

## CLARKE ENERGY LIMITED

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

#### 1 Definitions

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

- (a) **“Applicable Laws”** means any statute, instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works, the Goods or the performance of any obligations under the Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Works and/or Goods or with whose systems they are or are to be connected.
- (b) **“Business Hours”** means 9am – 5pm on any day which is not a Saturday, a Sunday or a day which under the Banking and Financial Details Act 1961 is a bank holiday.
- (c) **“Clarke Energy”** means Clarke Energy Limited (registered company number 1341453) whose registered office is situated at Power House, Senator Point South Boundary Road, Knowsley, Industrial Park, Liverpool L33 7RR.
- (d) **“Commencement Date”** means the date for commencement of any Works as stated in the Order or, if none is stated, the date for commencement notified in Writing by Clarke Energy.
- (e) **“Completion”** means acceptance and takeover of the Works by Clarke Energy as evidenced by Clarke Energy in writing.
- (f) **“Conditions”** means these general conditions for the supply of Goods and Works.
- (g) **“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.
- (h) **“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 these Conditions, the Order, the Specification and any other attachments or appendices to the Order.
- (i) **“Data Protection Legislation”** means the UK Data Protection Legislation and any other applicable laws or regulations in any relevant jurisdiction relating to the privacy, use or processing of personal data in force from time to time (including, without limitation, the EU GDPR); and any guidance, codes of practice or opinions issued or recognised by the relevant data protection or supervisory authority and applicable to a party, in each case as updated, amended or replaced from time to time.
- (j) **“Date for Completion”** means the date for the completion of the Works stated in the Order or the Programme as may be adjusted by the Conditions.
- (k) **“Employer”** means any employer, owner or other party with whom Clarke Energy has contracted with under the terms of the Main Contract and its assignees.

- (l) **“EU GDPR”** means the European General Data Protection legislation (Regulation (EU) 2016/679).
- (m) **“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.
- (n) **“Main Contract”** means the main contract entered into by Clarke Energy with the Employer in respect of which an Order is placed as a sub-contract.
- (o) **“Materials”** including designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works and/or the works under the Main Contract.
- (p) **“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.
- (q) **“Price”** means the price for the Goods and/or the charge for the Works as stated in the Order.
- (r) **“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 (as amended from time-to-time by Clarke Energy). In the absence of any Programme, the Supplier shall carry out the Works and/or deliver the Goods with all due diligence and expedition and in accordance with any reasonable requirements notified by Clarke Energy.
- (s) **“Site”** means the location at which any Works are to be carried out and/or any Goods are to be delivered, as stated in the Order.
- (t) **“Specification”** means any plans, drawings, data, samples or other descriptions or information relating to the Goods or Works attached to the Order.
- (u) **“Supplier”** means, in relation to any Contract, the provider of the Goods and/or Works on the terms of that Contract.
- (v) **“UK Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018; the UK GDPR; and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- (w) **“UK GDPR”** has the meaning given to it in section 3(10) (as supplemented by section 205 of the Data Protection Act 2018).

(x) **“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.

(y) **“Writing”** means any written communication, including by email and **“Written”** shall be accorded the same meaning.

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 The Contract**

2.1 These Conditions shall apply to all Contracts 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 procure 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 Conditions 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.

## **3 Copyright and intellectual property**

3.1 Clarke Energy owns all intellectual property rights (including copyright) relating to any and all Materials (whether in the Specification or otherwise) provided by Clarke Energy to the Supplier. Clarke Energy grants the Supplier an irrevocable, non-exclusive, non-terminable, royalty-free licence to use the Materials contained for the sole purpose of the Supplier’s obligations under the Contract. The Supplier shall not use such materials other than as required for the purposes of the Contract and Clarke Energy shall not be liable for use of the Material by the Supplier for any purpose other than that for which it was prepared and/or provided.

- 3.2 The Supplier owns all intellectual property rights (including copyright) relating to any and all Materials (whether in the Specification or otherwise) provided by the Supplier to Clarke Energy. The Supplier grants Clarke Energy an irrevocable, non-exclusive, non-terminable, royalty-free licence to use the Materials contained for the sole purpose of Clarke Energy's obligations under the Contract. Clarke Energy shall not use such materials other than as required for the purposes of the Contract and the Main Contract and the Supplier shall not be liable for use of the Material by Clarke Energy for any purpose other than that for which it was prepared and/or provided.

#### **4 Communications**

Any notice required or permitted to be given by either party to the other under the contract shall be in Writing (i) 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 Condition 4 to the party giving the notice (ii) by email to the email address(es) as may at the relevant time have been notified pursuant to this Condition 4 to the party giving the notice. Notices given by email or personal delivery shall be deemed to be received on the day of service if received within Business Hours, and on the next working day if received outside Business Hours. Notices served by first class post shall be deemed to be received on the second day after posting.

#### **5 Price of the Goods and Works**

- 5.1 The Price of the Goods and the Works shall be:
- (a) exclusive of any applicable VAT (which shall be payable by Clarke Energy subject to receipt of a VAT invoice); and
  - (b) 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 and all duties, imports or levies other than VAT.
- 5.2 The Price shall not be increased on account of increased costs of material, equipment, plant, hire, energy, fuel, labour or transport, fluctuation in rates of exchange or otherwise howsoever arising.
- 5.3 Clarke Energy shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier and the Price shall reflect such discount. The Supplier shall notify Clarke Energy in Writing forthwith if at any time the Supplier becomes aware that it is entitled to such discount after the date of the Order and the Price shall be reduced accordingly.
- 5.4 If the Goods are not delivered in accordance with the requirements of the Programme and/or the Works are not completed by the Date for Completion, without prejudice to any other remedy available to Clarke Energy, Clarke Energy shall be entitled to deduct from the Price or (if Clarke Energy has paid the Price) to claim from the Supplier liquidated damages for delay one per cent (1%) of the Price for each week of delay, up to a maximum of ten per cent (10%) or such other liquidated damages as are specified in the Order.

#### **6 Terms of Payment**

- 6.1 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 and/or Completion of the Works as applicable and each invoice shall quote the number of the Order.

- 6.2 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 10.1. Separate invoices must be submitted for the three stages of payment, being (i) completion of the Works and/or delivery of the Goods, (ii) completion of snagging and (iii) final retention.
- 6.3 Unless otherwise stated in the Order, Clarke Energy shall pay the Price sixty (60) days after the receipt of a proper invoice or, if later, after acceptance of the Goods or Works by Clarke Energy.
- 6.4 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.

## **7 Liability**

- 7.1 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:
- (a) negligence, breach of warranty or breach of statutory duty under any Applicable Laws by the Supplier in relation to the Goods and/or the Works and/or any liability arising in respect of the Goods and/or the Works under any statutory or contractual provision or under any regulations relating thereto, including a liability arising under Condition 8.6;
  - (b) any claim that the Goods and/or any design prepared or procured by the Supplier in respect of the Works 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 in Writing prior to commencement of the Works or supply of the Goods; and
  - (c) any damage to property, death, personal injury or other direct or indirect losses suffered by any person a result of any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods and/or in connection with the performance of the Works.

## **8 The Main Contract**

- 8.1 The Supplier shall be deemed to have full knowledge of the provisions of the Main Contract provided that Clarke Energy has provided the Supplier with a complete copy of the Main Contract (other than details of Clarke Energy's price under any bills of quantities or others schedules of rates and prices contained therein) and any other relevant documents, drawings or designs relating to Clark Energy's obligations under the Main Contract.
- 8.2 Save where the provisions of the Contract otherwise require, the Supplier shall provide the Goods and/or carry out and complete the Works so that no act or omission by the Supplier shall constitute, cause or contribute to any breach by Clarke Energy of any of its obligations under the Main Contract and the Supplier shall assume and perform under the Contract all the obligations and liabilities of Clarke Energy under the Main Contract in relation to the Goods and/or Works.

- 8.3 The Supplier shall as many times as Clarke Energy shall require provide a collateral warranty in the form specified by Clarke Energy in favour of the Employer and/or any other third party beneficiary notified to the Supplier in respect of the Works and/or the Goods supplied under the Contract.
- 8.4 By Written notice from time-to-time, Clarke Energy may grant to the Employer and/or any third party beneficiary the right to rely upon the following Conditions of the Contract: 3 (Copyright and intellectual property), 9 (Supplier's Responsibilities in Relation to the Works), 10 (Defects in Works) 11 (Supplier's Responsibilities in Relation to Goods), 12 (Insurance and Risk) pursuant to the Contracts (Rights of Third Parties) Act 1999. Such notice shall take effect on the date of the notice. Clark Energy's notice under this Condition 8.4 shall state the name of the entity to whom the rights are granted and their interest in the Works.
- 8.5 The Supplier acknowledges that any breach by the Supplier of the Contract may result in Clarke Energy:
- (a) breaching and incurring liability to: (i) the Employer under the Main Contract, and/or (ii) other parties to contracts entered into by the Employer in connection with the works under the Main Contract; and
  - (b) incurring loss and expense in connection with the works under the Main Contract,
  - (c) and all such liability, 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 of the Contract.
- 8.6 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.
- 8.7 The Supplier shall indemnify Clarke Energy against every liability which Clarke Energy may incur to the Employer under the Main Contract and/or 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.

## **9 Supplier's Responsibilities in Relation to the Works**

- 9.1 The Supplier shall carry out and complete the Works in accordance with the Contract and all Applicable Laws, 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.
- 9.2 Clarke Energy gives no warranty or representation as to the condition of the Site or adjoining property or any services in or under the Site or as to the accuracy of or sufficiency of any soils or survey data or other data contained in any document made available to the Supplier by Clarke Energy, or as to any recommendations or conclusions made or reached in any document. To the extent relevant to the scope of the Works the Supplier shall be deemed to have inspected and investigated all physical conditions and constraints at the Site in developing its Price and any programme/timescales in respect of the Works and the Price shall not be increased nor shall the Date for Completion be extended in respect of any unforeseen or adverse physical conditions at the Site that cause the Supplier additional costs and or delay in respect of the Works.

- 9.3 The Supplier shall be fully responsible for all aspects of the design of the Works, unless the Order and/or the Specification states that Clarke Energy or another party responsible for some and/or all of the design of the Works. The Supplier shall carry out any design for which it is responsible under the Contract with all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Supplier's profession undertaking the design in respect of works similar in scope and character to the Works.
- 9.4 The Supplier shall notify Clarke Energy forthwith in Writing if the Supplier becomes aware of any defects in the Specification or any respect in which the Works to be undertaken are unlikely to meet any requirements set out in the Specification (**Specification Defects**). Clarke Energy will as soon as reasonably practicable provide instructions to the Supplier to correct any Specification Defects. The Supplier shall be entitled to an addition to the Price and an extension to the date for Completion only where the Specification Defects arise out of defective design prepared by Clarke Energy or others on its behalf (other than the Supplier). Where Specification Defects arise out of any default, omission or breach of the Supplier (including its sub-contractors), the Supplier shall not be entitled to any addition to the Price or to any extension to the Date for Completion.
- 9.5 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.
- 9.6 The Supplier shall notify Clark Energy in Writing forthwith and in any event within (fourteen) 14 days of becoming aware of:
- (a) any requirement for obtaining consents for the Works which are required but are not in place and any increase to the Price and/or extension to the Completion Date for compliance with such consents once obtained; and
  - (b) any claim, or circumstances which give rise to a claim by the Supplier under the Contract for any sum in excess of the Price and/or an extension to the Date for Completion in relation to the Works.
- 9.7 Failure by the Supplier to notify Clarke Energy in accordance with Condition 9.6 shall result in the Supplier being deemed to have waived any such claim and its right to any associated increase to the Price and/or extension to the Date for Completion.
- 9.8 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. Where the Works are carried out at the same time as works of other suppliers and/or sub-contractors (**Other Contractors**), the Supplier shall fully co-operate with Other Contractors during the execution of the Works. Where the Supplier fails to comply with the requirements of this Condition 9.8, the Supplier will be liable for any resulting additional expense incurred by Clarke Energy under contracts or agreements other than the Contract.
- 9.9 All equipment of the Supplier shall, when brought on to the Site, be exclusively for the execution of the Works. The Supplier shall not remove the same or any part thereof from the Site without the prior Written consent of Clarke Energy, which shall not be withheld where the Supplier's equipment is not at that time required for the execution of the Works on Site.
- 9.10 The Supplier shall be liable for the loss of or damage to any of the Supplier's equipment which may occur otherwise than through the default of Clarke Energy.

- 9.11 The Supplier shall be responsible for maintaining the Supplier's equipment on Site in safe working order.
- 9.12 If so stated in the Order and/or the Specification or otherwise notified by Clark Energy (acting reasonably), the Supplier shall be required to install, test and/or commission certain sections of the Works in order to adhere to the requirements of the Programme. The Price includes all costs incurred in connection with complying with this Condition 9.12.
- 9.13 If the Supplier fails to carry out the Works in accordance with the Programme, the Supplier shall indemnify Clarke Energy against all losses, claims and expenses thereby suffered or incurred by Clarke Energy under contracts or agreements other than the Contract resulting from such failure.
- 9.14 If the Supplier fails to carry out and complete the Works by the Date for Completion, the Supplier shall indemnify Clarke Energy against all losses, claims and expenses thereby suffered or incurred by Clarke Energy under contracts or agreements other than the Contract resulting from such failure.
- 9.15 In the event that the Supplier fails to complete the Works within (ten) 10 weeks of the Date for Completion, Clarke Energy may terminate the Contract and the procedure in Condition 14.6 shall be followed.

## **10 Defects in Works**

- 10.1 Any defects or deficiencies which become apparent upon the later of: (i) eighteen (18) months of Completion; (ii) twelve (12) months from handover by Clarke Energy to the Employer under the Main Contract, or (iii) such other period as is agreed between Clarke Energy and the Supplier in Writing, shall upon notification of the same by Clarke Energy be made good by the Supplier at its cost.
- 10.2 If the Supplier fails to make good defects or deficiencies in accordance with Condition 10.1, Clarke Energy may itself carry out and complete and/or engage others to carry out and complete the necessary work, and the Supplier shall indemnify Clarke Energy against all costs incurred in doing so.
- 10.3 In the event that Clarke Energy exercises its right to make good or procure the making good of any defects or deficiencies in accordance with Condition 10.2, such work shall be deemed to have been carried out by the Supplier and the liability of the Supplier in relation to the Works shall be unaffected thereby.

## **11 Supplier's Responsibilities in Relation to Goods**

- 11.1 Where the Supplier is supplying Goods pursuant to the Contract:
- (a) The Goods shall be delivered to the Site on the date or within the period stated in the Order and/or any Programme, in either case in accordance with any requirements so stipulated and in any event during Business Hours.
  - (b) 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 Written notice of the specified date.



- (c) 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.
- (d) 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 it has had a reasonable time to inspect them following delivery. Clarke Energy shall be entitled to reject any Goods within a reasonable time after any latent defect in the Goods has become apparent.
- (e) 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.
- (f) The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.
- (g) 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.
- (h) 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. There must also be prominently displayed on the packaging of the Goods any storage requirements or lifting hazards.

11.2 The Supplier warrants that the Goods will:

- (a) 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;
- (b) be free from defects in design, material and workmanship;
- (c) correspond with any relevant Specification;
- (d) comply with all Applicable Laws;
- (e) comply with all statutory requirements and regulations relating to the sale of the Goods;
- (f) not infringe any rights of third parties.

11.3 The quantity, quality and description of the Goods shall, subject as provided in these Conditions, be as specified in the Order and/or in Specification or as agreed in Writing by Clarke Energy.

11.4 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 such inspection and testing.

11.5 If as a result of inspection or testing undertaken pursuant to Condition 11.4 Clarke Energy is not satisfied that the Goods will comply in all respects with the Specification and 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 inspections and/or testing to establish compliance with the Specification and the Contract, the Supplier shall provide to Clarke Energy certificates or other documents evidencing such compliance.

- 11.6 Title in 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 the Goods are delivered to Site pursuant to these Conditions; and
  - (b) when the Supplier becomes entitled to submit an invoice in respect of the Goods under Condition 5.1.
- 11.7 Where, prior to delivery, the title in the Goods passes to Clarke Energy, the Supplier shall set the Goods aside and mark them as Clarke Energy's property. The Supplier shall provide Clarke Energy with photographic evidence that the relevant Goods have been set aside and marked as Clarke Energy's property. Until the Goods have been so set aside and marked as Clarke Energy's property and the required evidence of the same has been provided by the Supplier, Clarke Energy shall be entitled to withhold any payment to which the Supplier might otherwise be entitled. The Supplier shall within seven (7) days of Clarke Energy's Written request, enter into a 11.6(b)ing certificate in the form supplied by Clarke Energy accompanying such request in respect of such off-site Goods.
- 11.8 The Supplier shall permit Clarke Energy at any time upon reasonable notice to inspect any Goods which have become the property of Clarke Energy in accordance with Condition 11.7 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.
- 11.9 No payment made by Clarke Energy shall prejudice their right to reject Goods which are not in accordance with the Specification and the Contract. Upon any such rejection, title in the rejected Goods shall immediately revert to the Supplier and Clarke Energy shall have no responsibility and/or liability in respect of such rejected Goods.
- 11.10 All equipment of the Supplier shall, when brought on to the Site, be exclusively for the delivery of the Goods. The Supplier shall not remove the same or any part thereof from the Site without the consent of Clarke Energy, which shall not be withheld where the Supplier's equipment is not at that time required for the execution of the delivery of the Goods to Site.
- 11.11 The Supplier shall be liable for the loss of or damage to any of the Supplier's equipment which occurs other than through the default of Clarke Energy.
- 11.12 The Supplier shall be responsible for maintaining the Supplier's equipment on Site in safe working order.
- 11.13 Once delivered Goods shall not be removed from the Site without Clarke Energy's consent.

## 12 Insurance and Risk

- 12.1 The Supplier warrants that it maintains insurance adequate to cover the risks specified in Condition 7 and that such insurances will be maintained in force throughout the period of the carrying out of the Works and/or supplying the Goods and the warranty period specified in Condition 10.1.
- 12.2 In addition to the requirements of Condition 12.1, 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.
- 12.3 Where the Supplier is responsible for any design of the Works, it shall maintain professional indemnity insurance at the level and basis as stated in the Order or, if none is so stated, in the sum of £2,000,000 on any one claims basis for the duration of the Works and for a period of 6 years after Completion.
- 12.4 Where the Suppliers is responsible for the supply of any Goods, it shall maintain product liability insurance in the sum of at the level and basis as stated in the Order or, if none is so stated, in the sum of £2,000,000 on any one claims basis for the duration of the Works and for a period of 6 years after Completion.
- 12.5 All free issue items provided by Clarke Energy and any plant, parts, equipment and materials of the Supplier used in the execution of the Works and/or supply of the Goods 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, Supplier's plant, Supplier's parts, Supplier's equipment and Supplier's materials and such free issue items provided by Clarke Energy, howsoever caused, and the Supplier shall maintain insurance for their full reinstatement value.
- 12.6 Subject to Condition 12.5, the risk of damage to or loss of the Goods shall pass to Clarke Energy upon the later of: (i) delivery to the Site unless rejected in accordance with Condition 11.1(d), and (ii) Completion.
- 12.7 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.

## 13 Confidentiality

- 13.1 For the purposes of this Condition 13:
- (a) The "**Disclosing Party**" is the party which discloses drawings, plans, communications, documents and any other information whether written or otherwise whether in relation to any Contract or otherwise ("**Confidential Information**"); and
  - (b) The "**Receiving Party**" is the party which receives Confidential Information.
- 13.2 The Receiving Party shall take all necessary precautions to ensure that all Confidential Information it receives under or in connection with a Contract or otherwise:
- (a) 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 Contract and only to the extent necessary for the performance of the Contract; and

- (b) 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 Contract.
- 13.3 The Supplier shall ensure that all its employees or professional advisors or consultants are aware of the Supplier's confidentiality obligations under this Condition 13.
- 13.4 The provisions of Conditions 13.2 and 13.3 shall not apply to any Confidential Information which:
  - (a) is or becomes public knowledge (otherwise than by breach of this Condition 13);
  - (b) was in the lawful possession of the Receiving Party and without restriction as to its disclosure before it was received from the Disclosing Party;
  - (c) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - (d) is independently developed without access to the Confidential Information; or
  - (e) must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Receiving Party.
- 13.5 In the event that the Supplier fails to comply with this Condition 13 Clarke Energy reserves the right to terminate the Contract and any other Contract made between Clarke Energy and the Supplier with immediate effect by notice in Writing to the Supplier.
- 13.6 The provisions of this Condition 13 shall survive the termination of the Contract, however arising.

#### **14 Omission, Breach and Termination**

- 14.1 Clarke Energy shall be entitled to omit from the Contract all or part of the Goods and/or Works by Written notice to the Supplier at any time prior to delivery of such Goods or performance of such Works and the Price shall be reduced accordingly. The Supplier agrees that it shall have no claim whatsoever for any loss of profit or other loss and expense in respect of such omission, including where Clarke Energy supplies and/or carries out or procures the supply and/or carrying out of the omitted Goods and/or Works.
- 14.2 Without prejudice to any other remedies which may exist, if any Goods and/or Works are not supplied and/or performed in accordance with the Contract, the Supplier shall repair or supply replacement Goods or Works which are in accordance with the Contract within seven (7) days of receiving Written notice from Clarke Energy (or such longer period as may be specified in such notice).
- 14.3 If it is not practicable for the Supplier to comply with Condition 14.2, or if the Supplier has failed so to do, Clarke Energy may treat the Contract as terminated and shall be entitled to repayment of any part of the Price which has been paid in respect of the defective Goods or Works, together with any sums payable under Condition 7.
- 14.4 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 from the date of the aforementioned notice.

- 14.5 Clarke Energy shall be entitled to terminate the Supplier's employment under the Contract without any further liability to the Supplier by giving notice to the Supplier at any time if:
- (a) the Supplier abandons, suspends or fails to supply the Goods, commence or make proper progress with the Works in accordance with Condition 9.1 and does not remedy such default within seven (7) days of receipt of Written notice from Clarke Energy requiring it to do so;
  - (b) 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;
  - (c) an encumbrancer takes possession of, or a receiver is appointed in respect of, any of the property or assets of the Supplier;
  - (d) the Supplier ceases, or threatens to cease, to carry on business; or
  - (e) Clarke Energy reasonably anticipates that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.
- 14.6 Upon termination of the Supplier's employment under the Contract, Clarke Energy may itself take over the Works and/or the supply of all Goods and make such arrangements as it considers necessary to have the Works completed and/or Goods supplied otherwise than by the Supplier, who shall thereafter have no right or entitlement whatsoever to supply further Goods and/or carry out further Works.
- 14.7 Upon termination of the Contract (howsoever occurring), Clarke Energy shall cease to be obliged to make any further payment to the Supplier under the Contract until the Works are completed and/or all Goods have been supplied. Upon completion of the Works and/or the supply of all Goods, 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 completed the Works and/or supplied all Goods;
  - (b) less the cost to Clarke Energy of having the remaining Works completed and/or the remaining Good supplied plus any loss, damage or other expenses suffered or incurred by Clarke Energy; and
  - (c) less (i) an amount equal to any amount already paid to the Supplier and (ii) any sum due under Condition 7.
- 14.8 If the sum calculated under Conditions 14.7(b) and 14.7(c) exceeds the sum calculated under Condition 14.7(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 Condition 14.7(a) exceeds the sum calculated under Conditions 14.7(b) and 14.7(c)

## **15 Determination of the Main Contract**

- 15.1 If the Main Contract is determined for any reason whatsoever before the Supplier has fully performed its obligations under the Contract, 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 its personnel and equipment from the Site.

- 15.2 Upon a determination of the Contract under Condition 15.1, subject to Condition 15.4 below, the Supplier shall be entitled to be paid for all Goods supplied, Works properly carried out, all materials properly bought and left on Site by the Supplier less such sums as the Supplier has already received on account.
- 15.3 If at the date of determination under Condition 15.1 the Supplier has properly prepared or fabricated off-site any Goods for incorporation into the Works, the Supplier shall deliver such Goods to the Site or to such other place as Clarke Energy may reasonably direct, and the Supplier shall be paid for such Goods.
- 15.4 If the Main Contract is determined by the Employer in consequence of any breach of Contract by the Supplier, the consequences set out in Condition 14.3 shall apply.

## **16 Force Majeure**

Neither Party 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 and/or the Works where and to the extent such Party's (the **Impacted Party**) delay or failure arose by reason of circumstances of an event of force majeure, being an event which is beyond that party's control and which could not have been avoided by the exercise of reasonable care including but not limited to acts of God, war, riot, civil commotion, fire, flood, storm, armed conflict or terrorist attack (**Force Majeure Event**).

The Impacted Party shall give notice within 14 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimised. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the Force Majeure Event.

## **17 Assignment and Subcontracting**

- 17.1 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 (such approval to be at Clarke Energy's absolute discretion).
- 17.2 The Supplier shall not sub-contract 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 (such approval to be at Clarke Energy's absolute discretion).
- 17.3 Insofar as Clarke Energy consents to any sub-contracting under Condition 17.2, the Supplier shall retain full responsibility under the Contract for all Goods supplied and/or Works undertaken by its sub-contractor(s) and for all acts, omissions and defaults of all sub-contractors.
- 17.4 The Supplier shall ensure that the insurances required to be maintained under the Contract covers the sub-contracted obligations or alternatively, that equivalent insurance cover is maintained by each sub-contractor.

## **18 Health & Safety**

The Supplier shall be responsible for the safety of all persons engaged in undertaking Works and/or supplying 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 and/or Goods supplied by it comply with

all of Clarke Energy's safety regulations and procedures notified to the Supplier and with all applicable health and safety legislation in force from time to time, including but not limited to all applicable provisions of the Health and Safety at Work Act 1974, the Construction (Design and Management) Regulations 2015 and the Building Safety Act 2022.

## **19 Compliance with Anti-Slavery and Human Trafficking Laws and Policies**

19.1 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 provided to the Supplier and as amended by notification to the Supplier from time to time ("**Anti-Slavery Policy**");
- (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 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) prevent and prohibit the use of forced labour, child labour and physically abusive disciplinary methods.

19.2 The Supplier represents and warrants that:

- (a) its responses to Clarke Energy's slavery and human trafficking due diligence questionnaire are complete and accurate;
- (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.

19.3 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.

19.4 The Supplier shall immediately notify Clarke Energy in Writing as soon as it becomes aware of:

- (a) any breach, or potential breach, of the Anti-Slavery Policy; or

- (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract.

19.5 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.

19.6 Breach of this Condition 19 shall be a material breach of the Contract.

## **20 Compliance with Anti-Bribery Laws and Policies**

20.1 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 provided to the Supplier and as amended by notification to the Supplier from time to time ("**Anti-Bribery Policy**").

20.2 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 20 ("**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.

20.3 Breach of this Condition 20 shall be a material breach of the Contract.

## **21 Anti-Facilitation of Tax Evasion**

21.1 The Supplier shall and shall procure that persons associated with it or other persons who are performing services in connection with the 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;
- (b) 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 the 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 21;
  - (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; and
  - (f) Within 3 months of the date of the Contract, and annually thereafter, certify to Clarke Energy in writing signed by an officer of the Supplier, compliance with this Condition 21 by the Supplier and all persons associated with it. The Supplier shall provide such supporting evidence of compliance as Clarke Energy may reasonably request.
- 21.2 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 21.
- 21.3 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
  - (b) 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.
- 21.4 The Supplier shall promptly notify Clarke Energy if, at any time during the term of the Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in Condition 21.3 at the relevant time.
- 21.5 Breach of this Condition 21 shall be a material breach of the Contract.

## **22 Processing of Personal Data**

- 22.1 The Supplier shall comply (and shall procure compliance by any sub-contractor) with any and all applicable obligations under the Data Protection Legislation in connection with the performance of any and all obligations under the Contract.

22.2 The Supplier shall indemnify Clarke Energy in respect of any costs, losses or other expense Clarke Energy suffers as a result of any claim against it made by any third party arising out of or in connection with any breach of Condition 22.1 by the Supplier or its sub-contractors.

## **23 General Compliance**

23.1 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.

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

## **24 Publicity**

24.1 The Supplier shall not at any time take any photograph of the Works or the Site or any part of the Works or Site and shall take all reasonable steps to ensure that no such photographs shall at any time be taken or published or otherwise circulated by any person employed by him, unless the Supplier has obtained the prior written consent of Clarke Energy to take and or publish such photographs.

24.2 The Supplier shall not publish, permit to be published or disclose any particulars of the Works or the project of which they form part in any trade or technical paper or elsewhere without the prior written consent of Clarke Energy.

## **25 General**

25.1 The terms and conditions set out in the Contract represent the entire terms and conditions of the Contract between the Supplier and Clarke Energy and shall replace and supersede agreements, promises, assurances, and understandings between them, whether written or oral, relating to its subject matter.

25.2 Any amendment or variation to these Conditions shall be made in Writing.

25.3 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 the 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.

25.4 Clarke Energy's rights under the Contract are in addition to and shall not operate to limit or diminish any rights available to the Clarke Energy which are implied by common law and/or under statute including but not limited to the Sale of Goods Act 1979 and any re-enactment or amendment thereof.

25.5 Except as expressly provided in Condition 8.4 the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**26 Governing Law**

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.