

**STANDARD TERMS AND CONDITIONS OF PURCHASE FOR UNIT BIRWELCO GROUP COMPANIES
(Unit Engineers & Constructors Ltd, Birwelco Ltd and Unit Superheater Engineering Ltd)
COP 1 (Feb 2014)**

1. Definitions

In these Conditions:-

'these Conditions' shall mean the terms and conditions contained herein.

'the Contract' shall mean these Conditions, the Purchase Order and the documents listed therein.

'the Goods' shall mean the goods described in the Purchase Order (including any interim and final documentation, replaced goods and spare parts) and the term 'the Goods' shall whenever the context permits include any work or services performed under the Contract by the Supplier or any of its sub-contractors in connection with or incidental to the Goods or the Works.

'the Owner' shall mean the person or persons or firm or company for whom the Purchaser has undertaken to execute the Works or any part thereof.

'the Purchase Order' shall mean a document headed 'Purchase Order', together with any amendment thereto signed by or on behalf of the Purchaser, and issued to the Supplier.

'the Purchaser' shall mean the company described in the Purchase Order.

'the Supplier' shall mean the person or persons or firm or company to whom the Purchase Order is issued.

'the Works' shall mean the works for and in connection with which the Goods are required.

2. Pricing and payment

(a) The price of the Goods shall be as stated in the Purchase Order and except as otherwise agreed in writing between the parties shall be the total compensation payable to the Supplier under the Contract.

(b) Unless otherwise agreed in writing by the Purchaser, the price shall include as appropriate (i) secure and proper packaging acceptable to the Purchaser and (ii) the cost of delivery to the address specified under Clause 3 hereof.

(c) Where the supply of the goods is subject to the addition of Value Added Tax, the price of the Goods and the amount of Value Added Tax shall be stated separately.

(d) The Purchaser reserves the right to set off any sums in respect of which the Supplier may be indebted or in default to the Purchaser whether or not in connection with the sale or supply of the Goods.

(e). Invoices are to be submitted in accordance with the requirements of the Purchase Order to the Purchaser's office. Invoices must state clearly whether they cover "full order" or "part order" and include full details of the materials supplied and/or the service provided. The Purchaser's purchase order number must be clearly shown on all invoices. Failure to comply with these requirements will delay the processing and payment of invoices.

(f) Unless the Purchase Order otherwise provides, payment of amounts correctly invoiced by the Supplier shall, subject to sub-

clauses (d) and (g) of this Clause, be made in 60 days from receipt of a correct and valid invoice.

(g) No payment made by the Purchaser shall in any way be construed as acceptance of any of the Goods supplied or work or services performed by the Supplier or any of its sub-contractors and no payment shall in any way impair or restrict any rights or remedies the Purchaser may have under the Contract or otherwise for and in connection with the supply of the Goods and/or the performance of work or services under the Contract by the Supplier or any of its subcontractors.

(h) The supply of the interim and final documentation identified in the Purchase Order is part of the Contract and failure to supply such documentation by the date(s) agreed shall mean that the delivery is not complete and will delay the processing and payment of invoices.

(i) When requested to do so by the Purchase Order the Supplier shall return the Purchaser's Order Acknowledgement within five (5) days from receipt.

3. Delivery

(a) The Goods shall be securely and properly packed by the Supplier and, if applicable, in accordance with any instructions given by the Purchaser and delivered to the address specified on the Purchase Order (hereinafter called 'the Place of Delivery'). The Supplier shall give reasonable notice to the Purchaser of the time of delivery.

(b) It is a condition of the Contract that the Supplier shall, subject to the provisions of Clauses 5, 6 and 15 hereof, deliver the Goods at the date and/or within the time or period stated in the Purchase Order.

(c) Subject to Sub-clause (b) above, the Supplier shall give the Purchaser immediate notice of any potential delay in delivery.

(d) In giving the notice required under Sub-clause (c) above the Supplier shall state whether, in his opinion, any part of the delay has been caused by the Purchaser being in breach of the Contract and shall provide details of the alleged breach(es) and the resulting delay. Provided notice is given as aforesaid the Purchaser shall grant such extension of any date or period specified in the Contract as shall, in his opinion, be fair and reasonable.

(e) Without prejudice to any of the Supplier's obligations under the Contract the Supplier and its sub-contractors shall at all times allow persons duly authorised by the Purchaser to enter upon the premises where the Goods or any part thereof is being manufactured or any work in connection therewith is being carried out and shall provide such programmes, schedules, reports and other information as the Purchaser may require to monitor the progress of the Goods and to satisfy the Purchaser that all practicable measures have been and are being taken to meet the due date and/or time of delivery.

(f) Delivery in instalments or separate consignments shall be permitted only with the prior consent in writing of the Purchaser and only in accordance with the terms of such consent, and such permission, if given shall not entitle the Supplier to claim payment prior to delivery of the whole of the Goods, unless otherwise expressly agreed in writing by the Purchaser.

(g) Any period for the hire of equipment shall commence from the date on which the equipment is collected or delivered to the Purchaser which shall be no earlier than the start date included in the Purchaser's order. The period of hire shall end on the completion date specified in the Purchase order, or on any subsequent completion date that is agreed with the Purchaser and covered by an amendment to the Purchaser's original order. The Purchaser shall not be responsible for additional hire costs that are incurred as a result of the Suppliers failure to collect the equipment on the agreed completion date identified in the Purchase Order.

4. Risk and title

(a) In no circumstances shall the risk of damage to or loss or destruction of the Goods pass to the Purchaser prior to delivery of the Goods to the Place of Delivery.

(b) Title in the Goods or any part thereof shall pass to the Purchaser on their being appropriated to the Contract or on delivery of or on payment for the Goods or any such part whichever is the sooner. Any Goods for which the Purchaser has paid but which have not been delivered shall be clearly identified as the property of the Purchaser and stored in safe and suitable conditions and in accordance with any instructions given by the Purchaser.

(c) Where the Purchaser or the Owner for the purposes of the Contract issues materials or other items free of charge to the Supplier, such materials and other items shall be, and remain the property of the Purchaser or the Owner as the case may be and shall be used by the Supplier solely in connection with the Contract. The Supplier shall, (unless within three working days from receipt thereof the Supplier notifies the Purchaser in writing to the contrary setting out appropriate details), be deemed to have satisfied itself as to the suitability of such materials and other items for their intended use and to have received same in good order and condition and in the quantities specified in the Contract. The Supplier shall thereafter be responsible for and accountable to the Purchaser for any loss of or damage thereto (including without limitation any waste thereof arising from any fault or neglect of the Supplier) until safe delivery of the completed Goods incorporating the said materials and/or other items is effected in accordance with Clause 3 hereof and any scrap or surplus arising from free-issue materials and/or other items as the Purchaser may at its option have decided and instructed the Supplier is/are (i) safely delivered with the Goods as aforesaid or (ii) sold by the Supplier by competitive tender and the amount so obtained paid or credited to the Purchaser.

5. Storage

If the Purchaser is not able to accept delivery of the Goods on the due date:

(a) the Supplier shall at its own cost and risk, store the Goods at suitable premises for a maximum period of 30 days following the due date,

(b) the Supplier shall insure the Goods for their full replacement value on 'all-risks' terms acceptable to the Purchaser in the joint names of the Supplier and the Purchaser and shall notify the Purchaser that such insurance cover is in place.

(c) for any storage period that exceeds 30 days following the due date, subject to receiving confirmation of insurance in a form acceptable to the Purchaser, the Purchaser shall reimburse the Supplier in respect of all reasonable storage charges and insurance premiums so incurred or paid.

6. Variations

(a) The Supplier shall not make any variations in the design, materials or method of manufacture of the Goods, nor substitute other parts or fitments for any proprietary or special parts or fitments

ordered by the Purchaser without the prior written consent of the Purchaser.

(b) If the Purchaser refuses its consent under Sub-clause (a) above, and the Supplier is for any reason unable to perform the Contract without making the variation or substitution as requested the Purchaser may terminate the Contract in accordance with the provisions of Clause 12(b)(i) hereof.

(c) Where the Contract or any part thereof is terminated under Sub-clause (b) above, any payments already made by the Purchaser shall be returned to the Purchaser.

(d) The Purchaser shall have the right, from time to time during the performance of the Contract, by notice in writing to direct the Supplier to add to or omit, or otherwise vary the Goods (including without limitation any required changes in any drawings, specifications, instructions or directions) and the Supplier shall carry out such variations and be bound by the same terms and conditions so far as applicable, as though the said variations were stated in the Contract.

(e) Any adjustment to the Contract price occasioned by any variation shall be ascertained and determined at the same level of pricing as that stated in the Purchase Order. The Supplier shall within five working days from receipt of the Purchaser's direction and if that direction so instructs prior to proceeding with the required variation advise the Purchaser in writing of its estimate of the amount of any such adjustment to the Contract price.

(f) If, in the opinion of the Supplier any such direction is likely to prevent the Supplier from fulfilling any of its obligations under the Contract, the Supplier shall within five working days from the receipt of the Purchaser's direction so notify the Purchaser and the Purchaser shall decide with all possible speed whether or not the same shall be carried out and shall confirm his direction in writing and modify the said obligations to such an extent as in the Purchaser's opinion may be justified. Until the Purchaser so confirms his instructions they shall be deemed not to have been given. If the Supplier fails to notify the Purchaser as aforesaid then the Supplier shall forfeit any right to modification of any of its obligations under the Contract by reason of or in connection with the aforementioned Purchaser's direction.

(g) Variations shall be confirmed by amendment to the Purchase Order, signed by or on behalf of the Purchaser and issued to the Supplier.

(h) The Supplier shall be deemed to have full knowledge and to have made full allowance in respect of all matters whatsoever (including without limitation any local conditions) that may be relevant to the proper performance of its obligations under the Contract. The Supplier shall in no event be entitled to any additional compensation or any modification to any of its obligations under the Contract by reason of or in connection with any failure on its part under this Sub-clause 6(h).

7. Quality

(a)(i) All Goods (including raw materials and unfinished goods) shall be provided and/or made in a professional manner using all due care and skill and shall, on delivery to the Purchaser, be of merchantable quality, fit for the purpose for which the Purchaser requires them and where applicable in accordance with the Purchaser's specifications, and of first class materials, workmanship and design and to the satisfaction of the Purchaser and the Owner. (ii) All Goods shall comply in all respects with the terms of the Contract and all warranties or representations given or made on behalf of the Supplier or implied at law. For the avoidance of doubt any express warranty or guarantee given by the Supplier shall extend to parts

and labour and shall, unless notified otherwise in the Purchase Order, apply until expiry of a period of twenty four months from the date the Works (incorporating the Goods) are completed, accepted and put into use by the Owner.

(b) The Supplier shall satisfy itself that it understands the Purchaser's requirements in order to comply with the obligations contained in Sub-clause (a) above and also to prevent delay caused by any work which may be necessary to meet the Purchaser's requirements. The cost of any such work shall be borne by the Supplier.

(c) For the purpose of satisfying the Purchaser that the obligations contained herein are being observed, the Supplier and its sub-contractors shall at all times allow persons duly authorised by the Purchaser to make any inspections or tests which the Purchaser may require and/or witness any inspections or tests carried out by the Supplier pursuant to Sub-clause (e) of this Clause and shall afford to the Purchaser all reasonable facilities and assistance which shall be free of cost to the Purchaser unless specifically agreed in writing to the contrary.

(d) The Supplier shall operate a quality system in accordance with the relevant parts of BS EN ISO 9001 or equivalent.

(e) Without prejudice to the provisions of Sub-clause (c) of this Clause, the Supplier shall at its own expense carry out such inspections and tests of the Goods as may be required for the purposes of ensuring that the Goods are (i) safe and without risks to health when properly used and (ii) in full compliance with the Contract.

8. Defects

(a) If, on inspection or test, (whether at any time prior to or after delivery) in manufacture or use, any Goods are found to be faulty in quality, damaged, defective, or not to comply with these Conditions (including Goods damaged in transit), the Purchaser may, at its option, (i) reject the whole or any part of the Goods in which event any payment previously made therefor shall be refunded to the Purchaser or (ii) require the Supplier at its own cost either to replace the Goods or to rectify any defect or (iii) undertake or procure at the risk and expense of the Supplier the replacement of the Goods or the rectification of any defect. The twenty four month period specified in paragraph (ii) of Clause 7(a) shall, in respect of Goods replaced or rectified as aforesaid, be renewed from the date such replaced or rectified Goods are put into use by the Owner.

(b) In addition to its remedies under Sub-clause (a) above the Purchaser shall be indemnified by the Supplier against all loss, damages, costs, charges, expenses or claims (including without limitation any claims by third parties) arising by reason of any failure of the Goods to comply with Clause 7(a) or any other terms of these Conditions whether express or implied by statute, common law, custom or otherwise or by reason of any act or omission of the Supplier, its servants, agents or sub-contractors in the performance of the Contract.

(c) Where the Purchaser requires the Supplier to rectify a defect: (i) the cost of collecting the Goods from and returning them to the Purchaser shall be borne by the Supplier; (ii) the cost of any additional inspection or testing of the replaced or repaired Goods and the cost of any further inspection or testing of other Goods as may be reasonably required by the Purchaser having due regard to the nature of the defect found in the Goods being replaced or repaired shall be borne by the Supplier; and (iii) the Supplier shall pay to the Purchaser a sum equal to the cost of any additional insurance considered necessary by the Purchaser.

(d) Any inspection, test, checking or approval by or on behalf of the Purchaser (or any failure to inspect, test, check, approve or make

any complaint to the Supplier), shall in no event be construed as acceptance of any of the Goods supplied or work or services performed by the Supplier or any of its sub-contractors and shall in no way relieve the Supplier from any obligation or liability under the Contract or otherwise.

9. Assignment and sub-contracting

(a) The Supplier shall not sub-contract or assign the whole or any part of the Contract or the benefit thereof without the written consent of the Purchaser. Any consent given by the Purchaser under the foregoing provisions of this Sub-clause shall not relieve the Supplier from any obligation or liability under the Contract.

(b) When the Purchaser has consented to the placing of sub-contracts copies of each sub-contract or sub-order shall be sent to the Purchaser immediately they are issued unless the Purchaser has specifically requested or approved in writing otherwise.

(c) The Purchaser shall without consent from the Supplier have the right to assign the whole or any part of the Contract or the benefit or burden thereof to any of its parent, subsidiary or associated companies, or to the Owner or any of its parent, subsidiary or associated companies and, with the Supplier's written consent, which shall not be unreasonably withheld, to any other party.

(d) Any person who is not expressly named in the Contract (including any employee, officer, agent, representative or sub-contractor of either party) shall have no right to enforce any term of such a Contract which is expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Purchaser.

(e) No person other than a party to the Contract shall have any right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

10. Health and safety

(a) The attention of the Supplier is drawn to the obligations imposed by the Health and Safety at Work etc. Act 1974, on designers, manufacturers, importers, suppliers, erectors and installers of articles and substances for use at work to ensure, so far as is reasonably practicable, that such articles and substances are so designed, constructed or installed to be safe and without risks to health at all times when they are being set, used, cleaned, maintained, handled, processed, stored or transported.

(b) Where by reason of its obligations under the said Act or any modification or re-enactment thereof or otherwise the Supplier has carried out or arranged for the carrying out of testing and examination of Goods to be sold hereunder for the purpose of ensuring that they are safe and without risks to health at the times mentioned above, the Supplier shall provide the Purchaser where appropriate on or before delivery of the Goods with proper documented results of such tests or examinations or, in default thereof, certificates issued by a duly qualified and authorised person that the tests and examinations proved satisfactory.

(c) Without prejudice to the obligation contained in Sub-clause (b) above, on or before delivery of the Goods to the Purchaser, the Supplier shall provide to the Purchaser in connection with the Goods information about the use for which such Goods have been designed and tested, and about any conditions necessary to ensure that when installed, commissioned and put to use the Goods will be safe and without risks to health.

(d) Nothing contained in the foregoing provisions of this Clause shall be construed as relieving the Supplier or in any way detracting from any obligation or liability the Supplier may have under the Health and Safety at Work etc. Act 1974 or any modification or re-

enactment thereof, or under any other statute, statutory instrument or regulation applicable to the Goods and the use thereof.

(e) Without prejudice to the generality of the foregoing in the event that the Supplier is required to supply personnel to perform any services of whatsoever nature at the site or a location other than the Supplier's place of business the Supplier hereby warrants and represents absolutely that all such personnel shall be in a good and sufficient state of health so as to perform such services without hazard to others.

(f) Where in the performance of the Supplier's obligations under this Contract the Supplier, its sub-contractors, tradesmen or artisans intend either to supply to the Purchaser, or to use any product which may or does contain a substance or substances which is or are hazardous to health within the meaning of Regulation 2(1) Control of Substances Hazardous to Health Regulations 2002 (or any amendment thereto), the Supplier shall supply full details both of such product and such substance in duplicate forthwith.

In supplying such details the Supplier will include in relation to both the product and the substance, without limitation, details of any assessment or monitoring which has been carried out and any data concerned with information or training.

The Supplier shall in addition supply promptly, but no later than seven days following the Purchaser's written request, any other supporting documentation or information relating to the product which the Purchaser may reasonably request.

In considering whether any product contains a substance which falls within the above Regulations, the Supplier shall include any substance which may be comprised in the product and which may be released either by cutting, grinding, spreading or burning the product or by mixing or using the product with other products or by any other means.

11. Suspension

The Purchaser shall, by notice in writing to the Supplier, be entitled to suspend the Contract or any part thereof. If the Supplier shall be delayed in the performance of any of his obligations under the Contract by any suspension order (other than a suspension order given by reason of the Supplier's own breach of the Contract), then any additional cost or expense directly and unavoidably incurred by the Supplier as a result of such order shall be added to the Contract price. The Purchaser, however, shall in no event be liable to the Supplier for any loss of profit, loss of use or loss of trading revenue, whether arising in connection with or as a result of such suspension or otherwise.

12. Termination of the Contract

(a) In addition and without prejudice to the Purchaser's right to terminate the Contract or any part thereof under any other provision in these Conditions, the Purchaser shall have the right at its sole discretion to terminate the Contract or any part thereof at any time prior to discharge of the Contract by performance by giving notice in writing to the Supplier under this Sub-clause.

(b) The Purchaser shall have the right to terminate the Contract or any part thereof forthwith:

(i) if the Supplier shall be in breach of any of the obligations set out in these Conditions or in the Purchase Order and (if the breach is capable of being remedied) shall not have remedied such breach to the complete satisfaction of the Purchaser within seven days (or within such longer period as the Purchaser may have agreed in writing), after notice thereof in writing (ii) in the event that the Supplier, not being a body corporate, becomes bankrupt, or compounds or makes any arrangements with his creditors, or

commits any act of bankruptcy, or where the Supplier, being a body corporate, goes into liquidation, whether compulsory or voluntary (save for the purpose of reconstruction or amalgamation while solvent), or has a receiver and/or manager appointed of its undertaking or assets or any part thereof.

(c) Termination of this Contract or any part thereof for any reason shall be without prejudice to the rights and remedies of both parties hereto accrued up to and including the date of such termination.

(d) Unless the Purchaser's termination notice otherwise provides, upon receipt of such notice the Supplier shall promptly cease any further work (except on any part not terminated by the Purchaser) and shall instruct its sub-contractors if any, to similarly do so, and shall comply with all reasonable instructions from the Purchaser in regard to termination.

(e) The Supplier hereby agrees that notwithstanding anything contained elsewhere in the Contract to the contrary, whether expressly or by implication, the Supplier's sole remedy in the event of termination pursuant to Sub-clause (a) of this Clause is to receive payment from the Purchaser of (i) such part of the Contract price as represents the value of Goods (if any) completed, delivered and accepted in accordance with the Contract prior to the date of receipt of such termination notice, less any monies previously received under the Contract (ii) any direct costs and expenses reasonably and necessarily incurred by the Supplier in complying with the provisions of sub-clause (d) of this Clause as substantiated to and agreed by the Purchaser or (iii) in lieu of (i) and (ii) such sum as the Purchaser and the Supplier may agree as full and final settlement. The Purchaser, however, shall in no event be liable to the Supplier for any loss of profits, loss of use or loss of trading revenue, whether arising in connection with or as a result of such termination or otherwise.

13. Intellectual Property, Patents, Copyrights

(a) The Purchaser, Owner and Supplier shall all retain ownership of their own pre-existing Intellectual Property Rights and nothing in the Contract shall be deemed to give any party the right, title or any interest whatsoever in the Intellectual Property Rights of another party.

(b) The Supplier warrants that the supply by the Supplier and the use by the Purchaser or Owner or any other user of the Goods does not and will not infringe the intellectual property rights of any third party, whether in the form of letters patent, trade or service marks, registered designs, unregistered designs, copyright or any other similar right and the Supplier shall indemnify the Purchaser and the Owner against all claims, demands, damages, penalties, costs, expenses or liability arising as a result of the breach of this warranty by the Supplier.

14. Confidentiality

(a) Any items provided to the Supplier by the Purchaser or the Owner (including without prejudice to the generality of the foregoing, specifications, plans, drawings, designs, samples, patterns, dies, moulds, gauges, equipment, material and computer programmes, whether by way of free issue or not) for use in connection with the Contract, whether for incorporation in the Goods or not, shall be and remain the property of the Purchaser or the Owner, as the case may be, and the Supplier shall (i) bear the risk of loss of or damage to such items and be generally responsible and accountable to the Purchaser therefor in accordance with Clause 4(c) hereof; (ii) affix and keep affixed a clear sign upon each such item indicating that it is the property of the Purchaser or the property of the Owner, as the case may be; (iii) not without the Purchaser's prior written consent use or allow the use of any such items for any purpose whatsoever, other than the supply of the Goods and the carrying out of any associated work under the Contract; (iv) not without the Purchaser's prior written consent disclose or allow the disclosure of any such

item or information relating thereto to any person whatsoever save for the purposes of the proper performance of the obligations owed to the Purchaser by the Supplier under the Contract; and (v) upon completion by performance or termination of the Contract, or earlier at the Purchaser's request, return to the Purchaser all such items.

(b) The Supplier shall not publish any information in connection with the Works, or the Contract, or the Goods supplied or to be supplied hereunder without the prior written consent of the Purchaser.

(c) The provisions of this Clause and Clauses 13, 17 and 21 shall remain in effect notwithstanding any discharge by performance, termination or suspension of the Contract, howsoever arising.

15. Force Majeure

(a) If either party is prevented or hindered from carrying out its obligations hereunder by Force Majeure (as defined in Sub-clause (b) of this Clause), then the performance of such obligations shall be suspended for such time as the Force Majeure circumstances last and the party affected shall not be liable for any loss or damage caused to the other by the delay, but shall however resume performance of the suspended obligations as soon as the Force Majeure circumstances cease to exist unless the Contract has prior thereto been terminated by the Purchaser pursuant to Sub-clause (c) of this Clause.

(b) 'Force Majeure' shall, for the purpose of this Contract mean any circumstances which were not reasonably foreseeable and which were beyond the control of the Purchaser or the Supplier or the Supplier's sub-contractors and which by the exercise of reasonable diligence the Purchaser or the Supplier or the Supplier's sub-contractors would have been unable to prevent or provide against and shall in any event be limited solely to Act of God or the Public Enemy, war, rebellion, civil disturbance, compliance with any order, act or regulation of any government or government agency.

(c) In the case of Force Majeure extending beyond a reasonable time (which term for the purposes of this Contract shall in any event include any period in excess of sixty days) the Purchaser may by notice in writing to the Supplier terminate the Contract, with no liability on either party for loss or damage thereby occasioned.

16. Labelling and instructions

(a) The Supplier warrants that the design, construction, quality, packaging and labelling of the Goods shall comply in all respects with any requirements of any statute, order or other instrument having the force of law, which may be in force at the times when the Goods are supplied.

(b) All marking and labelling of the Goods (i) necessary to ensure safe and proper handling, processing, storage and transport and (ii) as particularly required by the Purchaser shall be carried out by the Supplier.

(c) Hazardous goods must have prominent warnings in English and any other language as may be specified in the Purchase Order on all packing and documents.

17. Liens and claims

The Supplier shall indemnify and hold the Purchaser and the Owner harmless from all liens and other encumbrances against the Goods or any property belonging to or in the possession of the Purchaser or the Owner on account of debts or claims alleged to be due from the Supplier or its sub-contractors to any person, including sub-contractors, and on behalf of the Purchaser or the Owner and in the Purchaser's or the Owner's name, as the case may be, shall defend at its own expense any claim or litigation in connection therewith and shall follow any reasonable instructions issued by the Purchaser or the Owner in connection therewith.

18. Late delivery

If the Goods or any part thereof are not delivered by the due date and/or time, the Purchaser may at its option and without prejudice to any other rights or remedies it may have; either:

(a) refuse to take delivery of or reject the Goods or any part thereof as it may choose, and the Purchaser shall have no liability for the payment thereof, or,

(b) take delivery of and subject to Clause 8 hereof keep the Goods or any part thereof as it may choose, in which event the Supplier shall pay to the Purchaser such Liquidated Damages, if any, as may be specified in the Purchase Order or if no Liquidated Damages are specified in the Purchase Order, such sum as the Purchaser may claim for any costs, losses, damages and expenses suffered or incurred by the Purchaser as a result of or in connection with such late delivery.

19. Insurance

(a) The Supplier shall at its own expense effect and maintain throughout the performance of the Contract (i) such insurances as the Supplier may be required to effect and maintain by law; (ii) "all risks" insurance for the full replacement value of the Goods and other items while they remain at the Supplier's risk; (iii) insurance in respect of liability for death of or injury to third parties or loss of or damage to third party property for an amount of not less than £1,000,000, any one occurrence, unlimited in the aggregate; and (iv) adequate insurance for such other of the Supplier's insurable obligations under the Contract (including in particular its obligations under Clauses 7 and 8) as a prudent and competent person entering into the Contract would effect and maintain.

(b) The Supplier shall provide the Purchaser upon request with details of all insurance cover for the time being held by it in relation to the Goods and the Supplier's obligations under the Contract.

20. No waivers

No failure on the part of the Purchaser at any time or from time to time to enforce or to require the strict adherence and performance of any of the terms, Conditions and provisions of the Contract shall constitute a waiver of such terms, Conditions or provisions and/or affect or impair such terms, Conditions or provisions in any way or the right of the Purchaser at any time to avail itself of such remedies as it may have for each and every breach of such terms, Conditions or provisions.

21. Ethical conduct

The Supplier shall not offer or give or agree to give to any director, officer, employee or agent of the Purchaser or of the Owner any gift or consideration of any kind as an inducement or reward for doing, or for forbearing to do, or for having done, or forborne to do, any action in relation to the obtaining or execution of the Contract or any other contract with the Purchaser or the Owner or for showing or forbearing to show any favour or disfavour to any person in relation to the Contract or any other contract with the Purchaser or the Owner. In the event of breach of the Supplier's obligation under this Clause, the Purchaser may without prejudice to any other rights it may have terminate the Contract forthwith in accordance with the provisions of Sub-clause 12(b)(i) hereof and any payments already made to the Supplier under the Contract shall be returned to the Purchaser forthwith.

22. Conditions

No servant or agent of the Purchaser has any authority to agree to any variation of or addition to these Conditions, unless such variation or addition is expressed in writing and specifically agreed and signed on behalf of the Purchaser by a director or other person duly authorised by the Purchaser. Subject to the foregoing

provisions of this Clause, nothing contained in any document issued by the Supplier (irrespective of whether same is referred to in the Purchase Order) shall in any way modify or vary these Conditions.

23. Legal construction

Unless otherwise agreed in writing this Contract shall in all respects be construed and governed by the law of England and Wales and subject to Clause 24 the parties agree to submit to the jurisdiction of its Courts.

24. Disputes

If any dispute arises out of the Contract the parties shall, in the first instance, work together in good faith to resolve the dispute through negotiation by a senior level of management on both sides. If the dispute still remains unresolved the parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution's (CEDR) Model Mediation Procedure.

25. Unloading

The Purchaser shall make available to the Supplier such assistance in unloading as has been included in the Contract and is confirmed by the Supplier to the Purchaser in writing seven days prior to delivery of the Goods. The Goods shall not be treated as having

been delivered to the Place of Delivery until they are safely unloaded and taken over by the Purchaser.

26. Post-Delivery Storage

The Purchaser shall store the Goods at the Place of Delivery in accordance with such storage requirements as included in the Contract. Where the Contract is silent on storage requirements for the Goods then the Supplier warrants that the Goods may be stored without deterioration in the open on the ground whilst in the condition general to the Place of Delivery.

27. Entirety of Agreement

This Contract shall constitute the entire agreement between the Supplier and the Purchaser on the subject hereof and shall cancel and supersede all prior written or oral representations or understandings between the Supplier and the Purchaser other than as expressly included in the Contract. When a reference is made in the Contract to the Supplier's quotation this shall be solely for the purpose of further defining the scope of supply and/or the pricing. Such a reference shall not be interpreted to include the Supplier's conditions, statements or representations which are specifically excluded from the Contract.

Sub- Contract Terms and Conditions

DEFINITIONS

- 1 In this Sub-contract the following words and expressions shall have the meanings hereby assigned to them.
- a) "Contractor" means UnitBirwelco Ltd
 - b) "Sub-Contractor" means the party named on the attached Sub-Contract Order employed to carry out the Sub-Contract Works
 - c) "Client" means the party to the Main Contract other than the Contractor.
 - d) "Main Contract" means the contract between the Contractor and the Client.
 - e) "Sub-Contract" means the attached Sub-Contract Order together with the drawings and specification as thereon and these conditions but excluding any conditions or terms of the Sub-Contractor, whether contained in his quotation or otherwise.
 - f) "Sub-Contract Works" means the works as described on the Sub-Contract Order.
 - g) "Works" means the works as defined in the Main contract.
 - h) "Price" means the sum specified in the Sub-Contract Order as payable to the Sub-Contractor for the Sub-Contract Works or such other sum as may become payable under the Sub-Contract.
 - i) "Engineer" means the Engineer, Architect, Engineer's Representative, Employer's Representative, Client's Representative, Supervising Officer or other such person named in the Main Contract.
 - j) "Period for Completion" means the period given in the attached Sub-Contract Order
 - k) "Dispute Panel" means the panel made up of one person (being a director, partner or employee of the Contractor and Sub-Contractor respectively) nominated by each party.

Words importing the singular also include the plural and vice versa where the context requires.

GENERAL

- 2 The Sub-Contractor shall carry out and complete the Sub-Contract Works in compliance with the Sub-Contract, drawings, specification, Local and Statutory Authority requirements, trade practice and any other relevant requirements and/or instructions or variations supplied to him from time to time by the Contractor in writing and shall deliver up the Sub-Contract Works to the Contractor to the satisfaction of the Contractor and the Engineer.
- 3 The Sub-Contractor is responsible for the sufficiency of his rates and prices and he will be deemed to have visited the site and obtained any further information required to enable him to carry out the Sub-Contract Works.
- 4 The Sub-Contractor's rates and prices are fixed for the duration of the Sub-Contract Works and are not subject to price fluctuations.

- 5 The Sub-Contractor is deemed to have full knowledge of the provisions of the Main Contract (other than the Contractor's rates and prices) insofar as they are applicable to the Sub-Contract and shall be bound by the Main Contract terms and conditions. The Contractor will not be responsible for any inaccuracies or inadequate or conflicting information contained within any document supplied by the Contractor. Where the provisions of the Main Contract (if any), not expressly repeated herein, are applicable to the Sub-Contract Works, these shall be deemed to be incorporated herein.
- 6 The Contractor may be required to obtain the Engineer's consent to any proposed sub-contract. Should the Engineer decline to give his consent this Sub-Contract will become null and void and the Contractor will have no liability for any claims for damages, costs, loss and or expense from the Sub-Contractor.
- 7 The Sub-Contractor shall not display advertisements on the site nor shall he permit advertisements to be displayed without the written consent of the Contractor.
- 8 The Sub-Contractor shall submit a weekly return to the Contractor detailing all resources used each day including names of all operatives and a record of duties and activities undertaken and completed.
- 9 The Sub-Contractor will be responsible for setting out the Sub-Contract Works as required by the Contractor. The setting out for the Sub-Contract Works shall comply with the requirements of setting out for the Works in every respect.
- 10 The Sub-Contractor shall at all times and at his own cost clear away all rubbish and debris resulting or arising from the Sub-Contract Works together with surplus materials, to the satisfaction of the Contractor. The Sub-Contractor shall keep any access to the site and to the Works clear at all times.

ASSIGNING AND SUB LETTING

- 11 The Sub-Contractor shall not assign or sub-let any part of the Sub-Contract Works without the written consent of the Contractor. Such consent shall not relieve the Sub-Contractor of any of his liabilities or obligations under the Sub-Contract.

DEFECTS

- 12 (1) The Sub-Contractor will be liable to make good all defects, shrinkages or faults in the Sub-Contract Works at his own expense and to the entire satisfaction of the Contractor and the Engineer.
- (2) The Sub-Contractor will be liable for the cost of executing any work to the Works rendered necessary by defects, shrinkages or faults in the Sub-Contract Works.

HEALTH AND SAFETY

13 (1) The Sub-Contractor shall comply with all primary and/or secondary health, safety and welfare legislation, statutory instruments and/or codes of practice thereunder in force during the continuance of the Sub-Contract Works.

(2) It is an essential term of this Sub-Contract that the Sub-Contractor shall comply with the Contractor's Health and Safety Plan for the works and any safety rules contained therein and shall comply with procedures contained in the Contractor's Safety Management System, copies of which are available at the Contractor's sites and offices.

14 Non-conformance with the site safety requirements will result in the Sub-Contractor's personnel being dismissed from the site.

15 The Sub-Contractor is deemed to have allowed in his rates for the provision of Personnel Protective Clothing and Equipment for his operatives to work safely on the site.

INSURANCES

16 The Sub-Contractor shall effect and maintain the following Insurances to the approval of the Contractor:

- a) Employer's Liability - with indemnity unlimited.
- b) Public Liability - the limit of indemnity shall be as detailed on the Sub-Contract Order.
- c) Contractors All-risk – to the value of the Subcontract works and plant.

17 The Sub-Contractor will provide written evidence that he has in place the insurances detailed above and that he has paid the premium for the current year. Should the Sub-Contractor fail to provide such evidence, the Contractor shall be empowered to effect such insurance and to deduct the costs thereof from any sum due or to become due to the Sub-Contractor.

SUB-CONTRACTOR'S LABOUR, PLANT AND MATERIALS

18 (1) The temporary works, plant, tools, equipment or any other property belonging to or provided by the Sub-Contractor shall be at the sole risk of the Sub-Contractor and any loss or damage to or caused by the same shall be the sole responsibility of the Sub-Contractor, who shall indemnify the Contractor against any loss, claim or proceedings in respect thereof. Any insurance against any such loss or claim shall be the sole concern of the Sub-Contractor.

(2) Unfixed materials and goods delivered to the site and intended therefore shall become the property of the Contractor. Such materials and goods shall not be removed except for use upon the Sub-Contract Works, unless the Contractor has consented in writing to such removal. The Sub-Contractor shall, notwithstanding, be responsible for any loss thereof or damage thereto and for the cost of storage, handling and insurance of the same until such time as they are fully, finally and properly incorporated into the Works.

(3) The Sub-Contractor shall only employ operatives who are skilled and fully competent to carry out the Sub-Contract Works.

(4) The Sub-Contractor shall provide a full time foreman/charge hand to supervise such operatives and to

receive and act upon instructions from the Contractor. The Sub-Contractor must also provide effective managerial and technical supervision during the progress of the Sub-Contract Works as required by the Contractor for the successful completion of the Sub-Contract Works.

CONTRACTOR'S FACILITIES

19 In the event of any plant, materials, scaffolding, ladders, tools, tackle, water or any other facility being provided by the Contractor, as detailed on the attached Sub-Contract Order, the Sub-Contractor shall be permitted to use them, provided this does not impede the Contractor's progress. The Sub-Contractor shall satisfy himself as to their fitness, condition and suitability for the purposes for which the Sub-Contractor requires to use them and no such provision by the Contractor shall imply any warranty on the part of the Contractor as to their fitness, condition and suitability. The Sub-Contractor shall be solely responsible for any damage, loss, injury or accident which may result or arise from the use thereof either by himself or by anyone in his employment or authorised by him making use of the same.

PROGRESS AND COMPLETION

20 (1) The Sub-Contractor will commence the Sub-Contract Works on the date specified in the Sub-Contract Order.

(2) The Sub-Contractor will proceed with the Sub-Contract Works diligently and in accordance with the programme dates and/or requirements with regard to progress, sequence and manner of work and time for completion, as notified by the Contractor.

(3) The Contractor does not undertake to provide continuity of work and may at any time by written notice to the Sub-Contractor, suspend the Sub-Contract Works or part thereof without liability for any loss or expense or other damage incurred by the Sub-Contractor due to such suspension.

(4) Should the Sub-Contractor fail to progress the Sub-Contract Works in accordance with Clause 20 (2) hereof, the Contractor shall be entitled to deduct any cost incurred by the Contractor as a consequence of such failure.

(5) Furthermore, should the Sub-Contractor fail to progress the Sub-Contract Works in accordance with Clause 20 (2) hereof, the Contractor reserves the right to alter the amount of the Sub-Contract Works or to rescind the Sub-Contract entirely, without prejudice to the Contractor's rights to seek damages from the Sub-Contractor. The Contractor may employ an alternative sub-contractor or sub-contractors to execute all or any part of the Sub-Contract Works and may recover any additional expense incurred in so doing from the Sub-Contractor.

PAYMENT

21 (1) Interim payments will be paid to the Sub-Contractor in accordance with the terms given in the attached Sub-Contract Order. The Contractor shall ascertain the value of the work for the purpose of interim payments.

(2) Notwithstanding the provisions of Clause 21 (1), the Sub-Contractor shall, when requested by the Contractor, submit a request for payment, detailing work completed and the value of ordered variations and dayworks.

(3) In addition to all rights of set off at common law or otherwise, the Contractor may set off against sums otherwise due to the Sub-Contractor, any sum due to the Contractor from the Sub-Contractor and any claim by the Contractor against the Sub-Contractor howsoever arising under this or any contract.

(4) Any interim payment made does not mean or imply in any way, that the Contractor accepts that any work completed conforms to standards set out in the Sub-Contract.

22 **VALUE ADDED TAX**

(1) The Price shall be deemed to be exclusive of any Value Added Tax (VAT) chargeable by the Sub-Contractor on any supply of goods or services.

(2) Should VAT be properly chargeable on all or part of the Sub-Contract Works then the Contractor shall add to every payment made, the amount of VAT that the Sub-Contractor is due to account for to the Commissioners of Customs and Excise. Such amounts will be paid under the rules governing the Self Billing Procedure. The Sub-Contractor shall account to the Commissioners for the amount of VAT shown on the payment certificate of the Contractor. Such payment certificate shall become the Sub-Contractor's Tax Invoice.

SUB-CONTRACTOR'S TAX EXEMPTION

23 The Sub-Contractor will furnish the Contractor at the Contractor's Head Office with the Sub-Contractor's tax exemption certificate or Certifying Document for the Contractor's verification prior to the commencement of the Sub-Contract Works. If the Sub-Contractor does not furnish the Contractor with such certificate, or does not hold a current tax exemption certificate, or if the tax exemption certificate expires during the course of the Sub-Contract Works and a new certificate is not produced for verification to the Contractor, then income tax will be levied on all labour elements of payments at the rate current at the time of payment. The Sub-Contractor must notify the Contractor immediately of any change in the Sub-Contractor's tax status.

RETENTION

24 Interim payments made to the Sub-Contractor shall be net of 5% retention, unless otherwise indicated within the Sub-Contract Order. One half of the retention monies shall be released on Practical Completion of the Sub-Contract Works. The balance of the retention monies shall be released to the Sub-Contractor upon satisfactory completion of all snagging and maintenance items and the conclusion of any defects liability period specified in the Main Contract.

DAYWORK

25 Where the Sub-Contractor has been ordered in writing by the Contractor to carry out any additional or substituted work on a daywork basis, payment will be made in accordance with the rates contained in the attached Sub-Contract Order. All applications for payment of dayworks must be made within 7 days of the end of the week during which the work was carried out.

VARIATIONS

26 (1) The Contractor may by written or verbal instruction order any variation to the Sub-Contract Works, save that any verbal instruction issued shall be required to be confirmed in writing by the Contractor. The Sub-Contractor will not add to, vary, or omit any part of the Sub-Contract Works without written instruction from the Contractor or written confirmation from the Contractor of oral instruction.

(2) Provided that the variation does not arise from any fault or negligence on the part of the Sub-Contractor, the variation will be valued by reference to the Bill of Quantities or Schedule of Rates referred to in the Sub-Contract. Where no such Bill of Quantities or Schedule of Rates are included in the Sub-Contract or where no rate is given, the variation will be valued by the Contractor following consultation with the Sub-Contractor.

(3) The Sub-Contractor shall not be entitled to claim for loss of profit, preliminaries, site establishment costs or head office overheads as a result of any variation involving an omission of work.

EXTENSION OF TIME

27 If the Sub-Contractor shall be delayed in the execution of the Sub-Contract Works as a consequence of any ordered variation or any breach of this Sub-Contract by the Contractor, then he shall be entitled to such extension of the Period for Completion as may in all the circumstances be fair and reasonable. It is a condition precedent to the Sub-Contractor's right to an extension of the Period for Completion that he shall have given written notice to the Contractor of the circumstances or occurrence which is delaying him within 7 days of such delay first occurring together with full and detailed particulars in justification of the period of extension claimed in order that the claim may be investigated at the time.

DESIGN

28 The Sub-Contractor warrants to the Contractor that insofar as the Sub-Contractor is responsible for any design, preparation of drawings, selection of materials and preparation of the specification for the Sub-Contract Works, he has exercised all professional skill and care. The Sub-Contractor shall indemnify the Contractor against any damage, expense, loss or claim which the Contractor might incur arising from failure on the part of the Sub-Contractor to have exercised all professional skill and care.

DETERMINATION

- 29 The Contractor may summarily determine this Agreement without payment or compensation to the Sub-Contractor if the Sub-Contractor:
- a) Fails to proceed diligently with the Sub-Contract Works to the satisfaction of the Contractor or proceeds in a manner as would in the reasonable opinion of the Contractor prejudice the completion of the whole or any portion of the Works in accordance with the terms and conditions hereof, and continues with such failure for a period of 7 days after receiving notice of intention to determine from the Contractor.
 - b) Refuses or fails within 7 days or other extended time notified by the Contractor in writing, to rectify any defective workmanship and/or materials to the Contractor's and/or the Engineer's satisfaction.
 - c) Fails to complete and deliver up the whole or any portion of the Sub-Contract Works by the time or times specified or by such extended time or times as may be allowed by the Contractor.
 - d) Fails to withdraw or replace any one or more of his employees to whom the Contractor has reasonable grounds of objection due to poor timekeeping or work performance or disruptive behavior.
 - e) Makes any arrangement with his creditors, becomes apparently insolvent or commits an Act of Bankruptcy, or being a limited company calls a meeting of its creditors for the purpose of appointing a liquidator, is the subject of a winding up petition or striking off notice, goes into liquidation (except a voluntary liquidation for the purpose only of reconstruction) or has an Administrator or Receiver appointed over all or any of its undertakings or assets.
 - f) Fails within 7 days notice in writing from the Contractor to begin and to diligently comply with any of the obligations on the part of the Sub-Contractor contained herein.

DISPUTES

- 30 (1) Where any dispute or difference arises between the parties, either party may serve a written notice on the other identifying the dispute. Within 14 days of such notice the Dispute Panel shall meet and attempt in good faith to resolve the dispute without recourse to legal proceedings.
- (2) The parties acknowledge and agree that this undertaking shall not prejudice any right that either party may have to refer any dispute or difference to adjudication at any time, if that party so wishes.
- (3) The law of this Sub-Contract shall be the law of England and Wales. Any dispute arising out of or in connection with this contract or the performance of the same shall be determined by the courts of England and Wales.

THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 31 The Contractor and the Sub-Contractor acknowledge that neither of them has entered into the Sub-Contract for the benefit of any third party and the Sub-Contract is not intended to and does not confer any right or entitlement upon any third party.