

Stearn Electric Co Ltd trading as JPD Contracts

CONDITIONS OF CONTRACT – SUPPLY AND INSTALL

The Client's attention is specifically drawn to clauses 13-15 – limitation of liability

1. Definitions

Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated below:

Word or phrase Meaning

Agreement: these Conditions, the Contractor's quotation and the Contractor's Order Acknowledgement

CDM Regulations: the Construction (Design and Management) Regulations 2007, as they apply to the Contract Works.

Client the Company to whom the Contractor's quotation is addressed.

Conditions: clauses 1 to 27 of these Conditions.

Contract the arrangement between Contractor and Client, comprising the documents set out in the Contractor's quotation and the Contractor's Order Acknowledgement.

Contract Documents: the Contractor's quotation and any documents referred to therein and in addition the Contractor's Order Acknowledgement.

Contract Price the price agreed by both parties for the Contractor to undertake the Contract Works.

Contract Works: the works briefly described in the Contractor's quotation and Contractor's Order Acknowledgement, as varied (where applicable) under clause 11.

Contractor JPD Contracts ("JPD") as a trading division of Stearn Electric Co Ltd.

End User(s) The ultimate consumer of the Goods supplied and installed on the site.

Force Majeure See clause 25.

Goods materials and goods supplied by the Contractor which will be permanently part of the Contract Works.

Order Acknowledgement Written acceptance by the Contractor of the Client's written order on the Contractor's Order Acknowledgement form.

Others the Client and other Contractors and consultants working on the project for the Client.

Site: the place where the Goods are to be delivered and / or installed.

Writing includes hand, email, fax, post and courier unless otherwise stated

2. General

2.1 These conditions shall:

(a) Apply to and be incorporated into the Contract; and

(b) Prevail over any inconsistent or conflicting terms or conditions contained, or referred to, in the Client's purchase order, the Contractor's quotation, specification, or implied by law, trade custom, practice or course of dealing.

2.2 These Contract Documents represent the entire obligations between the Contractor and the Client. In the case of any inconsistency between any letter or quotation incorporating or referring to these Conditions and any Order, letter or form of contract sent by the Client to the Contractor, whatever may be their respective dates, the provisions of these Conditions shall prevail. In the case of any inconsistency between the Contractor's quotation and the Contractor's Order Acknowledgement, the Contractor's Order Acknowledgement shall prevail.

2.3 Sending the Contractor's Order Acknowledgement by post or email to the Client shall be deemed to be conclusive evidence of the Client's acceptance of these conditions where no response is received within seven calendar days from the date of the Order Acknowledgement.

2.4 Any alteration to these conditions only applies where accepted in writing by a Director of the Contractor.

2.5 If at any time any one or more of the provision or part thereof of these Conditions becomes or is invalid, illegal or unenforceable in any respect under any law or is held by a court to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

2.6 No waiver by the Contractor of any breach of any provision of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision and the Contractor shall not be prejudiced by any forbearance or indulgence granted by it to the Client.

2.7 The Contractor may assign the Contract or any part of it to any person, firm or company. The Client shall not be entitled to assign the Contract or any part of it without the prior written consent of the Contractor.

3. Reckoning periods of days

Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday that day shall be excluded.

4. Contracts (Rights of Third Parties) Act 1999

Nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

5. Giving or service of notices and other documents

5.1 A notice or other document may be served by any effective means including by email, other than for those Notices stated in clause 5.5.

5.2 Valid email addresses to which notices or other documents can be sent are those notified by the parties to each other.

5.3 A notice or other document is deemed to be received on the next business day after it has been sent. A business day excludes Saturdays, Sundays and public holidays.

5.4 Documents attached to emails must be in Microsoft Word, Excel, pdf or as specified in the Contractor's Order Acknowledgement. Documents attached to emails in any other format are deemed not to have been received.

5.5 Notices which must be sent by Recorded Signed For or Special Delivery are:

(a) Notice of termination per clause 20

(b) Notice of defects per clause 13.1(b)

For such a notice to be valid, it must be served in the specified manner. Failure to issue notices in the manner specified will be treated as if they had not been served.

6. Description

6.1 Any figures, statements, descriptions, illustrations, photographs, drawings, weights or any other matters contained in the Contractor's or manufacturer's catalogues, pamphlets, price lists or advertising literature are not guaranteed to be accurate and are intended merely to represent a general picture of the Contractor's products and services and shall not form part of the Contract nor be regarded as a warranty or representation relating to the Goods.

6.2 The Contractor and its servants and agents give no representations as to the condition of the Goods, their fitness for purpose or the measurements or specifications of any Goods unless it is confirmed in Writing by the Contractor.

7. Contractor's obligations

7.1 The Contractor shall carry out and complete the Contract Works in accordance with the Contract Documents, with due diligence and in a good and workmanlike manner.

7.2 The Contractor shall provide goods and materials of the standard stated in the Contract Documents.

7.3 The Contractor shall provide all labour, materials and plant required to carry out and complete the Contract Works during normal working hours except for the attendances set out in the Contract Documents which the Client shall provide free of charge to the Contractor.

7.4 The Contractor may subcontract any of the Contract Works.

7.5 The Contractor shall comply with, and give all notices required by, any statute, any statutory instrument, rule or order or any regulation or bye-law applicable to the Contract Works (including the CDM Regulations). Any payable fees and charges in respect of the Contract Works shall be paid by the Client.

7.6 Unless stated within the Contract, the Contractor has no maintenance obligations beyond the warranty obligations as defined within clause 13 hereof.

7.7 The Contractor does not have any design responsibility. In the event that any design is completed by the Contractor, then the Contractor shall in respect of any inadequacy in the design have the like liability to the Client, whether under statute or otherwise, as would an appropriate professional designer holding himself out as competent to take on work for such design who acting independently under a separate contract with the Client, had supplied such design for the works to be carried out and completed by a Contractor who is not the supplier of the design.

8. Client's obligations

8.1 The Client shall comply with the CDM Regulations, shall provide sufficient access to the Site for the Contractor to perform his obligations under this Contract and shall in no way hinder or prevent the Contractor, whether by act or omission, from performing such obligations.

8.2 The Client shall not, without the prior written consent of the Contractor, assign, transfer, charge, Contract or deal in any other manner with all or any of its rights or obligations under this Contract.

8.3 The Client must provide the Contractor with all the information stipulated in the tender or quotation and any other information requested by the Contractor. If this information is not provided the Contractor may at its option, cancel the Contract or claim a suitable extension of the Contract period and charge the Client any additional costs resulting from such extension.

8.4 The Contractor does not accept responsibility for compliance with statutory regulations (including but not limited to planning permission, building regulations etc) or local by- laws or for the fulfilment of any special requirements binding upon the Client. When the Goods are supplied for use in conjunction with equipment and/or structures which are not supplied by the Contractor, the Client shall be solely responsible for ensuring that such equipment and/or structures are in all respects suitable and adequate for the purpose, and are properly installed. The Contractor shall not be liable for any adaption of the completed installation to suit the Client's own circumstances.

8.5 Where the Client requires special safety precautions when Contractors are working on site ie provision of temporary traffic control system, flagmen, warning lamps etc., such requirements shall be provided free of charge by the Client.

8.6 If installation is prevented, delayed, impeded or otherwise rendered more expensive by any act or omission of the Client (including but not limited to Others employed by the Client or any other third party to which the Client is responsible) including failure to advise the Contractor of special local conditions, the Client shall pay such extra charges as the Contractor shall reasonably require. Any alteration by the Client in design, quantities or specifications may also involve adjustment to the price. Such work shall be carried out only against written instructions given to the Contractor by the Client.

8.7 Where the Contractor provides any labour on the Client's site, the Client shall indemnify the Contractor against the consequences of any defect or suitability of any tackle or apparatus provided by the Client and against all liabilities for damages, costs and expenses arising out of the death of or personal injury to any persons or damage to any property howsoever caused provided that this indemnity shall not apply to liabilities arising from the negligence of the Contractor or its servants or agents.

9. Commencement and completion

9.1 The Contractor shall deliver the Goods to Site as stated in the Order Acknowledgement and shall complete the Contract Works in a reasonable period, unless a period for completion is stated in the Contractor's quotation.

9.2 Times or dates for delivery or performance (including installation) are estimates only and, unless otherwise expressly stated, time is not of the essence. The Contractor will use reasonable endeavours to deliver or perform by the time or date quoted, and except as stated in clause 15 will not be liable under any circumstances for any loss claimed to have arisen from any delay in delivery or performance. No delay shall entitle the Client to cancel or repudiate the Contract.

9.3 Practical completion ("Contractor's Practical Completion") is usually detailed elsewhere within the contract documents. If not detailed elsewhere, this clause will apply. When installation has been completed, the Client will be notified accordingly and will be asked to provide a witness to attend the commissioning of the equipment and will be provided with the handover documentation. The date when the handover documentation is given to the Client is the date when practical completion is deemed to have been achieved by the Contractor ("Contractor's Practical Completion"). In the event that the Client does not provide such a witness the Goods will nevertheless be commissioned and if found satisfactory by the Contractor will be deemed to have been handed over and a certificate to that effect will be issued and will be deemed to have been given to the Client. Installation is deemed to be complete if either the Goods have been used by the Client or have been commissioned, notwithstanding minor omissions or defects which do not materially affect such use.

9.4 Unless stated elsewhere in the Contract, the Contractor has included for one visit to site.

10. Client's instructions

10.1 The Client may issue written instructions which the Contractor shall carry out within a reasonable period, taking into account the availability of materials and manufacturing slots. The Contractor shall only be obliged to follow Client instructions where the price has been agreed in accordance with clause 11.1 and which are issued between the date of the Contractor's Order Acknowledgement letter is served to the Client up until the date of Contractor's Practical Completion.

10.2 The Contractor shall be entitled to additional payment in respect of the Client's instructions.

10.3 If despatch of the Goods is delayed due to any failure or default of the Client the Contractor shall be entitled to arrange for storage of the Goods on the Client's behalf and all charges for storage, transport, loading and unloading, insurance and demurrage will be payable by the Client. The due date for payment for such costs will be as stipulated in clause 16.1 of these Conditions.

11. Variations and claims

11.1 Where the Client wishes to instruct a variation to the Contract Works, then the Client shall issue a request for a quotation, the Contractor shall price the additional works, and only when the price has been agreed, the Client shall issue a written instruction to the Contractor to proceed with the works and confirming the agreed price. The Contractor reserves the right to refuse to complete any additional works instructed by the Client until the price for the varied works has been agreed.

11.2 The Contractor shall in addition be paid any direct loss and/or expense incurred by the Contractor due to the regular progress of the Contract Works being affected by compliance with any Variation or for any other reasons beyond the control of the Contractor including but not limited to Force Majeure.

11.3 If the Client fails to provide any items required by these Conditions, the Contractor may in its discretion and at its sole option provide the items required and charge the cost incurred plus 20% to the Client.

12. Extension of time

12.1 If the Contractor is delayed in completing the Contract Works by the ordering of any Variation of the Contract Works or for other reasons beyond the control of the Contractor, the Contractor shall notify the Client in writing. The Client shall make such extension of time (if any) as is reasonable.

12.2 The Contractor shall constantly use reasonable endeavours to prevent or minimise any delay in the progress of the whole or any part of the Contract Works.

13. Limitation of Liability - The Client's attention is specifically drawn to clause 13

13.1 The Contractor shall only be liable to make good any defects in the Contract Works which stem from his faulty selection of unsuitable or inadequate materials or from faulty materials or bad workmanship. If this is proved to be the case, then the Contractor undertakes, at its discretion, either to replace or repair the Goods or any part or parts thereof. Provided that:

- (a) All monies due and payable have been paid in full;
- (b) Written notice of the defect with full details thereof being received by the Contractor within fourteen calendar days of the discovery of the defect. Such notice must be delivered in accordance with clause 5.5; and
- (c) The Contractor is permitted to witness the defective Goods in their original installed state; and
- (d) The Contractor receives written notice of any defect within two years from the date of Contractor's Practical Completion per clause 9.3; and
- (e) The Contract Works and / or Goods have been used under proper operating conditions including having been operated within the classification and its known domestic and / or commercial use as applicable at the time the Contractor prepared its quotation; and
- (f) In the case of materials and goods supplied and fixed but not manufactured by the Contractor, the extent of the Contractor's liability in respect thereof shall not exceed the extent of the supplier's or the manufacturer's liability to the Contractor; and
- (g) The Contractor shall not be liable to make good any defects in the Contract Works which arise from the operation of the same by the Client, his servants or agents before the date of Contractor's Practical Completion per clause 9.3 nor shall the Contractor be liable for any loss or damage arising directly or indirectly as a consequence of such operation; and
- (h) The Contractor is not liable if the defect is due to carelessness, improper treatment or any wilful or negligent act or omission, including lack of maintenance, inadequate lubrication, or any failure to comply with any instructions given by the Contractor or any use of the Goods with any part or parts which do not comply with the Contractor's specifications
- (i) The Contractor is not liable if the goods have been modified
- (j) The Contractor is not liable if the defect or failure is caused by wear and tear
- (k) The Contractor is not liable if the Client has not paid the Contractor for all work invoiced on this or any other contract between the Client and the Contractor.

13.2 The Contractor shall not be liable in respect of any defect which may occur in any previously existing system to which the Contract Works may be connected unless and to the extent that such defect is directly caused by a defect in the Contract Works for which the Contractor would be liable under this clause.

13.3 Save as is provided by this clause, the Contractor shall not be liable for any direct loss or damage as consequence of any defect in the Contract Works save to the extent that such defect is caused by the negligence of the Contractor, his servants or agents. Subject to clause

13.9, the Contractor's liability for any direct claim arising under the Contract shall be limited to that proportion of recoverable direct loss as would be just and equitable to require the Contractor to pay in regard to the extent of the Contractor's responsibility for the same on the assumption that:

13.3.1 All other consultants and advisors, contractors, subcontractors and suppliers directly or indirectly involved with the works under the Contract have provided contractual undertakings on terms no less onerous than those set out herein.

13.3.2 All the parties referred to in this clause have paid to the Client such sum as it would be just and equitable for them to pay having regard to the extent of their liability for the direct loss incurred by the Client.

13.4 The Contractor is not liable for damage to the Client's property during installation by the Contractor.

13.5 For the avoidance of doubt, any condition or warranty implied by law shall cease to apply after the expiry of the period stated in clause 13.1(d) above.

13.6 The Contractor will require a reasonable period of time to carry out any repairs or replacements.

13.7 The Contractor will charge for any visits to Site caused either by the Client / End Users failure to properly maintain the Goods or where the Client fails to provide the services necessary on site for the Contractor to fulfil its obligations hereunder.

13.8 The Client shall indemnify and hold the Contractor and its offices, directors, employees and agents harmless against any claims, demands, liability, direct loss and/or damages including legal fees, arising from:

(a) Any misrepresentation and/or breach by the Client of the warranties contained in Clause 8; and/or

(b) Without prejudice to the foregoing any breach by the Client of any of these Conditions.

13.9 Save as provided by clause 13.10 below, the Contractor's total liability in respect of all losses arising under or in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall in no circumstances exceed £100,000.

13.10 Nothing in these Conditions shall limit or exclude the Contractor's liability for:

(a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(b) Any matter in respect of which it would be unlawful for the Contractor to exclude or restrict liability.

13.11 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

13.12 Clauses 13 to 15 inclusive shall survive termination of the Contract.

14. Consequential loss or damage - The Client's attention is specifically drawn to this clause 14

The Contractor shall not be liable for any indirect or consequential loss or damage (including pure economic loss, damages, compensation, costs, expenses, losses or other liabilities of any nature, whether direct or consequential including, without limitation, any loss of profits, loss of goodwill, increased overheads or other financial loss of any nature suffered or incurred) arising under or in connection with the Contract howsoever caused, including but not limited to the Contractor's workmanship or Goods or equipment supplied by the Contractor.

15. Limitation of liability for liquidated damages - The Client's attention is specifically drawn to clause 15

In the event that completion of the Contract Works is delayed solely by the Contractor, the Contractor's liability for liquidated damages is limited to 0.5% of the nett price of the Contract Price each week or part thereof until completion of the work up to a maximum of 5% of the nett price of the Contract Price which shall be the sole remedy for such delays.

16. Payment

16.1 Payment shall be due to the Contractor on production of an invoice in line with the terms stated in the Contract. This is a payee notice as defined by s110B(4) of the Housing Grants, Construction and Regeneration Act 1996 as amended.

16.2 Unless stated elsewhere in this Contract, the rates and prices are fixed for sixty calendar days from the date of the Contractor's quotation. After sixty calendar days, or such other period stated elsewhere in the Contract, the rates and prices will be altered by escalation as described below:

16.2.1 Escalation. No price increases resulting from escalation will be charged where the Contract Works are installed within 6 months from the date of the Contractor's quotation. Where the Contract Works are installed outside this 6 month period, then the rates and prices are subject to escalation. Such escalation will be calculated by the Contractor in accordance with RPI formula, with the base date being 60 calendar days after the date of the Contractor's quotation.

16.3 The Client shall determine and give a written notice to the Contractor not later than five calendar days after the date on which a payment becomes due which shall specify the amount (if any) of the payment to be made and the basis on which that amount was calculated. The final date for payment is 7 calendar days from the date the payment becomes due for monies due prior to the Contractor starting on site (ie to secure the manufacturing slot and prior to delivery) and 30 calendar days from the date the payment becomes due for all other payments unless expressly stated elsewhere in the Contract.

16.4 Where payment is paid late by the Client, the Contractor may enforce its statutory rights. In addition, any costs incurred by the Contractor will be charged to the Client including but not limited to the costs of bounced cheques and time spent by the Contractor's employees.

16.5 All amounts quoted by the Contractor under the Contract or within variations are exclusive of value added tax ("VAT") and any duties which will be added to the Contractor's invoice at the rate chargeable at the time of issuing the Contractor's invoice. The Client is responsible for notifying the Contractor of the correct VAT rate. Where no notification is given, VAT will be charged at the current highest prevailing rate. If the wrong rate is notified by the Client to the Contractor, this will constitute a breach of contract by the Client and the Client will indemnify the Contractor as set out in clause 13.8.

16.6 If the Client fails to make any payment due to the Contractor under the Contract by the due date for payment (due date), then the Client shall pay interest on the overdue amount at the rate of 8% per annum above the official dealing rate of the Bank of England (the base rate) from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

17. Retention of title

17.1 In no case will the property in the Goods pass to the Client until payment has been made to the Contractor of all monies owed on any contract by the Client to the Contractor including VAT on and until such payment the Client will hold the Goods in a fiduciary capacity as bailee for the Contractor.

17.2 The risk in the Goods will pass to the Client once Contractor's Practical Completion has been achieved and the Client shall then insure and keep insured the Goods to the full price against all risks.

17.3 In the case of default in payment by the Client after despatch of the Goods and before the Goods has become the Client's property or if, before the property in the Goods has passed to the Client, the Client becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof, the Contractor may give notice to the Client terminating the Contract or the Client's right to possession, as the case may be.

17.4 Where the Client has defaulted on payment, whether due to insolvency or due to any other reasons, the Client shall, if the Goods have been despatched, be bound at the Client's own expense to re-deliver the Goods to the Contractor. In such cases the Contractor may (with or without previous notice) repossess any or all of the Goods and the Contractor or the Contractor's duly authorised Agents are in such circumstances irrevocably authorised by the Client to enter the premises in which the Goods is located and to dismantle and remove the same at the Client's expense.

18. Cancellation

The Client has no right to cancel, but in the event of cancellation by the Client following written agreement by the Contractor, the Client will be liable to the Contractor to pay 25% of the Contract Price. The due date for payment of cancellation fees shall be the date of the invoice and the final date for payment shall be 31 calendar days after the date of invoice. Where the Contractor is unable to retrieve the Goods, the two year warranty will cease to apply.

19. Suspension

19.1 If the Client fails to pay the sum due to the Contractor under this Contract or under any other contract with the Contractor by the final date for payment, then the Contractor may give a written notice of his intention to suspend the performance of any or all of its obligations under this Contract. If the Client's failure to make payment continues for three calendar days after the giving of such notice, then the Contractor may suspend such performance until payment in full is made under this Contract and under any other contract between the Client and the Contractor.

19.2 Where the Contractor exercises his right of suspension under clause 19.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right.

19.3 Applications in respect of any such costs and expenses shall be made to the Client and the Contractor shall with his application or on request submit such details of the costs and expenses as are reasonably necessary to enable his entitlement to be ascertained.

20. Termination – breach / insolvency / force majeure

20.1 Each party ('the terminating Party') shall be entitled by written notice to the other party to terminate the Contractor's employment under this Contract forthwith if the other party at any time:

- (a) Is in breach of his obligations under this Contract which he fails to rectify within seven calendar days of a written warning from the terminating Party specifying the breach and requiring that it be remedied within that period; or
- (b) Is insolvent within the meaning of s113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof.

20.2 On termination of the Contract for the reasons stated above in clause 20.1:

- (a) The Contractor shall immediately leave the Site.
- (b) The Client shall immediately pay to the Contractor all of the Contractor's outstanding unpaid invoices and interest and, in respect of Contract Works or Goods supplied but for which no invoice has yet been submitted, the Contractor shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (c) The Client shall return all of the Contractor Goods and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Contractor may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (d) The accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (e) Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

20.3 If a Force Majeure Event prevents the Contractor from providing any part of the supply and installation of the Goods for a period of 150 calendar days, the Contractor shall, without limiting any other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the other party.

21. Copyright

21.1 Any drawings or other technical data provided in connection with the Contract shall remain in the custody of the Client, who shall not divulge any details therefrom to any other person, firm or company without the approval of the Contractor. Such drawings or other technical data remain the property of the Contractor or affiliated suppliers or manufacturers.

21.2 No right of ownership or interest in the Contractor's patents, registered designs, trademarks, copyrights or any other intellectual property owned by the Contractor shall pass in any way to the Client in relation to the Goods or Services provided under these Conditions. The Contractor gives no warranties or representations in relation to the Contractor's patents, registered designs, trademarks, copyrights or any other intellectual property and, in particular, does not warrant or represent that any registered patents, registered designs, trademarks, copyrights or any intellectual property are valid or will remain registered.

22. Bribery Act 2010

Either party will be entitled to terminate this contract immediately if the other party commits, or has committed, an offence under the Bribery Act 2010.

23. Insurance

23.1 The Client shall insure in the joint names of the Client and the Contractor the whole and every part of the Goods and the Contractor's equipment including hired plant from the date the Goods and/or the Contractor's equipment arrive on Site to Contractor Practical Completion or installation at full replacement value against all loss or damage from any cause whatsoever.

23.2 The Client shall indemnify the Contractor against all losses, liabilities, claims, costs or expenses arising from damage or injury to persons or property, which may arise out of or in conjunction with the execution of the Contract, provided that this indemnity shall not apply to liabilities arising from negligence of the Contractor or its servants or agents.

23.3 The Client agrees to indemnify the Contractor against all losses, damage, injury, costs and expenses of whatever nature suffered by the Contractor arising out of claims under the Consumer Protection Act 1987 and against all losses, damage, injury, costs and expenses of whatever nature suffered by the Contractor to the extent that the same are caused by or related to :-

- (a) Drawings or specifications given to the Contractor by the Client in respect of Goods supplied and / or manufactured by the Contractor or affiliated manufacturers for the Client, or
- (b) Defective materials or products supplied by the Client to the Contractor and incorporated by the Contractor in Goods supplied and / or manufactured by the Contractor or affiliated manufacturers for the Client, or
- (c) The improper incorporation, assembling, use, processing, storage or handling of goods by the Client.

24. Confidentiality

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 24 shall survive termination of the Contract.

25. Force Majeure

The Contractor shall have no liability to the Client for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any act, event, omission or accident beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of a utility service, energy sources or transport network, acts of God, war, terrorism, riot, disorder, civil commotion, interference by civil or military authorities, compliance with any law or government order, rule, regulation or direction, accident, acts of local or central Government or national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, lightning, loss at sea, epidemics or similar events, natural disasters or severe weather conditions, or default of suppliers or subcontractors.

26. Applicable law and Jurisdiction

26.1 The parties irrevocably agree that the courts of England are to have exclusive jurisdiction for the purpose of hearing and determining any suit, action or proceedings and/or to settle any disputes arising out of or in any way relating to this Agreement or its formation or validity ("Proceedings") and for the purpose of enforcement of any judgment against its property or assets.

26.2 Nothing in this clause shall (or shall be construed so as to) limit the right of the Contractor to take Proceedings against the Client in the courts of any country in which the Client has assets or in any other court of competent jurisdiction nor shall the taking of Proceedings in any one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.

27. Facilities, Services & Attendances

Unless shown below as being provided by JPD, all such items are to be provided by the Client at his cost.

Item	Client to provide	JPD to provide
Unimpeded and suitable vehicular access for JPD to unload at the entrance to each plot	✓	✗
Fully prepared openings and that surfaces are built to JPD's detailed sizes. Floor levels to be true and horizontal to +/- 5mm and vertical walls are to be plumb to +/- 5mm	✓	✗
Live and tested supply of water and / or gas and / or electricity as required for each product defined in the Contract Works located within one metre of each entrance	✓	✗
Stair climber	✗	✓
Any other specialist lifting equipment	✓	✗
Unloading and distribution on site	✗	✓
Shared toilets & mess room, shared first aid, shared drying room	✓	✗
110V electricity outlet(s) to within 15m of working area – delays to progress to be charged at day work rates	✓	✗
Electrical adaptors, leads etc	✗	✓
Safety lighting	✓	✗
Task lighting	✗	✓
Scaffolding and powered access including but not limited to scissor lifts unless otherwise stated in the Contract	✓	✗
Clear working area	✓	✗
Rubbish skips (located at designated point on site)	✓	✗
Plant, small tools and tackle	✗	✓
The finished floor in and around the installation site with a tolerance across the diameter +/- 5mm	✓	✗
Setting out including provision of all levels datums and gridlines	✓	✗
Dealing with asbestos	✓	✗
Protection of all surrounding equipment, floors, furnishings etc during installation	✓	✗
Restriction of access to the site whilst the Contractor is installing the works to ensure safety to non-Contractor personnel. Note that this may include but is not limited to hoarding, hereas fencing etc	✓	✗
Protection and responsibility of JPD's works until Contractor's Practical Completion unless otherwise stated in the Order Acknowledgement	✓	✗
Protection and responsibility of JPD's works after Contractor's Practical Completion	✓	✗
Security	✓	✗
Builderswork	✓	✗
Cleaning of Contract Works immediately after Contractor's Practical Completion excluding removal of protective tape	✗	✓
Final clean including removal of protective tape (where applicable)	✓	✗