it shall pass to Clarke Energy once payment has been made and the Goods shall be considered to have been appropriated to the Contract and shall be marked "property of Clarke Energy Limited".
- 11.4 The Supplier shall provide copies of the policies of insurance required to be maintained under the Contract and evidence of premiums paid whenever reasonably requested to do so by Clarke Energy.

12.0 Confidentiality

- 12.1 For the purposes of this clause 12:
 - 12.1.1 The "Disclosing Party" is the party which discloses Confidential Information to, or in respect of, which Confidential Information comes to the knowledge of, the other party; and
 - 12.1.2 The "Receiving Party" is the party which receives Confidential Information relating to the other party.
- 12.2 The Receiving Party shall take all necessary precautions to ensure that all Confidential Information it receives under or in connection with the Agreement:

- 12.2.1 Is given only to such of its employees and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement; and
- 12.2.2 Is treated as confidential and not disclosed (without the prior written consent of the Disclosing Party) or used by the Receiving Party or any of its employees or its professional advisors or consultants otherwise than for the purposes of the Agreement.
- 12.3 The Supplier shall ensure that all its employees or professional advisors or consultants are aware of the Supplier's confidentiality obligations under the Agreement.
- 12.4 The provisions of clauses 12.2 and 12.3 shall not apply to any Confidential Information which:
 - 12.4.1 Is or becomes public knowledge (otherwise than by breach of this clause 12);
 - 12.4.2 Was in the possession of the Receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party;
 - 12.4.3 Is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 12.4.4 Is independently developed without access to the Confidential Information; or
 - 12.4.5 Must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Receiving Party.
- 12.5 In the event that the Supplier fails to comply with this clause 12 Clarke Energy reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 12.6 The provisions of this clause 12 shall survive the termination of the Agreement, however arising.

13.0 Breach and Termination

- 13.1 Without prejudice to any other remedies which may exist, if any Goods and/or Works are not supplied or performed in accordance with the Contract, then Clarke Energy shall be entitled:
 - 13.1.1 to require the Supplier to repair the Goods or to supply replacement Goods or Works in accordance with the Contract within seven (7) days (or such longer period as may be specified in such notice) of receiving notice from Clarke Energy in Writing; or
 - 13.1.2 at Clarke Energy's sole discretion, if it is not practicable for the Supplier to comply with Condition 13.1.1, or if the Supplier has failed so to do to treat the Contract as discharged by the Supplier's breach immediately following notice from Clarke Energy and require the repayment of any part of the Price which has been paid, together with any sums payable under Condition 6.
- 13.2 Without prejudice to any other remedies which may exist, either party may at its option suspend or terminate the Contract forthwith by written notice to the other if the other is in material breach of any of its obligations hereunder and fails to remedy the same within seven (7) days of receiving notice thereof in Writing from the party thereby entitled to terminate.
- 13.3 Clarke Energy shall be entitled to terminate the Contract in respect of all or part only of the Goods and/or Works by giving notice to the Supplier at any time prior to delivery or performance, in which event Clarke Energy's sole liability shall be to pay to the Supplier the Price for the Goods or Works in respect of which Clarke Energy has exercised its right of cancellation, less the Supplier's net saving of cost arising from cancellation.
- 13.4 Clarke Energy shall be entitled to terminate the Contract without liability to the Supplier by giving notice to the Supplier at any time if:

- 13.4.1 The Supplier shall abandon, suspend or fail to commence or make proper progress with the Works in accordance with Condition 8.4 and does not remedy such default within seven (7) days of receipt of written notice from Clarke Energy in Writing requiring him to do so; or
 - 13.4.2 The Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or, being an individual or firm, becomes bankrupt or, being a company becomes subject to an administration order or goes into liquidation, otherwise than for the purpose of amalgamation or reconstruction; or
 - 13.4.3 An encumbrancer takes possession of, or a receiver is appointed in respect of, any of the property or assets of the Supplier; or
 - 13.4.4. The Supplier ceases, or threatens to cease, to carry on business; or
 - 13.4.5 Clarke Energy reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.
- 13.5 On termination other than pursuant to Condition 13.3 Clarke Energy may itself take over the Works and all Goods on Site and make such arrangements as it considers necessary to have the Works completed otherwise than by the Supplier, who shall thereafter be excluded from carrying out further Works.

In that event Clarke Energy shall cease to be obliged to make any further payment under the Contract until the Works are completed. Upon completion of the Works, Clarke Energy shall pay to the Supplier an amount which takes into account the following:

- (a) the price which would have been due to the Supplier had the Supplier duly completed the Works; less
- (b) the cost to Clarke Energy of having the remaining Works completed plus any loss, damage or other expenses suffered or incurred by Clarke Energy; and
- (c) Less an amount equal to any amount already paid to the Supplier plus any sum due under Condition 6.

If the sum calculated under (b) and (c) exceeds the sum calculated under (a) the amount of such excess shall constitute a debt owing by the Supplier to Clarke Energy and shall be recoverable accordingly. If there is no such excess the Supplier shall be paid the amount by which the sum calculated under (a) exceeds the sum calculated under (b) and (c).

14.0 Determination of the Main Contract

- 14.1 If the Main Contract is determined for any reason whatsoever before the Supplier has fully performed his obligations under the Contract, then Clarke Energy may at any time by written notice to the Supplier forthwith determine the Contract and thereupon the Supplier shall with all reasonable speed remove his men and equipment from the Site.
- 14.2 Upon a determination of the Contract under this clause, the other provisions of the Contract shall cease to have effect and subject to sub clause 14.3 below the Supplier shall be entitled to be paid the full value, calculated by reference to the Price and to the rates and prices contained in any bill of quantities or schedule forming part of the Contract, of all work properly done on Site by the Supplier and of all materials properly bought and left on Site by the Supplier but less such sums as the Supplier has already received on account. Furthermore if at the date of such determination the Supplier has properly prepared or fabricated off Site any Goods for subsequent incorporation in the Works Contract, and shall deliver such goods to the Site or to such other place as Clarke Energy may reasonably direct, then the Supplier shall be paid for such Goods as materials properly brought and left on Site provided always that nothing shall affect the rights of Clarke Energy in respect of any breach of this Contract committed by the Supplier prior to such determination under this clause.

14.3 If the Main Contract is determined by the Employer in consequence of any breach of Contract by the Supplier then the provisions of the preceding sub-clause as to payment shall not apply, but the rights of Clarke Energy and the Supplier shall be the same as if the Supplier had by such breach repudiated the Contract and Clarke Energy had by its notice of determination under sub-clause 13.1 of this clause elected to accept such repudiation and the provisions of clause 13.5 shall accordingly apply.

15.0 Force Majeure

Neither the Supplier nor Clarke Energy shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of its obligations in relation to the Goods or the Works if the delay or failure arose by reason of circumstances beyond that party's control which could not have been avoided by the exercise of reasonable care including without limitation act of God, war, riot, civil commotion, compliance with any law on government order, rule, regulation or direction, fire, flood, storm, armed conflict or terrorist attack.

16.0 Assignment and Subcontracting

16.1 The Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights under the Contract, without Clarke Energy's approval in Writing.

16.2 The Supplier shall not subcontract the whole or any part of its obligations under the Contract without the prior written consent of Clarke Energy and then only to sub-contractors approved by Clarke Energy. In so far as Clarke Energy does give its consent the Supplier shall remain fully responsible for all acts and omissions of sub-contractors and shall ensure that the insurance cover required to be maintained under the Contract provides the same cover for such sub-contractors as it does for the Supplier or alternatively, that equivalent insurance cover is maintained in respect of such sub-contractors.

16.3 Clarke Energy reserve the right to approve all suppliers used by the Supplier provided that the Supplier shall retain full responsibility for all Goods supplied pursuant to, or as a part of the Works covered by the Contract, in accordance with the terms of the Contract.

17.0 Health & Safety

17.1 The Supplier shall be responsible for the safety of all persons engaged in the supply of Goods to Clarke Energy and for all persons who may be affected by the activities of the Supplier and shall procure that all works undertaken by the Supplier and that the Goods supplied by it comply with all of Clarke Energy's safety regulations and procedures (which are notified to the Supplier) and with all applicable health and safety legislation in force from time to time, including the Health and Safety at Work Act 1974 and in particular Section 6 thereof.

18.0 Compliance with Anti-Slavery and Human Trafficking Laws and Policies

18.1 In performing its obligations under the Contract, the Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to, the Modern Slavery Act 2015;
- (b) comply with Clarke Energy's anti-slavery policy as amended by notification to the Supplier from time to time ('Anti-Slavery Policy'), but only to the extent that such Anti-Slavery Policy has been provided or notified to the Supplier.
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- (d) include in its contracts with its subcontractors and sub-supplier's anti-slavery and human trafficking provisions that each of its subcontractors and sub-suppliers shall comply with the Anti-Slavery Policy (if applicable) and with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to, the Modern Slavery Act 2015; and

- (e) use best endeavours to prohibit the use of forced labour, child labour and physically abusive disciplinary methods.
- 18.2 The Supplier represents and warrants that:
- (a) its responses to Clarke Energy's slavery and human trafficking due diligence questionnaire are complete and accurate (but only to the extent that such slavery and human trafficking due diligence questionnaire has been provided to and completed by the Supplier); and
 - (b) neither the Supplier nor any of its officers, employees or other persons associated with it:
 - (i) has been convicted of any offence involving slavery or human trafficking; and
 - (ii) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 18.3 The Supplier shall implement due diligence procedures for its own sub-suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 18.4 The Supplier shall notify Clarke Energy as soon as it becomes aware of:
- (a) any breach, or potential breach, of the Anti-Slavery Policy (if applicable); or
 - (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract.
- 18.5 The Supplier shall maintain a complete set of records to trace the supply chain of all Goods provided to Clarke Energy in connection with the Contract.

19.0 Compliance with Anti-Bribery Laws and Policies

- 19.1 The Supplier shall:
- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (c) promptly report to Clarke Energy any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract; and
 - (d) comply with Clarke Energy's ethics, anti-bribery, and anti-corruption policies as amended by notification to the Supplier from time to time ('Anti-Bribery Policy').
- 19.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this condition 19 ('Relevant Terms'). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Clarke Energy for any breach by such persons of any of the Relevant Terms.
- 19.3 Breach of this condition 19 shall be deemed a material breach.

20.0 Anti-Facilitation of Tax Evasion

- 20.1 The Supplier shall and shall procure that persons associated with it or other persons who are performing services in connection with this Contract shall:
- (a) not engage in any activity, practice or conduct which would constitute either:
 - (i) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
 - (ii) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
 - (c) not do, or omit to do, any act that will cause or lead the Purchaser to be in breach of the Anti-Bribery Policy;
 - (c) promptly report to Clarke Energy any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017;
 - (d) have and shall maintain in place throughout the term of this Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier) and to ensure compliance with this condition 20;
 - (e) if requested, provide Clarke Energy with any reasonable assistance to enable Clarke Energy to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Anti-Bribery Policy;
 - (f) within 3 months of the date of this Contract, and annually thereafter, certify to Clarke Energy in writing signed by an officer of the Supplier, compliance with this condition 19 by the Supplier and all persons associated with it. The Supplier shall provide such supporting evidence of compliance as Clarke Energy may reasonably request.
- 20.2 The Supplier shall keep at its normal place of business detailed, accurate and up-to-date records and books of account showing the steps taken by the Supplier to comply with the Anti-Bribery Policy. The Supplier shall ensure that such records and books of accounts are sufficient to enable Clarke Energy to verify the Supplier's compliance with its obligations under this condition 20.
- 20.3 The Supplier warrants and represents that:
- (a) its responses to Clarke Energy's anti-facilitation of tax evasion due diligence questionnaire are complete and accurate; and
 - (d) neither the Supplier nor any of its officers, employees or other persons associated with it:
 - (i) has been convicted of any offence involving tax evasion or the facilitation of tax evasion; or
 - (ii) having made reasonable enquiries, so far as it is aware has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence concerning tax evasion or the facilitation of tax evasion;
- 20.4 The Supplier shall promptly notify Clarke Energy if, at any time during the term of this Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in condition 20.3 at the relevant time.
- 20.5 Breach of this condition 20 shall be deemed a material breach.

21.0 General Compliance

21.1 In performing its obligations under the Contract, the Supplier shall:

- (a) Support and respect the United Nations Universal Declaration of Human Rights, the International Labour Organisations fundamental conventions and the UN Global Compact;
- (b) Source minerals responsibly; and
- (c) Not under any circumstances make or receive facilitation payments on behalf of Clarke Energy;

21.2 The Supplier shall comply with any and all applicable anti-discrimination legislation, including the Equality Act 2010.

22.0 General

22.1 The terms and conditions set out in the Contract represent the entire terms and conditions of the agreement between the Supplier and Clarke Energy and any amendment or variation thereof shall be required to be made in writing.

22.2 Clarke Energy's failure at any time to require strict performance or compliance by the Supplier of any of its obligations or with any provisions under this Contract shall not waive or diminish Clarke Energy's rights subsequently to demand strict performance of that obligation or any other or strict compliance with that provision or any other.

22.3 It is agreed that Clarke Energy's rights under the Contract are in addition to and shall not operate to limit or diminish any rights available to the Purchaser or implied at common law and/or under statute including the Sale of Goods Act 1979 and any re-enactment or amendment thereof.

23.0 Governing Law

23.1 All disputes or differences which shall at any time arise between the parties concerning the Contract its construction or effect or the rights, duties or liabilities of the parties under it or any other matter in any way connected with or arising out of the subject matter of the Contract shall be referred to a single arbitrator to be agreed upon by the parties or in default of agreement to nominated by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996.

23.2 The Contract shall be construed and governed in all respects in accordance with the laws of England and any disputes or differences shall be subject to the non-exclusive jurisdiction of the English Courts.