

NG Bailey Group Limited and Subsidiary and Associated Companies - Terms and Conditions of Purchase of Goods and/or Services

1. Definitions

1.1 Throughout these Terms and Conditions of Purchase the following terms have the following meanings:

| Term | Definition |
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| Buyer | means NG Bailey Group Limited or any subsidiary of NG Bailey Group Limited which issues a Contract, as named in the Order. |
| Buyer's Location | means any place where the Buyer is working. |
| Conditions | means these Terms and Conditions of Purchase and any additional terms specifically incorporated into the Contract in writing by the Buyer. |
| Contract | means the Order and the other Contract Documents. |
| Contract documents | <ul style="list-style-type: none"> • the National Framework Agreement (if applicable); • the Order (or variation of the Order in accordance with Condition 2.1), including any documents appended to it (but excluding any Supplier terms and conditions); • these Conditions (or variation of these Conditions in accordance with Condition 2.1); • the Main Contract (if applicable); • any other documents attached to the Order and specifically referred to therein; • any documents expressly referred to in the Order but not attached; and/or • any quotation from the Supplier which is specifically referred to in the Order (excluding any Supplier terms and conditions). |
| Delivery date | means the date or dates for physical delivery of any Goods and/or completion of any Services. |
| Goods | means any goods which are or form part of the subject matter of the Contract including without limitation all components and materials, items, articles or things as set out in the Contract. |
| Intellectual Property Rights | means all intellectual property rights (including without limitation, patents, trademarks, designs, design rights, copyright, inventions, trade secrets, knowhow and confidential information) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. |

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| Main Contract | means any contract between the Buyer and its client under which the Buyer is employed to provide certain works and/or services of which the Goods and/or Services to be provided by the Supplier shall form all or part, or any related agreement between the Buyer and a third party. |
| National Framework Agreement | means, if applicable, the national framework agreement entered into by NG Bailey Group Limited or any subsidiary of NG Bailey Group Limited and the Supplier which governs the supply and purchase of Goods and Services. |
| Order | means the written purchase order or written agreement issued by the Buyer which incorporates these Conditions (which, unless agreed otherwise, shall constitute the Buyer's offer). |
| Practical Completion | means the completion of the works under the Main Contract. |
| Supplier | means the person, firm or company with whom the Contract is placed. |
| Services | means any services to be provided by the Supplier as set out in the Contract. |
| Specification | means the specification or performance requirements of the Goods or Services as set out in the Contract. |
| Variation | means any instruction which may increase or reduce or otherwise change the Goods and/or Services to be provided by the Supplier or otherwise change the conditions under which the Goods and/or Services are to be provided. |

1.2 Headings do not affect the interpretation of these Conditions.

2. Contract terms

- 2.1 Unless set out in the National Framework Agreement or otherwise agreed in writing, the Order constitutes an offer by the Buyer to purchase the Goods and/or Services from the Supplier in accordance with these Conditions. The Order shall be deemed to be accepted on the earlier of: (a) the Supplier issuing written acceptance of the Order, or (b) any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence. Any acceptance of the Contract by the Supplier shall be subject to these Conditions. Any variation to the Contract shall only have effect if made in a variation order issued by the Buyer. Any amendments to or variation of these Conditions shall only have effect if contained within any National Framework Agreement or an Order.
- 2.2 The Contract constitutes the entire agreement between the Buyer and the Supplier with regard to the Goods and/or Services to the exclusion of all other terms and conditions which the Supplier may seek to apply (whether or not signed by the Buyer). The Supplier waives any right it may have to rely on all other such terms and conditions. The Contract supersedes all prior negotiations, representations, promises, assurances or agreements whether written or oral unless and to the extent that they are expressly accepted in writing by the Buyer in the Contract Documents.
- 2.3 If any term or condition of the Contract is held to be unenforceable, invalid or illegal by any Court or tribunal it shall be deemed severable and shall not affect any other term or condition of the Contract which shall otherwise remain in full force and effect between the parties.

- 2.4 Any conflicts, discrepancies or ambiguities within or between the Contract Documents shall be resolved by an instruction from the Buyer. If the Supplier discovers any such conflict, discrepancy or ambiguity, it shall forthwith inform the Buyer of the same. The Buyer shall give its instructions thereon in a reasonable time. The Supplier shall have no entitlement to any extension of time, Variation or other remuneration in respect of any such conflict, discrepancy or ambiguity and the Supplier shall be deemed to have priced for the interpretation most favourable to the Buyer.

3. Notices and communications

- 3.1 All communications under this Contract shall be submitted in a form that can be read, copied and recorded, except that where the form and/or receiver is expressly stated the expressly stated provision shall apply.
- 3.2 All communications shall be addressed to the Supplier at its registered address or principal place of business, and to the Buyer at the Buyer's office from which the Contract was issued, marked for the attention of the Procurement Manager.
- 3.3 If the Supplier is not based in England and Wales, it hereby agrees to accept service of any document or proceedings arising out of or in relation to this Contract at its place of business (if any) in England and Wales.

4. Goods

- 4.1 The Supplier warrants and represents that the Goods shall conform as to quantity, quality and description with the Specification.
- 4.2 Without prejudice to the generality of Condition 4.1, it is a condition of the Contract that:
- the Goods shall be new and of best quality and free from defects in design, material and workmanship;
 - the Goods shall comply with all applicable laws and with the applicable British Standards, if any, and/or relevant trade standards/regulations, including any appropriate foreign or international trade standards/regulations/laws;
 - where the Buyer makes known to the Supplier the purpose for which the Goods are to be used, either expressly or by implication, the Goods shall be fit for that purpose; and
 - the sale or use of the Goods or product of the Services shall not infringe any Intellectual Property Rights of third parties.
- 4.3 The Supplier shall not substitute or provide alternative Goods or change the quantities to be supplied to the Buyer without the Buyer's prior written consent in the form of a variation order issued pursuant to Condition 2.1 above.
- 4.4 The Buyer (and/or its nominated representative) may inspect all or any of the Goods in the course of production at the premises where the Goods are being produced at any reasonable time and may require the making good, amendment or replacement of anything which is defective or does not comply with the Contract and to reject any Goods of which it reasonably disapproves. The Supplier shall immediately make good, amend or replace as so required to the Buyer's full satisfaction at the Supplier's own cost. No such inspection, testing, approval or review and no omission to inspect, test, approve or review on the part of the Buyer shall operate in any way to relieve or diminish any duty or liability of the Supplier under the Contract.
- 4.5 Unless otherwise agreed in writing:

- All Goods shall be securely packed in such a manner as to preserve them undamaged in transit and whilst stored on site before installation;
 - The Goods shall be fully and accurately described in all tickets, labels, invoices, packing and delivery notes, quoting the Buyer's Order number;
 - The Supplier shall submit with the Goods full instructions for use and clear warnings with respect to anything which may reasonably be done or omitted to be done in relation to the Goods and which could render them unsafe; and
 - The Buyer shall not be liable to return any packaging material or container.
- 4.6 The Supplier shall ensure that any timber products supplied to the Buyer are from a Forest Stewardship Council ("FSC") or equivalent approved source and carry the FSC or equivalent trademark. The Supplier shall provide documentary evidence (including chain of custody as appropriate) as proof upon request from the Buyer.
- 4.7 Without prejudice to any other rights or remedies which the Buyer may possess, if any defect in design, specification, materials, workmanship, operating characteristics or otherwise develops in the Goods during the first 24 months from the latest of (1) the Delivery Date, or (2) the Goods being put into service by the Buyer, or (3) Practical Completion ("Defects Liability Period"), the Supplier shall, without limitation to the Buyer's other legal rights and remedies, carry out, at the site where the Goods are located, all necessary alterations or repairs to the defective Goods at the Supplier's own cost. If the defect in the Goods cannot be corrected the Supplier shall promptly remove and replace free of charge the Goods or at the Buyer's option remove the Goods and refund the full price paid to the Buyer within 14 calendar days.
- 4.8 The Supplier shall guarantee for a period of a further 24 months any replacement, altered or repaired part or parts of the Goods.
- 4.9 If the Supplier refuses or fails to alter, repair or replace defective Goods when requested, the Buyer may make other arrangements for such alteration, repair or replacement to be carried out by a third party and recover any costs so incurred from the Supplier by way of deduction or set off or otherwise as a debt.
- 4.10 Any Specification, plans, designs or other similar document or data supplied by the Buyer to the Supplier or specifically produced by the Supplier for the Buyer, together with the Intellectual Property Rights therein, shall (as between the parties) be the exclusive property of the Buyer. The Supplier shall not disclose to any third party or use any Specification, plan, design or other similar document or data except, or as required, for the purpose of the Contract.
- 4.11 By providing any design or other similar document or data the Supplier grants to the Buyer an irrevocable, worldwide, royalty free licence to copy and/or use any drawings, computer disks, software and information (and/or any future modification thereto) contained therein and the Buyer shall be entitled to assign or sub-licence this design or similar document or data to third parties.
- 4.12 In the case of any Goods which have been designed and manufactured by the Supplier in accordance with drawings and/or specifications or patterns supplied by the Buyer, the Supplier agrees not to sell goods created from the same designs to any person, firm or company except against an Order of the Buyer or with the consent of the Buyer in writing. The Supplier further undertakes not to manufacture quantities in excess of the Order for the purpose of sale or otherwise. Such drawings and/or specifications or patterns shall remain the property of the Buyer and shall be returned by the Supplier to the Buyer on demand and the Supplier shall destroy any further copies.
- 4.13 The Supplier shall notify the Buyer if the Goods, or any part thereof, are expected to become obsolete within 24 months of the Delivery Date.

- 4.14 Regardless of any anticipated obsolescence of any Goods, the Supplier warrants to provide, at a fair price to be agreed between the Supplier and the Buyer, spare parts for a period of 10 years or such period as may be prescribed by any government or other relevant authority after the Delivery Date.
- 4.15 The rights set out in this Condition 4 are in addition to all other rights which the Buyer may have, whether at common law, statute or otherwise.

5. Delivery and performance

- 5.1 The Supplier shall deliver the Goods DDP INCOTERMS 2020 or perform the Services at the address stated in the Contract and in a manner and sequence that will enable the Buyer to discharge its obligations under the Main Contract.
- 5.2 Delivery of Goods is deemed to include off loading and placement by the Supplier to the reasonable instructions of the Buyer.
- 5.3 All Goods shall be accompanied by a delivery note, confirming the items being delivered, clearly identifying that they are being supplied by the Supplier, and stating the Buyer's Order number. Where Goods are left at the delivery address without obtaining the signature of an authorised representative of the Buyer on the delivery note, then delivery shall be deemed not to have taken place until accepted and confirmed by the Buyer. Signature of any documentation on delivery shall have no contractual effect, other than confirming the date of delivery.
- 5.4 Deliveries shall be of the total quantity ordered unless delivery by installments has been specified by the Buyer. Any Goods delivered in excess of or less than the amount stated in the Contract may be accepted or rejected at the Buyer's option.
- 5.5 The Buyer shall be entitled to instruct, and the Supplier shall accept, a Variation to:
- The Delivery Date;
 - The quantity and/or specification of the Goods or Services;
 - The address for delivery of the Goods or provision of the Services; and/or
 - Any other Variation.
- The Buyer shall fairly assess the effect (if any) of the instruction on the Supplier's costs of providing the Goods or Services and/or the Delivery Date and shall amend the price and/or Delivery Date accordingly. Such amendment shall only be made effective by a variation order made in accordance with Condition 2.1. The Buyer may instruct a Variation where it intends to have the Goods or Services provided, in whole or part, by others or itself. The Supplier shall not be entitled to loss of profits or other compensation arising from a Variation other than direct costs reasonably and necessarily incurred.
- 5.6 If delivery of Goods or provision of Services is by instalments, each delivery shall not constitute a separate contract. The failure by the Supplier to deliver or provide any one instalment shall entitle the Buyer to treat the entire Contract as wholly repudiated by the Supplier.
- 5.7 Time is of the essence for the delivery of the Goods and performance of the Services. No defaults, breaches, acts or omissions of the Buyer shall entitle the Supplier to any extension of time for performance of any obligation under the Contract unless and to the extent that it has been the material cause of the Supplier being unable to meet the obligation and subject to strict compliance with clause 5.8, in which case the Buyer shall amend the Delivery Date in accordance with the procedure in Condition 2.1 but this shall not waive any of the Buyer's other rights under the Contract and time shall remain of the essence for any changed Delivery Date.

5.8 The Supplier shall give notice in writing to the Buyer within 1 week from becoming aware, or from when the Supplier should have become aware that the delivery of the Goods or performance of the Services is delayed or disrupted or is likely to become delayed or disrupted and that the Goods or Services may not be delivered or performed by the Delivery Date. The notice shall include details of the cause of the delay or disruption and must include both the likely time and financial impact. The Supplier shall not be entitled to any amendment to the Delivery Date or any associated loss and expense or other financial compensation:

- unless it has given notice in the above time scale, and
- unless the notice contains all the necessary details as required above, and
- unless the notice is communicated separately from other communications, and
- unless it has, and demonstrates that it has, used its best endeavours to mitigate both the time and financial impact.

If the Supplier does not deliver the Goods or perform the Services in accordance with the requirements of the Contract, or indicates by its actions, inactions or otherwise that it will be unable to deliver the Goods or perform the Services by the Delivery Date, the Buyer may, in its absolute discretion and without prejudice to its other rights and remedies:

- require the Supplier to deliver the Goods or perform the Services as soon as practicable;
- obtain alternative goods or services from other sources, in which case the quantity of Goods or Services to be provided by the Supplier under the Contract shall be reduced accordingly;
- elect to terminate the Contract forthwith by serving notice on the Supplier;
- claim damages for breach of contract; and/or
- require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered.

5.9 In the event of the Buyer exercising its rights under Conditions 5.8, the Buyer shall be relieved from any obligation to pay for Goods or Services ordered but not provided. Any additional costs or expenses incurred by the Buyer in exercising its rights under Condition 5.8, including any difference in price between the Goods or Services which should have been provided under the Contract and alternative goods or services, shall be recoverable from the Supplier by way of deduction or set off or otherwise as a debt. The Supplier's obligations under the Contract in connection with Goods and Services supplied previously and Goods and Services which remain to be supplied shall remain in full force and effect. The Supplier shall have no entitlement to recover any costs, expenses or losses it incurs as a result of the Buyer exercising its rights under Condition 5.8, including (without limitation) any loss of profit or additional costs incurred.

5.10 The Buyer reserves the right to refuse delivery of the whole or any part of the Goods if they are supplied before the Delivery Date and any charges relating thereto shall be the responsibility of the Supplier.

5.11 The Supplier shall be deemed to have full knowledge of the Main Contract which has been made available for inspection (excluding rates and prices). The Supplier acknowledges and agrees that any breach by the Supplier of the Contract may result in the Buyer being in breach of or becoming liable for damages under the Main Contract. The Supplier hereby indemnifies the Buyer against all such damages which shall be recoverable from the Supplier by way of deduction or set off or otherwise as a debt.

5.12 The Supplier shall be responsible for the co-ordination, integration and compatibility of the Goods and/or Services with the works of the Buyer and/or others.

5.13 The Supplier shall be responsible for the safe storage and disposal of waste generated by the Supplier and in so doing shall comply with all relevant legislation and site regulations.

6. Surplus goods

- 6.1 Any Goods that the Supplier supplies to the Buyer in accordance with a Contract which are not required by the Buyer (“Surplus Goods”) shall be dealt with in accordance with this Condition 6.
- 6.2 Any Surplus Goods which the Buyer deems to be re-saleable shall be collected by the Supplier from the Buyer within any timeframe stipulated by the Buyer in writing. A credit note shall promptly be issued to the Buyer for the same value as the price paid by the Buyer for the Surplus Goods.
- 6.3 The Supplier shall obtain from the Buyer confirmation of the Order number against which it will issue a credit note and the Supplier shall record that Order number on any such credit note.
- 6.4 The Buyer and the Supplier shall sign an NG Bailey goods return note to confirm the Surplus Goods being returned to the Supplier and credited to the Buyer.
- 6.5 The Supplier shall never issue cash or other non-credit note refunds for Surplus Goods.
- 6.6 Should the Supplier fail to collect the Surplus Goods within any timeframe stipulated by the Buyer in writing, the Buyer shall be entitled to dispose of the Surplus Goods as it deems appropriate. For the avoidance of doubt, any action taken by the Buyer in accordance with this Condition 6.6 shall not affect the Buyer’s other rights as set out in this Condition 6.

7. Risk and title

- 7.1 Title to the Goods shall pass to the Buyer when the Goods are delivered to the Buyer in accordance with the Contract, or when payment is made for the Goods (whichever is the earlier).
- 7.2 The Supplier shall have no right to claim or retake possession of Goods once delivered to, or after any payment has been made for the Goods by the Buyer (whichever is the earlier).
- 7.3 Where any Goods are to be paid for before they are delivered to the Buyer the Supplier shall provide evidence and/or assist the Buyer to visit the premises where the Goods are situated to ensure that the Supplier has set such Goods aside at the place of storage and to check that the Supplier has marked the Goods as belonging to the Buyer or otherwise has recorded the Buyer’s interest in them.
- 7.4 Risk of damage to or loss of the Goods shall pass to the Buyer only when the Goods are delivered to the Buyer in accordance with the Contract.

8. Services

- 8.1 The Supplier shall provide the Services in accordance with the Contract and all reasonable directions of the Buyer and shall allocate sufficient resources to enable it to comply with this obligation.
- 8.2 The Supplier warrants to the Buyer: that the Supplier will perform the Services with all reasonable diligence, prudence, care and skill and in accordance with generally recognised best practices, guidance, and standards in the industry for similar services; that the Supplier will use personnel who are suitably skilled and experienced; that the Services will conform with all descriptions and specifications provided to the Buyer by the Supplier, including the Specification (if any); and that the Services will be provided in accordance with all applicable legislation from time to time in force and the Supplier will inform the Buyer as soon as it becomes aware of any changes in that legislation.
- 8.3 Without prejudice to any other rights or remedies which the Buyer may possess, if any defect in the Services develops or is discovered during the first 24 months from the latest of (1) the date of completion of performance of all the Services or (2) the date of Practical Completion, (“Defects Liability Period”), the Supplier shall, without limitation to the Buyer’s other legal rights and remedies, promptly correct or reperform the Services at the Supplier’s own cost. If the defective Services cannot be corrected the Supplier shall refund the full price paid to the Buyer within 14 calendar

days. The Supplier shall guarantee for a period of a further 24 months any corrected or reperfomed Services carried out. If the Supplier refuses or fails to comply with this Condition 8.3 when requested, the Buyer may make other arrangements for the correction or reperformance of the Services or purchase alternative services and recover any costs so incurred from the Supplier by way of deduction or set off or otherwise as a debt.

- 8.4 The Supplier assigns to the Buyer, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights which are the product of the Services. The Supplier shall, promptly at the Buyer's request, do or procure to be done all such further acts and things and the execution of all such other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Buyer in accordance with this Condition 8.4.
- 8.5 The Supplier shall obtain waivers of all moral rights in the products of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

9. Price

The price specified in the Contract or Order shall be a fixed price calculated, where applicable, in accordance with the provisions of the National Framework Agreement. The price shall include, where applicable, all charges for packaging, loading, transport, insurance, delivery, offloading and placement of Goods or provision of the Services to the delivery address and any duties or taxes other than value added tax.

10. Payment

- 10.1 The Supplier shall submit:
- invoices to the Buyer to its address at Accounts Payable, 7 Brown Lane West, LEEDS, West Yorkshire LS12 6EH. Each invoice shall clearly identify: the NG Bailey company (the Buyer); the Buyer's Order number; description(s), quantity(ies), and price(s) of the Goods delivered or Services performed which match those on the Order; the total against each line item; and the invoice total including VAT at the prevailing rate. The Supplier shall only submit one invoice for the total quantity of Goods or Services specified in the Contract unless interim or part invoicing has been expressly agreed in the Contract or is required by law. All of the above requirements are to be complied with to constitute a valid invoice.
 - within the first 10 days of each month a statement identifying all of the preceding month's invoices.
- 10.2 The Buyer shall, subject to these Conditions and the Supplier having submitted a valid invoice, pay the Supplier the amount properly due within 60 days of receipt of the valid invoice.
- 10.3 The Buyer makes a payment run every week except the two weeks which include Christmas and New Year Bank Holidays. Where the date for payment under Condition 10.2 falls between payment run dates, payment shall be made in the next payment run and shall be deemed to have been paid on the date it fell due under Condition 10.2.
- 10.4 The Buyer shall be entitled:
- to set off at any time against any monies due from the Buyer to the Supplier under the Contract any sums owed to the Buyer by the Supplier, whether under the Contract, any other contract or otherwise; and
 - in the event of any third party upon whom payment to the Buyer is conditional (whether directly or indirectly) becoming insolvent, as defined by Section 113 of the Housing Grants,

Construction and Regeneration Act 1996 as subsequently amended, to withhold payment of any amount which is due or may become due under the Contract to the Supplier until such time as the Buyer has received payment in its bank account in respect thereof and then only to the extent of such receipt.

- 10.5 The Supplier undertakes that neither it nor any business or person to whom it assigns the benefit of the Contract shall initiate a winding up petition or other similar action against the Buyer and further undertakes that in the event that the Supplier or any business or person to whom it assigns the benefit of the Contract does initiate a winding up petition or other similar action against the Buyer, the Supplier shall indemnify the Buyer in respect of any costs, expenses (including all legal fees), and/or other liabilities that the Buyer may incur in responding to such petition or action.
- 10.6 The currency of the Contract for payment purposes shall be pounds sterling unless otherwise agreed between the parties.
- 10.7 It is a condition precedent to the Supplier's entitlement to payment that the Supplier shall have executed and returned this Contract to the Buyer and provided any executed guarantees, bonds, warranties and/or other documents stated in this Contract or the Order to be provided by the Supplier.
- 10.8 If the Contract makes provision for the deduction of retention from the price, the Buyer shall be entitled to deduct and retain from sums otherwise due to the Supplier a retention at the percentage stated in the Contract until the later of delivery of the Goods and/or completion of performance of the Services and any applicable first retention release date stated in the Contract. Until the later of the end of the Defects Liability Period, the date when all notified defects in the Services and/or Goods have been rectified to the Buyer's satisfaction and any second retention release date stated in the Contract, the Buyer shall be entitled to deduct and retain half the retention percentage. If there are uncorrected defects at the end of the Defects Liability Period then the Buyer may, in its sole discretion, correct them in which case the cost to the Buyer shall be deducted from the retention and the balance paid to the Supplier or by Buyer when known.
- 10.9 If without just cause, either party fails to make any payment of any sum due to the other by the final date for payment as stated in this Contract and the other party gives notice to that effect within 7 days of such failure the other party shall be entitled to be paid interest on the overdue amount from the final date of payment up to the date of actual payment at a rate equivalent to the Bank of England's base rate plus 2%.

11. Cancellation and termination

- 11.1 The Buyer reserves the right to cancel the Order in whole or part for convenience by giving written notice to the Supplier. The Buyer recognises that cancellation may cause loss and expense to the Supplier and, therefore, provided that the Supplier establishes to the reasonable satisfaction of Buyer that it has suffered such loss and expense, the Buyer shall reimburse the Supplier, subject to such reimbursement not exceeding 25% of the value of the Order cancelled. Such reimbursement shall constitute the Buyer's sole liability for cancellation.
- 11.2 The Buyer shall be entitled to terminate the Contract immediately without liability to the Supplier by giving notice to the Supplier at any time if:
- the Supplier commits a Fundamental Breach of the Contract, which term includes:
 - failing to comply with any health, safety or environmental legislation, code of practice and/or legal requirement of this Contract; failing to proceed regularly and diligently with or refusing to carry out or suspending the carrying out of the Contract or any Variation without just cause; or otherwise acting in default of any obligation under this Contract which will significantly impair proper performance;
 - committing any offence under the Bribery Act 2010 or any other act of fraud or

- corruption (which includes without limitation any anti-competitive conduct) or the Modern Slavery Act 2015 or the Criminal Finances Act 2017;
- assigning or subcontracting performance of this Contract in whole or part without the Buyer's prior written consent;
 - entering (voluntarily or involuntarily, knowingly or unknowingly) into an adverse financial position, of which the following are non-exhaustive examples: insolvency, cessation of business, change in ownership or control or legal status or of partners, winding up, bankruptcy, entry into administration, failure to pay its employees or suppliers on time, shortage of funds.
- the Buyer reasonably believes that any of the events mentioned in Condition 11.2 first bullet are about to occur in relation to the Supplier;
 - the Supplier is in fundamental breach of any other contract between the Buyer and Seller, including but not limited to any applicable National Framework Agreement;
 - the Supplier fails to conduct its activities or to ensure that its upstream supply chain and procurement activity is conducted in a socially responsible manner in accordance with the UN Guiding Principles for Business and Human Rights;
 - the Buyer terminates the National Framework Agreement for a reason which allows the Buyer to terminate the Contract.
- 11.3** Termination of the Contract, however arising, shall not affect the rights of the Buyer accrued up to the date of termination.
- 11.4** Within a reasonable time of becoming aware of the occurrence of a Fundamental Breach within the scope of clause 11.2 first bullet point, the Buyer may at its discretion take one or more of the following actions at the Supplier's expense, and the Buyer's costs of and associated with taking such actions shall be allowed (by way of deduction or set off) or paid by the Supplier:-
- remove the whole or part of the Supplier's Goods and/or Services to be provided under this Contract and engage and pay others to supply the remaining Goods and/or Services or supply the Goods and/or Services itself;
 - require the Supplier to provide a performance bond, collateral warranty or other performance security.
- 11.5** If the employment of the Buyer is terminated under the Main Contract for any reason, then the employment of the Supplier shall terminate at the same time.
- 11.6** In the event of the termination of the Contract under this Clause 11, no further payment (if any) shall be due to the Supplier until the Buyer has prepared (within one year of the termination) a final account of the payments owed by each party to the other which (except for claims made against members of the NG Bailey group of companies by third parties arising from the Contract) shall become final and conclusive as to the price unless the Supplier objects in writing within 28 days of its issue by implementing either adjudication or court proceedings.
- 11.7** If the termination of the Contract is not due to any act or omission of the Supplier or their insolvency, the Supplier shall be entitled to be paid for any part of the Goods and/or Services satisfactorily completed up to the date of termination but shall not be entitled to receive any other financial compensation of whatsoever nature.

12. Compliance

- 12.1** The Supplier shall comply with and ensure that its employees, agents and subcontractors comply with:
- the Bribery Act 2010 and any of the Buyer's published policies on bribery, corruption and unethical business conduct, including the NG Bailey Code of Integrity for Business Partners;
 - the Modern Slavery Act 2015 and any of the Buyer's published policies on modern slavery;

- the General Data Protection Regulation 2016/679 and the Data Protection Act 2018 and any Buyer's published policies on data protection, including NG Bailey's Supplier Data Processing Addendum; and
 - The Buyer's Social Values Commitment Policy and any social values standards specified in the documents forming part of this Contract,
as time to time revised, amended or updated.
- 12.2 The Supplier shall have, maintain, and enforce its own policies and procedures to ensure compliance with the matters set out in Condition 12.1.
- 12.3 The Supplier shall observe and comply with, and shall ensure that its employees, agents and sub-contractors at all times observe and comply with:
- any Act of Parliament, any instrument, rule or order made under any Act of Parliament, and any regulation or bye law of a local authority;
 - any codes of practice, site rules, notices or instructions in relation to security or health and safety or good management in force at any Buyer's Location which the Supplier visits in connection with the Contract.
- 12.4 Where the Supplier is required to visit a Buyer's Location, the Supplier shall also:
- three weeks before a visit to perform a Service provide a risk assessment and method statement in respect of the Service;
 - ensure all of its staff hold valid CSCS cards;
 - ensure all its staff sign in and out with the Buyer each day;
 - ensure any accidents, safety incidents or near misses are reported to the Buyer and are recorded.

13. Liability and insurance

- 13.1 The Supplier shall indemnify the Buyer and any member of the NG Bailey group of companies against all direct and indirect liabilities, losses (including loss of profit), damages, costs, expenses (including legal expenses) and proceedings awarded or brought against or incurred or paid by the Buyer or any member of the NG Bailey group of companies as a result of or in connection with:
- a breach by the Supplier of any term or condition of the Contract or of any warranty given by the Supplier in relation to the Goods or Services;
 - any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering, installing, testing, commissioning or setting-to-work of the Goods;
 - any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the Goods or the Services;
 - any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier.
- 13.2 The Supplier shall have and maintain in place during the term of the Contract (and in respect of professional indemnity insurance, for a period of no less than the period specified in clause 20 below) employer's liability, product liability, public liability and professional indemnity insurance in respect of potential liabilities to the Buyer and to third parties arising out of the Contract or otherwise for an amount sufficient to cover its potential liabilities. The Supplier shall at the request of the Buyer produce evidence to the satisfaction of the Buyer that such insurances are in place.
- 13.3 For the avoidance of doubt, the provisions of this Condition 13 shall survive termination of the Contract, however arising.

14. Performance security

- 14.1 The Supplier shall forthwith upon the request of the Buyer which may be made at any time:
- procure that the Supplier's holding company (as defined by section 1159 of the Companies Act 2006) shall guarantee to the Buyer (via the provision of a parent company guarantee) the due performance by the Supplier of its obligations under the Contract and indemnify the Buyer against all losses, claims and liabilities arising from a breach thereof, such guarantee and indemnity to be given as a deed in a form satisfactory to the Buyer; and/or
 - provide collateral warranties in favour of any third parties acquiring an interest in the Goods and/or Services. The terms of such collateral warranties shall be as set out or referred to in the Contract Documents or as otherwise provided by the Buyer to the Supplier.

15. Non waiver of rights

No relaxation, forbearance, delay, failure or indulgence by the Buyer in enforcing any right or remedy of these Conditions or otherwise, or the granting of time by the Buyer to the Supplier, or tolerance of the Supplier's breaches of its obligations shall prejudice, affect or restrict the rights of the Buyer under the Contract, nor waive any other right or remedy, nor shall it prevent or restrict the further exercise of any right or remedy by the Buyer, nor shall any waiver by the Buyer of any breach by the Supplier operate as any waiver of any subsequent or continuing breach thereof.

16. No partnership or agency

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

17. Third party rights

The parties do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999, except that:

- any third parties acquiring an interest in the Goods and/or Services shall be entitled to enforce the Supplier's obligations set out in Condition 14.1 second bullet;
- any company which is, from time to time, a subsidiary or holding company of the Buyer, or is a subsidiary of the Buyer's holding company (as those terms are defined in section 1159 of the Companies Act 2006) shall be entitled to enforce any of the rights conferred on the Buyer in the Contract as if they were a party to the Contract.

18. Assignment

- 18.1 The Supplier shall not, without the prior written consent of the Buyer, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract, including for the avoidance of doubt, factoring of any amount due. The Buyer may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.2 If the Supplier's employment under the Contract is terminated for any reason, or the Supplier is in any other respect in breach of its obligations under the Contract, the Supplier shall if requested to do so forthwith and at no cost assign to the Buyer the benefit of any or all agreements for the supply of Goods and/or the provision of any Services for the purposes of the Contract and the Buyer may pay any supplier or sub-contractor of the Supplier under such agreements for any Goods delivered or Services provided for the purposes of the Contract after such assignment. Payments made under this Condition 18.2 may be deducted from any sum due or to become due to the Supplier or shall be recoverable by the Buyer by way of deduction or set off or otherwise as a debt.

19. Confidentiality

The Supplier agrees to keep and shall ensure that its personnel, servants, agents and employees keep all or any confidential information in connection with the Buyer (and any member of their group of companies), the Contract and Main Contract secret and confidential. This clause shall be in addition to and shall not override any obligations contained in any non-disclosure agreement entered into between the parties.

20. Governing law, jurisdiction and limitation

The 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 read and interpreted according to English Law and the parties submit to the exclusive jurisdiction of the English courts. Without prejudice to any claims permissible by statute, without limitation, in relation to latent defects, fraud or concealment, the Supplier's liability hereunder shall be limited to 12 years from Practical Completion, except in relation to any claims intimated prior to such time.

A. Supplementary conditions in relation to construction operations

If the Contract includes construction operations as defined in the Housing Grants, Construction and Regeneration Act 1996, as amended, ("HGCR") and the duration of the construction operations exceeds 45 days, the following conditions shall apply only to that part of the Contract defined as construction operations in the HGCR and shall be substituted for Conditions 10.2 and 10.3 above.

- A1** The Supplier shall be entitled to receive interim valuations until completion of the construction operations, and no later than the application date in the month following Practical Completion. The interim sum due shall be the total of the following applicable at the relevant valuation date: the value as calculated by the Buyer of the construction operations including Variations properly executed; less: the amount of retention calculated in accordance with the Order, less the amount of all previous payments made to the Supplier, and less any sums due from the Supplier to the Buyer under this Contract or otherwise.
- A2** The following definitions apply:
- The application date shall be the 28th of each calendar month, up to 28th of the month following Practical Completion (should the 28th be a weekend or bank holiday the application date shall be the final working day prior to the 28th),
 - The valuation date shall be the final calendar day of each calendar month,
 - The due date for payment shall be 45 days after the valuation date for the applicable application, and
 - The final date for payment shall be 15 days after the due date for the applicable application.
- A3** The Supplier shall, no later than each application date, make an application for payment (in a format agreed with the Buyer) which specifies the amount the Supplier considers to be or to have been due on the due date for payment and the basis on which that sum is calculated. The Buyer shall take this application into account when calculating the value in accordance with Condition A1.
- A4** The Buyer shall issue to the Supplier no later than 5 days after the due date for payment a payment notice specifying the sum the Buyer considers to be or have been due to the Supplier on the due date for payment and the basis on which that sum is calculated. Should the Supplier have failed to issue an application in accordance with Condition A3 the interim sum due shall default to the amount of all previous payments made to the Supplier, unless the Buyer chooses to issue a payment notice confirming a different amount at its absolute discretion. If the Buyer fails to issue a payment notice, the Supplier shall remind the Buyer before acting further.

- A5 If the Buyer intends to pay less than the sum stated in the payment notice, the Buyer shall issue to the Supplier no later than 1 day before the final date for payment a pay less notice specifying the sum that the Buyer considers due to the Supplier and the basis on which that sum is calculated. The Buyer shall pay the sum stated in the pay less notice on or before the final date for payment.
- A6 If a payment notice issued by the Buyer pursuant to Clause A4 specifies a sum that the Buyer considers to be or have been due from the Supplier to the Buyer on the due date for payment and the basis on which that sum is calculated, the Supplier shall pay the sum stated in the payment notice on or before the final date for payment.
- A7 Subject to Clause 11, the Supplier shall submit its final account including all supporting documentation to the Buyer no later than 4 weeks after completion of the construction operations. If the Supplier fails to submit a final account within the stated period, or if Buyer does not accept the Supplier's final account, the Buyer shall prepare a final account and issue it to the Supplier, which shall become final and conclusive as to the sum due under the Contract unless the Supplier objects in writing within 28 days of its issue by implementing either adjudication or court proceedings.
- A8 The due date of any final payment due to the Supplier in respect of the final account shall be the date 4 weeks after the later of the end of the Defects Liability Period and the date when all notified defects in the Services and/or Goods have been rectified to the Buyer's satisfaction and the final date for payment shall be 4 weeks thereafter.
- A9 Any dispute arising under the Contract may be referred at any time by either party to adjudication and such adjudication shall be conducted under the statutory Scheme for Construction Contracts 1998 (as amended from time to time), and the adjudicator shall be nominated by the Royal Institution of Chartered Surveyors. The adjudicator shall be required to give reasons for his decision. If the adjudicator requires expert or legal advice, the costs of the same shall be approved by the parties in advance.