

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.8.

Contract: the contract between M.C.S. Pipework and the Customer for the supply of Goods and/or Services in accordance with these Conditions and the Tender Documents.

Customer: the person or firm who purchases the Goods and/or Services from M.C.S. Pipework.

Deliverables: the deliverables set out in the Order.

Delivery Location: has the meaning set out in clause 4.2.

Employer: the party named in the Main Contract who will ultimately receive the benefit of the Goods and Services, including such party's successors or assignees.

Main Contract: the contract between the Employer and the Customer (or between a sub-contractor or other entity appointing the Customer).

M.C.S. Pipework: M.C.S. Pipework Services Limited registered in England and Wales with company number 06495835 or M.C.S (Pipework Solutions) Limited registered in England and Wales with company number 07150909 (depending which company is specified in the Tender Documents and/or the Order).

M.C.S. Pipework's Materials: has the meaning set out in clause 8.1.8.

Price: the price for the whole of the Goods and/or Services stated in the Quotation (accepted by the Order or otherwise accepted by the Customer)

Force Majeure Event: has the meaning given to it in clause 17.1.1.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and M.C.S. Pipework and which forms part of the Tender Documents.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Quotation, or Tender Document, as the case may be and which (in the absence of any

other clear statement, representation or action) constitutes the Customer's acceptance of M.C.S Pipework's offer (on the terms set out in the Tender Documents).

Quotation: the quotation provided by M.C.S Pipework to the Customer for the Goods and/or Services.

Schedule of Rates: the schedule of rates provided by M.C.S Pipework as part of the Tender Documents.

Services: the services, including the Deliverables, supplied by M.C.S. Pipework to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Goods and/or Services provided in writing by M.C.S. Pipework to the Customer.

Tender Documents: the documents supplied M.C.S Pipework (in response to the Customer's tender enquiry) relating to the provision of the Goods and/or Services including (in descending order of priority):-

- the Conditions;
- the Quotation;
- the Goods Specification and Services Specification; and
- the Schedule of Rates

and which constitute M.C.S Pipework's offer to the Customer (1) to perform the Services and (2) to provide the Goods.

1.2 In these Conditions, the following rules apply :

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

2. **BASIS OF CONTRACT**

2.1 The Order constitutes acceptance by the Customer of M.C.S Pipework's offer to provide Goods and/or Services in accordance with the Conditions.

2.2 In the event that no Order is placed by the Customer, the offer contained in the Tender Documents shall be deemed to be accepted on the date when M.C.S. Pipework performs any act with a view to fulfilling its obligations in accordance with the Tender Documents.

- 2.3 The Contract shall come into existence on whichever of the two events set out at clauses 2.1 or 2.2 occurs earlier (**Commencement Date**).
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of M.C.S. Pipework which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by M.C.S. Pipework and any descriptions of the Goods or illustrations or descriptions of the Services contained in M.C.S. Pipework's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 The Quotation given by M.C.S. Pipework (together with the rest of the Tender Documents) shall constitute an offer, but the amount set out in the Quotation is only valid (and capable of being accepted by the Customer) for a period of 30 days from its date of issue.
- 2.8 The Customer shall ensure that the terms of the Order and any applicable specification are complete and accurate and the Customer shall bear the risk of correction of any discrepancies between the Order and any specification.
- 2.9 Any typographical, clerical or other error or omission in any sales literature, quotation, acceptance or offer, invoice or other documents or information issued by M.C.S. Pipework shall be subject to correction without liability on the part of M.C.S. Pipework.
- 2.10 M.C.S. Pipework reserves the right to make changes to the Goods Specification and/or Services Specification and/or (where the Goods or Services are to be supplied pursuant to such) the Customer's Specification, to the extent that such changes do not materially affect their quality or performance. In any case the Goods Specification and/or Services Specification and/or any specification contained within the Customer's tender enquiry are required to conform with any applicable statutory or EC requirements, and M.C.S. Pipework reserves the right to charge for any amendments necessary to ensure such compliance.
- 2.11 No Order which has been accepted by M.C.S. Pipework may be cancelled by the Customer except with the agreement in writing of M.C.S. Pipework and on the terms that the Customer shall indemnify M.C.S. Pipework in full against all loss (including without prejudice to the generality of the foregoing) loss of profit, costs (including the cost of labour, testing and materials used), damages, charges and expenses incurred by M.C.S. Pipework as a result of cancellation.
- 2.12 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
3. **GOODS**
- 3.1 The Goods are described in the Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer:
- 3.2.1 the Customer shall indemnify M.C.S. Pipework against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by M.C.S. Pipework

in connection with any claim made against M.C.S. Pipework for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with M.C.S. Pipework's use of the Goods Specification;

- 3.2.2 the Customer shall satisfy itself that the Goods Specification fits its requirements.

This clause 3.2 shall survive termination of the Contract.

- 3.3 From time to time, M.C.S. Pipework may require the Customer to make a financial contribution to the production of tooling necessary to manufacture the Goods to the Goods Specification. Such contribution shall be set out in the Quotation and/or the Order.

4. **DELIVERY OF GOODS**

- 4.1 M.C.S. Pipework shall ensure that:

4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and M.C.S. Pipework reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.2 if M.C.S. Pipework requires the Customer to return any packaging material to M.C.S. Pipework, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as M.C.S. Pipework shall reasonably request. Returns of packaging materials shall be at M.C.S. Pipework's expense.

- 4.2 M.C.S. Pipework shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (**Delivery Location**) at any time after M.C.S. Pipework notifies the Customer that the Goods are ready.

- 4.3 Unless otherwise agreed, delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

- 4.4 Any dates quoted for delivery of the Goods (or requested by the Customer) are approximate only, and the time of delivery is not of the essence. M.C.S. Pipework shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide M.C.S. Pipework with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.5 If M.C.S. Pipework fails to deliver the Goods within 14 days of the date (or dates) referred to in clause 4.4), its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. M.C.S. Pipework shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide M.C.S. Pipework with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

- 4.6 If the Customer fails to accept or take delivery of the Goods within five Business Days of M.C.S. Pipework notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by M.C.S. Pipework's failure to comply with its obligations under the Contract in respect of the Goods:

- 4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the 6th Business Day following the day on which M.C.S. Pipework notified the Customer that the Goods were ready; and
- 4.6.2 M.C.S. Pipework shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If six Business Days after M.C.S. Pipework notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, M.C.S. Pipework may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods (in which, latter, case M.C.S. Pipework shall be entitled to recover such shortfall from the Customer as a debt).
- 4.8 M.C.S. Pipework may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
5. **QUALITY OF GOODS**
- 5.1 Where M.C.S. Pipework is not the manufacturer of the Goods, M.C.S. Pipework shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to M.C.S. Pipework.
- 5.2 M.C.S. Pipework warrants that on delivery the Goods shall:
- 5.2.1 conform in all material respects with their description within any applicable Goods Specification;
- 5.2.2 be free from material defects in design, material and workmanship.
- 5.3 Subject to clause 5.4, if:
- 5.3.1 the Customer gives notice in writing, within a reasonable time of discovery and in any event within the earlier of 12 months of the date of delivery or 12 months of the Goods being put into use (namely the points at which commencement of installation of the Goods by the Customer occurs), that some or all of the Goods do not comply with the warranty set out in clause 5.2; and
- 5.3.2 M.C.S. Pipework is given a reasonable opportunity of examining such Goods; and
- 5.3.3 the Customer (if asked to do so by M.C.S. Pipework) returns such Goods to M.C.S. Pipework's place of business,
- M.C.S. Pipework shall, at its option, repair or replace the defective Goods, or refund or issue a credit note for the price of the defective Goods in full. M.C.S. Pipework shall bear the cost of returning any Goods which fail to comply with the warranty set out in clause 5.2 from their original Delivery Locations only, to M.C.S. Pipework's place of business.
- 5.4 M.C.S. Pipework shall not be liable for the Goods' failure to comply with the warranty in clause 5.2 if:
- 5.4.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.3; or

- 5.4.2 the defect arises because the Customer failed to follow M.C.S. Pipework's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are no such instructions) good trade practice; or
 - 5.4.3 the defect arises as a result of M.C.S. Pipework following any drawing, design or Goods Specification supplied by the Customer;
 - 5.4.4 the Customer alters or repairs such Goods without the written consent of M.C.S. Pipework; or
 - 5.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 5.4.6 the Goods differ from their description or the Goods Specification as a result of changes instructed by the Customer because the Customer considers such changes need to be made to ensure they comply with applicable statutory or regulatory standards; or
 - 5.4.7 the defect arises as a result of incomplete, inaccurate or defective information or instructions provided by the Customer; or
 - 5.4.8 the defect arises as a result of faulty, defective or poor installation of the Goods by a third party; or
 - 5.4.9 the Customer has not paid for the Goods and/or Services.
- 5.5 Except as provided in this clause 5, M.C.S. Pipework shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.2.
- 5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by M.C.S. Pipework under clause 5.3.

6. **TITLE AND RISK**

- 6.1 The risk in the Goods shall pass to the Customer on delivery to the Customer of the Goods (or, if delivered in instalments, of such parts of the Goods as are delivered to the Customer).
- 6.2 Title to the Goods shall not pass to the Customer until M.C.S. Pipework has received payment in full (in cash or cleared funds) for:
- 6.2.1 the Goods; and
 - 6.2.2 any other goods that M.C.S. Pipework has supplied to the Customer.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 hold the Goods on a fiduciary basis as M.C.S. Pipework's bailee;
 - 6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as M.C.S. Pipework's property and if there are any, batch numbers should remain clearly marked on the Goods until such time as full payment is made ;
 - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on M.C.S. Pipework's behalf from the date of delivery;
- 6.3.5 notify M.C.S. Pipework immediately if it becomes subject to any of the events listed in clause 15.2.2 to clause 15.2.12; and
- 6.3.6 give M.C.S. Pipework such information relating to the Goods as M.C.S. Pipework may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.2.2 to clause 15.2.12, or M.C.S. Pipework reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy M.C.S. Pipework may have, M.C.S. Pipework may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so within the same working day, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. SUPPLY OF SERVICES

- 7.1 M.C.S. Pipework shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 M.C.S. Pipework shall use reasonable endeavours to meet any performance dates for the Services specified in the Order and/or the Quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 M.C.S. Pipework shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and M.C.S. Pipework shall notify the Customer in any such event.
- 7.4 M.C.S. Pipework warrants to the Customer that the Services will be provided using the reasonable care and skill of a qualified and competent professional person performing services similar in scope and character to the Services.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
 - 8.1.1 pay to M.C.S Pipework the Price in accordance with clause 10;
 - 8.1.2 ensure that the terms of the Order and the Goods Specification and/or Service Specification are complete and accurate;
 - 8.1.3 co-operate with M.C.S. Pipework in all matters relating to the Services;
 - 8.1.4 provide M.C.S. Pipework, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by M.C.S. Pipework to provide the Services;
 - 8.1.5 provide M.C.S. Pipework with such information and materials as M.C.S. Pipework may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 8.1.6 prepare the Customer's premises for the supply of the Services;

- 8.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 8.1.8 keep and maintain all materials, equipment, documents and other property of M.C.S. Pipework (**M.C.S. Pipework Materials**) at the Customer's premises in safe custody at its own risk, maintain M.C.S. Pipework Materials in good condition until returned to M.C.S. Pipework, and not dispose of or use M.C.S. Pipework Materials other than in accordance with M.C.S. Pipework's written instructions or authorisation;
 - 8.1.9 not make any alteration to its premises, including the use of any of the same, between the date of the Quotation and the date of delivery of the Services;
 - 8.1.10 provide M.C.S. Pipework with use of the Customer's power and lighting supply and other utilities free of charge;
 - 8.1.11 provide M.C.S. Pipework with all health and safety information and procedures from time to time in force at the Customer's premises; and
 - 8.1.12 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption.
- 8.2 If M.C.S. Pipework's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.2.1 M.C.S. Pipework shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays M.C.S. Pipework's performance of any of its obligations;
 - 8.2.2 M.C.S. Pipework shall not be liable for any costs, claims, damages or any other losses sustained or incurred by the Customer arising directly or indirectly from M.C.S. Pipework's delay or failure to perform any of its obligations as set out in this clause 8.2; and
 - 8.2.3 the Customer shall reimburse M.C.S. Pipework on written demand for any costs or losses sustained or incurred by M.C.S. Pipework arising directly or indirectly from the Customer Default.

9. **MAIN CONTRACT RIGHTS**

- 9.1 The Customer will procure for M.C.S. Pipework all rights necessary to enable M.C.S. Pipework to perform its obligations under the Contract, including but not limited to the following:
 - 9.1.1 The Customer will procure that it has rights to grant M.C.S. Pipework access to the Delivery Location. If the Customer does not hold such rights, the Customer will procure that the Employer (or other person with control of the Delivery Location) permits reasonable access to the Delivery Location and to any places on or off site where any work or materials are being executed, prepared or stored to M.C.S. Pipework, its servants, agents and subcontractors for any purposes connected with the Services.
 - 9.1.2 The Customer will procure that the Employer allows M.C.S. Pipework an opportunity to inspect the Delivery Location, the physical conditions and other conditions affecting the Delivery Location. The Customer will procure that the Employer makes both the Customer and M.C.S. Pipework fully aware of any

local conditions and/or restrictions and/or difficulties, means of access to the Delivery Location and any related risks.

10. CHARGES AND PAYMENT

- 10.1 The Price shall be the price set out in the Quotation and Order or, if no price is quoted, the price set out in M.C.S. Pipework published price list as at the date of delivery. The element the Price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods (which shall be paid by the Customer to M.C.S. Pipework in addition to the Price).
- 10.2 Unless otherwise specified in the Quotation or the Order, the element of the Price for the Services shall be on a time and materials basis and shall be calculated in accordance with M.C.S. Pipework's standard daily fee rates, as set out in the Order.
- 10.3 In respect of Goods, M.C.S. Pipework shall invoice the Customer on or at any time after completion of delivery. In respect of Services, M.C.S. Pipework shall invoice the Customer upon performance of the Services (whether such performance is complete or not). The due date for payment of each invoice in respect of the Services is the date of the said invoice in each case and, no later than 5 days after each due date, the Customer shall provide M.C.S Pipework with a payment notice setting out the amount that the Customer will pay in relation to the Services (or element thereof) covered by the relevant invoice.
- 10.4 M.C.S. Pipework reserves the right to invoice the Customer for the Goods and/or Services or for part of the Goods and/or Services in advance where specified in the Quotation and/or the Order.
- 10.5 Subject to clause 16.1.1 the Customer shall pay each invoice submitted by M.C.S. Pipework:
- 10.5.1 within 30 days of the end of the month in which the sum covered by the invoice falls due ('final date'); and
 - 10.5.2 in full and in cleared funds to a bank account nominated in writing by M.C.S. Pipework, and
- time for payment shall be of the essence of the Contract.
- 10.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by M.C.S. Pipework to the Customer, the Customer shall, on receipt of a valid VAT invoice from M.C.S. Pipework, pay to M.C.S. Pipework such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 10.7 Without limiting any other right or remedy of M.C.S. Pipework, if the Customer fails to make any payment due to M.C.S. Pipework under the Contract by the due date for payment (**Due Date**), M.C.S. Pipework shall have the right:-
- 10.7.1 to charge interest on the overdue amount at the rate of 8 per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly; and
 - 10.7.2 to suspend (on giving to the Customer not less than 7 days written notice of its intention to do so) performance of any of its outstanding obligations until the Customer makes payment in full of any sum due (and, in the event that M.C.S

Pipework suffers any loss as a result of such suspension, it shall be entitled to recover such loss from the Customer as a debt).

- 10.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against M.C.S. Pipework in order to justify withholding payment of any such amount in whole or in part. M.C.S. Pipework may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by M.C.S. Pipework to the Customer.
- 10.9 In the event that the Customer instructs (whether verbally or in writing) M.C.S. Pipework to perform any additional work (which is outside the scope of the Tender) M.C.S. Pipework shall be entitled (1) to perform such work and (2) to be paid for such work in accordance with the Schedule of Rates (or, if the Schedule of Rates does not cover that additional work, a reasonable sum).

11. **INTELLECTUAL PROPERTY RIGHTS**

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services shall be owned by M.C.S. Pipework.
- 11.2 Insofar as M.C.S. Pipework is responsible for the design of the Goods and/or Services or any part thereof, the copyright in all designs, drawings, details and specifications prepared by M.C.S. Pipework in relation to such design shall remain vested with M.C.S. Pipework.
- 11.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods and/or Services, the Customer's use of any such Intellectual Property Rights is conditional on M.C.S. Pipework obtaining a written licence from the relevant licensor on such terms as will entitle M.C.S. Pipework to license such rights to the Customer.
- 11.4 All M.C.S. Pipework Materials are the exclusive property of M.C.S. Pipework.

12. **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 12 shall survive termination of the Contract.

13. **INDEMNITY**

- 13.1 The Customer will indemnify M.C.S. Pipework against every liability M.C.S. Pipework may incur to any other person whatsoever (including but not limited to the Customer's or M.C.S. Pipework's employees, servants and agents) against all claims, demands, proceedings, losses, damages, costs and expenses made against or incurred by M.C.S. Pipework by reason of:

13.1.1 any breach by the Customer of the Contract; or

13.1.2 the Customer's negligence; or

13.1.3 the Customer's breach of statutory duty; or

13.1.4 the Customer's infringement of a third party's Intellectual Property Rights; or

13.1.5 the Customer's interference with a legal right.

14. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

14.1 Nothing in these Conditions shall limit or exclude M.C.S. Pipework's liability for:

14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

14.1.2 fraud or fraudulent misrepresentation;

14.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

14.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

14.1.5 defective products under the Consumer Protection Act 1987.

14.2 Subject to clause 14.1:

14.2.1 M.C.S. Pipework shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any

- loss of profits, sales, business or revenue; or
- loss or corruption of data, information or software; or
- loss of business opportunity; or
- loss of anticipated savings; or
- loss of goodwill; or
- indirect or consequential loss

14.2.2 M.C.S. Pipework's total liability to the Customer in respect of all other 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 the Price.

14.3 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.

14.4 This clause 13 shall survive termination of the Contract.

15. TERMINATION

15.1 If for any reason the Customer's employment under the Main Contract or the Main Contract itself is terminated before M.C.S. Pipework has fully performed its obligations under the Order, the Customer must inform M.C.S. Pipework of the termination of employment or termination of the Main Contract without delay, upon which this Contract will automatically terminate and M.C.S. Pipework shall be entitled to payment

in full for all Goods delivered and/or manufactured specifically for or in relation to the Main Contract and all Services performed until the date of termination of this Contract.

- 15.2 Without limiting its other rights or remedies, M.C.S Pipework may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 15.2.1 the Customer has committed a material breach of its obligations under this Contract and (if such breach is remediable) has failed to remedy that breach within 7 days after receipt of notice in writing of the breach;
 - 15.2.2 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 15.2.3 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 15.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 15.2.5 the Customer (being an individual) is the subject of a bankruptcy petition or order;
 - 15.2.6 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 15.2.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer (being a company);
 - 15.2.8 a floating charge holder over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 15.2.9 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
 - 15.2.10 any event occurs, or proceedings are commenced, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.2 to clause 15.2.9 (inclusive);
 - 15.2.11 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
 - 15.2.12 the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 15.3 Without limiting its other rights or remedies, M.C.S. Pipework may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 15.4 Without limiting its other rights or remedies, M.C.S. Pipework shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and M.C.S. Pipework if:
- 15.4.1 the Customer fails to pay any amount due under this Contract on the due date for payment; or
- 15.4.2 the Customer becomes subject to any of the events listed in clause 15.2.2 to clause 15.2.12, or M.C.S. Pipework reasonably believes that the Customer is about to become subject to any of them.

16. **CONSEQUENCES OF TERMINATION**

- 16.1 On termination of the Contract for any reason:
- 16.1.1 the Customer shall immediately pay to M.C.S. Pipework all of M.C.S. Pipework's outstanding unpaid invoices and interest and, in respect of Goods (if any) and/or Services supplied but for which no invoice has yet been submitted, M.C.S. Pipework shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 16.1.2 the Customer shall return all of M.C.S. Pipework Materials and any Goods and/or Deliverables which have not been fully paid for. If the Customer fails to do so, then M.C.S. Pipework may enter the Customer's premises and take possession of them. Until the relevant M.C.S. Pipework Materials and any Goods and/or Deliverables have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 16.1.3 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
- 16.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

17. **GENERAL**

- 17.1 Force majeure:
- 17.1.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of M.C.S. Pipework including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 17.1.2 M.C.S. Pipework shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 17.1.3 If the Force Majeure Event prevents M.C.S. Pipework from providing any of the Services and/or Goods for more than 26 weeks, M.C.S. Pipework shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

17.2 Assignment and subcontracting:

- 17.2.1 M.C.S. Pipework may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 17.2.2 The Customer shall not, without the prior written consent of M.C.S. Pipework, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.3 Notices:

- 17.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 17.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- 17.3.3 This clause 17.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

17.4 Waiver and cumulative remedies:

- 17.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 17.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

17.5 Severance:

- 17.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 17.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor

constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

- 17.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 17.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by M.C.S. Pipework.
- Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.