

TERMS AND CONDITIONS OF SALE AND SUPPLY AND INSTALLATION OF MECHANICAL & ELECTRICAL SERVICES BY QUARTZELEC LIMITED – QE-M&E Services (Aug 15)

These terms and conditions (“**Conditions**”) apply to all transactions for the sale and supply and installation of any Works ordered from or to be supplied or performed by Quartzelec Limited (Company number: 02364716) whose registered office is Castle Mound Way, Central Park, Rugby, Warwickshire, England CV23 0WB (“**Quartzelec**”).

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions unless the context requires otherwise the following words have the following meanings:

“**Base Rate**” rate set by the Bank of England

“**CDM Regulations**” Construction (Design and Management) Regulations 2015.

“**Competent Person**” as defined in the Electricity at Works Regulations 1989.

“**Completion**” when the Works have been completed by Quartzelec except for minor or other discrepancies which do not have an impact on use

“**Completion Date**” the date the Works are to be completed as set out in the Order Acceptance as extended by these Conditions, or as otherwise agreed by the Parties

“**Completion Certificate**” certifying the Works achieved Completion

“**Contract**” any contract between the Customer and Quartzelec incorporating these Conditions, any applicable Specification, Quotation, the Order and the Order Acceptance.

“**Contract Price**” the price payable by the Customer as specified in the Order Acceptance, in respect of the execution of the Works as adjusted in accordance with the Contract

“**Customer**” the person or organisation as identified in the Contract.

“**Customer Default**” has the meaning given to it in Clause 3.6.

“**Defects Liability Period**” shall be 12 months following Completion unless stated otherwise in the Order Acceptance

“**Due Date**” the date at which payment arising from interim applications for payment is due.

“**Final Completion**” the date following the end of the Defects Liability Period.

“**Final Date for Payment**” 14 calendar days after the Due Date.

“**Force Majeure Event**” any occurrence which hinders, delays or prevents a party in performing any of its obligations under this Contract which is beyond its reasonable control, provided this could not have been foreseen or reasonably provided against through the exercise of reasonable diligence and care including but not limited to acts of God, war, explosion, flood, fire, governmental actions, strike, lock-out, or other form of industrial action (other than a strike, lock-out or other form of industrial action induced by the party so incapacitated), power breakdown or machinery breakdown.

“**High Voltage**” works involving voltages exceeding 1000 V a.c. r.m.s. and 1500 V d.c.

“Liquidated Damages Sum” the sum specified in the Order Acceptance being the amount of the liquidated damages applicable to the Contract in accordance with Clause 6.1.

“Losses” any and all liability or losses arising from actions, awards, costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities.

“Low Voltage” works involving voltages lower than 1000 V a.c. rms and 1500 V d.c.

“Order” an order placed in writing by the Customer with Quartzelec for the provision of the Works whether made by fax or e-mail or as may be set out in the Customer's purchase order form or the Customer's written acceptance of Quartzelec's quotation, as the case may be, being identified as such in the Order Acceptance issued accompanying these Conditions

“Parties” Quartzelec and the Customer together

“Principal Designer” as defined in the Construction (Design and Management) Regulations 2015

“Quotation” the quotation to which these terms and conditions apply.

“Site” the location set out in the Order Acceptance or such other location as the Parties may agree subsequently for the purposes of the Works.

“Specification” any specification for, or the quality and/or description of, the Works, including any relevant plans or drawings, that is agreed in writing by the Customer and Quartzelec and as may be set out in the Order Acceptance or as may be subsequently agreed between the Parties following confirmation of the Order Acceptance.

“VAT” value added tax and any such tax amending or replacing the same or the equivalent taxation in the relevant jurisdiction.

“Works” the works to be performed by Quartzelec for the Customer as identified in the Order Acceptance and as varied in accordance with these Conditions.

- 1.2 The following terms and conditions shall govern all orders and contracts between Quartzelec and the Customer, and are full and final.
- 1.3 The Contract shall supersede any previous agreements, negotiations, terms or conditions entered into or discussed by the Parties or stipulated or requested by the Customer.
- 1.4 Subject to Clause 1.3 above, the Works as described in the Order Acceptance shall be provided by Quartzelec on and in accordance with these terms and conditions and the Customer agrees to be bound by such terms and conditions.
- 1.5 In these Conditions:
 - (a) reference to any gender includes all genders;
 - (b) reference to the singular shall include the plural and vice versa;
 - (c) words indicating a person shall include bodies of persons whether corporate or incorporate;
 - (d) reference to a Clause is to the relevant Clause in these Conditions;

- (e) the headings are for convenience only and shall not affect their interpretation;
- (f) reference to any statute or statutory provision includes a reference to the same as from time to time amended, extended, re-enacted or consolidated and all subordinate legislation from time to time made under it.

2. **FORMATION OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to employ Quartzelec to carry out the Works on these Conditions.
- 2.2 Any Quotation given by Quartzelec shall not constitute an offer, and unless specified otherwise by Quartzelec in writing, is only valid for a period of 30 calendar days from its date of issue.
- 2.3 A legally binding contract will only be formed between Quartzelec and the Customer when either:
 - (a) Quartzelec has notified the Customer of its acceptance of the Customer's Order in writing by an Order Acceptance; or
 - (b) (if earlier) by its actions has commenced performance of the Customer's Order.
- 2.4 A read receipt or delivery receipt of an email will not amount to written confirmation of Quartzelec's acceptance of the Customer's Order.
- 2.5 Quartzelec may refuse to accept any Order placed by the Customer and will have no liability to anyone else in such circumstances.
- 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.

3. **SPECIFICATION**

- 3.1 The description of the Works shall be as specified in the Order Acceptance and/or in any Specification provided to Quartzelec by the Customer or produced for the Customer by Quartzelec and/or as otherwise agreed in writing between the parties. Details in brochures and price lists produced by Quartzelec and/or the Specification are intended as guidance only and are only intended to give a general approximation of the Works unless stated in the Order Acceptance or otherwise agreed in writing.
- 3.2 Any Specification, moulds, dies, materials and/or equipment together with the copyright, design rights and/or any other intellectual property rights in all Specifications, data and materials specifically produced and/or used by Quartzelec for the Customer in connection with the Contract, shall be the exclusive property of Quartzelec, unless such data or materials is provided to Quartzelec by the Customer.
- 3.3 The Customer shall check and ensure that any Order Acceptance and any Specification is accurate and adequate for the provision of the Works and Quartzelec shall have no liability for any Losses

arising from or in connection with any errors in any Specification or details provided by and/or approved by the Customer or in any delay by the Customer in providing and/or approving the same.

- 3.4 The Customer shall give Quartzelec any information requested by Quartzelec to perform the Contract.
- 3.5 The Works shall be performed by appropriately qualified and trained personnel with due care and diligence to such high standard of quality as it is reasonable for the Customer to expect in all the circumstances.
- 3.6 If Quartzelec's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- (a) Quartzelec shall without limiting its other rights or remedies have the right to suspend performance of the Works 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 Quartzelec's performance of any of its obligations;
 - (b) Quartzelec shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Quartzelec's failure or delay to perform any of its obligations as set out in this Clause 3.6; and
 - (c) the Customer shall reimburse Quartzelec on written demand for any Losses sustained or incurred by Quartzelec arising directly or indirectly from the Customer Default.
- 3.7 Quartzelec shall comply with all applicable regulations or other legal requirements concerning the performance of the Works under English law, but it shall be the responsibility of the Customer to ensure the Specification and the Order Acceptance give sufficient details to Quartzelec to ensure the Works are compliant with all applicable regulations and other legal requirements in the country of destination requested by the Customer.

4. **CHANGES TO SPECIFICATION BY QUARTZELEC**

- 4.1 Quartzelec reserves the right to make any changes to the Specification, Order, Order Acceptance and/or the Works which are required from time to time by law or any applicable safety or manufacturing requirements provided such changes do not materially affect the quality and/or performance of the Works.

5. **COMMENCEMENT AND COMPLETION**

- 5.1 The Works will be commenced and completed within a reasonable time of this Order Acceptance or within any period agreed by the Parties. Quartzelec may delay commencement of the Works in the event all the conditions to enable Quartzelec to commence the Works are not met. In the event that there is such a delay, the execution of the Works shall be extended by such period as is commensurate to such delay.

- 5.2 Quartzelec shall not be liable for any delays in the Completion of the Works due to causes beyond its reasonable control including any action or inaction, or inadequate or lack of instruction given by the Customer.
- 5.3 Upon Completion, Quartzelec shall verify, in the presence of the Customer, the conformity of the materials with the contractual technical specifications. This shall take place at Quartzelec's request and a Completion Certificate shall be signed by both Parties. This Completion Certificate shall constitute the beginning of the warranty obligations of Quartzelec.
- 5.4 Completion shall be deemed to have occurred as soon as the Customer puts into use all or part of the Works. In the event that Completion cannot take place for a reason not attributable to Quartzelec, the Completion Date shall be within a reasonable time.
- 5.5 Minor defects not affecting the Works shall not delay the signature of the Completion Certificate for the Works concerned provided that Quartzelec undertakes to remedy such defects as quickly as possible.
- 5.6 In the event that the Customer fails to attend the eventual completion tests on the agreed date, Quartzelec shall carry out such tests. If the contractual specifications are met, Quartzelec shall draw up a Completion Certificate which shall have the same effect as a Completion Certificate signed by both Parties.
- 5.7 If within ten (10) calendar days after the end of the completion tests, the Customer fails to sign any Completion Certificate or does not inform Quartzelec of any rejection of the Works, Completion shall be deemed to have taken place on the basis of the Certificate signed by Quartzelec. The Final Completion shall automatically take place at the end of the Defects Liability Period of the materials as specified in Clause 24.

6. **DAMAGES**

- 6.1 If Quartzelec fails to achieve the Completion Date for reasons attributable to Quartzelec, the Customer shall be entitled to the payment of liquidated damages. Damages shall be calculated on the basis set out in the Order Acceptance or otherwise based on the contractual value (excluding taxes, fees and levies) of the Works concerned at a rate of 0.25 % per week of delay. Such damages shall not exceed five percent (5 %) of the total Contract Price.
- 6.2 If Quartzelec fails to achieve Completion on the Completion Date due to circumstances which are not attributable to Quartzelec (including any variations or change to a provisional sum), the Customer shall give Quartzelec a reasonable extension of time to take all steps which Quartzelec considers necessary to meet these performances. This shall include, where necessary, the modification or replacement of any material or any part of them.
- 6.3 Liquidated damages shall not be imposed on Quartzelec for late Completion of the Works due to any circumstances outside of Quartzelec's control or attributable to the Customer or to force majeure.

6.4 Any damages paid in accordance with Clause 6.1 shall represent the total loss suffered by the Customer and shall be in full satisfaction of Quartzelec's liability for such delay.

7. **VARIATIONS**

7.1 With Quartzelec's consent, the Customer may, without invalidating the Contract, instruct a variation to the Works and any such instruction shall be valued and paid for on the basis of Quartzelec's rates and administration charges current at the date of execution of the varied work. Quartzelec shall not be obliged to carry out any such variation if it considers (in its own discretion) such variation to be dangerous to its personnel or to current or prospective occupiers of the premises or to be contrary to British Standards, Building Regulations or any other regulations governing the Works and current at the date of execution of the varied work.

7.2 If Quartzelec is delayed, disrupted or prevented in the execution of the Works owing to any acts or omissions of the Customer, Customer's servants, agents or sub-contractors (including any variations) then Quartzelec shall be entitled to recover from the Customer any additional costs arising from such delay or disruption.

8. **CONTROL OF HIGH VOLTAGE WORK**

8.1 The following procedures shall apply to High Voltage Works in accordance with this Contract.

(a) Prior to the commencement of the Works, in order that Quartzelec may decide who controls the Works, the Customer shall satisfy Quartzelec that any High Voltage switchgear to be operated by Quartzelec has been constructed, protected, worked and maintained in a satisfactory manner. To assist Quartzelec in their decision, the Customer shall provide:

- (i) Details of the method of operation and control;
- (ii) An operations diagram of the High Voltage circuits and points of Low Voltage backfeed to the Customer's system;
- (iii) Details of the controlled work to be carried out and of the equipment on which controlled work is to be carried out;
- (iv) Information regarding the position of the equipment if appropriate.

(b) The Customer shall ensure that this information is complete and accurate to the best of his knowledge and will inform Quartzelec of any alterations that may occur whilst the Works are in progress.

8.2 Subject to the above, Quartzelec will specify whether it wishes to take complete control of the equipment. If this is the case, Quartzelec will appoint the Competent Person, subject to the Customer's confirmation. The person so appointed will operate the Customer's High Voltage switchgear and will issue the necessary safety documents in accordance with Quartzelec's Safety Rules and the CDM Regulations.

- 8.3 If Quartzelec agrees that the Customer may retain control of his equipment, the Customer, will appoint one of his employees as the Competent Person who will operate the Customer's High Voltage switchgear. Quartzelec will specify whether safety documents to Quartzelec's personnel will be issued by the Customer's Competent Person and endorsed by Quartzelec or alternatively issued by Quartzelec.
- 8.4 Responsibility for the carrying out of the testing, commissioning and re-commissioning will remain with the party responsible for control and operation. Where the Customer retains such responsibility Quartzelec shall be given the opportunity to witness any tests carried out by the Customer on High Voltage equipment prior to commissioning or re-commissioning.

9. **CUSTOMER'S OBLIGATIONS**

- 9.1 The Customer shall be responsible, at its own cost, for:
- (a) obtaining all statutory consents, permissions and approvals necessary for the execution of the Works, including where necessary, any import licences or other consents in relation to the materials utilised in the performance of the Works;
 - (b) ensuring that the delivery of the materials (where necessary) complies with any other legislation or regulations governing the importation of materials into the country of destination requested by the Customer; and
 - (c) providing on time any approval or instruction, any material including but not limited to components and designs, civil works if any, performed with due care and diligence, access to the site or any other thing which may be required in relation to the performance of the Works by Quartzelec.

10. **MATERIALS**

- 10.1 The term "material" and "materials" includes any goods which are either the subject matter of the Contract or which are to be incorporated into or are intended for the Works or necessary for its performance. Quartzelec will endeavour to use materials specified in the Order Acceptance but in the event such materials are not available Quartzelec reserves the right to use similar materials.

11. **QUALITY ASSURANCE AND TESTING**

- 11.1 Quartzelec's standard quality control procedures shall apply to the Contract and Quartzelec's standard works tests shall be performed.
- 11.2 The Customer shall be given 7 calendar days' notice of those tests specified in the Contract which it is entitled to attend. If the Customer fails to attend such tests Quartzelec may sign the test results on behalf of the Customer who shall then be deemed to have accepted such test results.

12. **SITE FOR WORKS**

12.1 To enable Quartzelec to perform the Works the Customer will at its own cost provide such facilities and services as Quartzelec in its sole discretion shall require, including by way of example only and without limitation:

- (a) sufficient and suitable access to the Site and all parts of the Works;
- (b) a safe area which complies with all applicable statutory and other regulations and codes of practice to enable performance of the Works;
- (c) all necessary health and safety policies applicable to the site and to Quartzelec's personnel whilst performing the Works. The Customer shall be responsible for providing all medical and practical assistance on Site in the event of accident or sickness affecting Quartzelec's employees;
- (d) safe receipt and unloading of materials; adequate and secure dry storage facilities for materials and equipment;
- (e) all necessary fixed scaffolding, ladders and crawling boards, together with hoisting and/or crane facilities, where Work is required at a height above 7.6 metres;
- (f) a workman's cabin of minimum 20m² floor area, equipped with canteen facilities, changing room, clothes storage and washing facilities with hot water;
- (g) access to suitable toilet facilities;
- (h) access to an adequate supply of electric power at 110V a.c. to all parts of the Works;
- (i) temporary lighting to Quartzelec's requirements;
- (j) removal of rubbish from working areas;
- (k) the use of a telephone; and
- (l) all fuel, power and services required for the site cabins, Completion of the Works and commissioning of the Works.

13. **CANCELLATION**

13.1 No Order which has been accepted by Quartzelec may be cancelled by the Customer except with Quartzelec's prior written agreement and on terms that the Customer shall indemnify and keep indemnified Quartzelec in full against any and all Losses (including the cost of all labour and materials used) incurred and/or suffered by Quartzelec as a result of cancellation.

13.2 In the event of any cancellation under the Contract, the Customer shall pay to Quartzelec within 14 calendar days from the date of cancellation of the Contract any outstanding sums due under the Contract including an amount in respect of any services and/or materials provided or purchased or Works carried out up to the date of cancellation in respect of which Quartzelec had not yet submitted an invoice.

14. **POSTPONEMENT**

14.1 Quartzelec will be under no obligation to do so but may comply with a reasonable request by the Customer to postpone performance of the Works.

14.2 If performance of the Works is postponed at the Customer's request the Customer shall indemnify and keep indemnified Quartzelec in full against any and all Losses (including increased administration and legal costs on a full indemnity basis as well as any storage costs and associated insurance costs) suffered and/or incurred by Quartzelec as a result and shall also pay for the performance had not been postponed.

15. **SUB-CONTRACTING**

15.1 Quartzelec reserves the right to sub-contract any or all of the Works concerning the electrical, mechanical, civil and building works.

16. **CONTRACT PRICE**

16.1 Where the CDM Regulations apply, the Contract Price is based upon the Customer:

- (a) appointing a Principal Designer and ensuring that the Principal Designer carries out all applicable duties under the CDM Regulations; and
- (b) appointing a Principal Contractor not being Quartzelec and ensuring that the Principal Contractor carries out all the duties of a Principal Contractor under the CDM Regulations. In any event that the Customer appoints Quartzelec as the Principal Contractor then Clause 28 will apply to the Quotation.

16.2 Unless otherwise expressly stated in writing the Contract Price does not include:

- (a) cutting out and making good of the building fabric in connection with the Works, civil, building and trenching and reinstatement work in connection with the Works; or
- (b) any structural reinforcement required to support and accommodate the Works and plant.

16.3 Where the Contract Price includes a provisional sum for labour or materials such provisional sum shall be expended according to the direction of the Customer or Customer's agent. Where a provisional sum is expended it shall be valued and paid for on the basis of actual cost of the work executed plus a reasonable percentage addition for Quartzelec's overheads and profit and, where the actual cost plus the percentage addition totals more or less than the provisional sum included in the Contract Price, the Contract Price shall be adjusted accordingly to reflect such increase or decrease.

16.4 The Contract Price is based on material and labour costs prevailing at the date of the Order Acceptance. In the event that there arises any alteration in costs of material or labour subsequent to the date of the Order Acceptance Quartzelec shall be entitled to request the Customer to revise the Contract Price accordingly. In such case, both Customer and Quartzelec shall revise the Contract Price in good faith and amend the Contract accordingly.

- 16.5 The Contract Price is based on continuity of work in a logical sequence without obstruction or restriction during normal hours. If for any reason beyond Quartzelec's control this continuity is broken or the site working hours are restricted in any way, or if overtime working is required. Quartzelec shall be entitled to recover the additional expenses incurred. Quartzelec's normal working hours are 08:00 to 16:30 hours Monday to Thursday and 08:00 to 14:00 hours on Friday inclusive.
- 16.6 The Contract Price is based upon normal working practices in safe and environmentally friendly working areas. If working areas are excessively hot, dirty, wet or constitute a threat to health and safety and such conditions were not expressly brought to Quartzelec's attention prior to submission of the Quotation and if as a result special working practices are required, Quartzelec shall be entitled to an increase in the Contract Price to reflect the extra costs incurred by Quartzelec.
- 16.7 All prices or rates specified are exclusive of any applicable VAT or other applicable sales taxes or duties which shall be payable by the Customer where applicable.
- 16.8 Unless otherwise agreed in writing, the Order Acceptance does not cover the Customer's requirements (if any) for an increase in existing electricity supply capacity or a new electricity supply.

17. **PAYMENT**

- 17.1 The Contract Price shall not be adjusted or altered in any way other than in accordance with the provisions of this Contract.
- 17.2 Quartzelec shall make an application for payment ("**Interim Application**") stating what Quartzelec considers is the value of the Works executed and materials on site or purchased for the Works and other amounts due under this Contract from the date of commencement of the Works (or at such other times as agreed by the parties) at intervals of not less than four weeks. The date of the Interim Application shall be the Due Date.
- 17.3 No later than 5 calendar days after any Due Date, the Customer shall notify Quartzelec of the sum that it considers to have been due at the Due Date in respect of the payment and the basis on which the sum is calculated.
- 17.4 Unless the Customer has served notice under Clause 17.5, it shall pay Quartzelec the sum referred to in the Customer's notice under Clause 17.3 (or, if the Customer has not served notice under Clause 17.3, the sum referred to in the Interim Application referred to in Clause 17.2) ("**Notified Sum**") on or before the final date for payment of each invoice.
- 17.5 Not less than 7 calendar days before the Final Date for Payment ("**Prescribed Period**"), the Customer may give Quartzelec notice that it intends to pay less than the notified sum ("**Pay Less Notice**"). Any Pay Less Notice shall specify:
- (a) the sum that the Customer considers to be due on the date the notice is served; and
 - (b) the basis on which that sum is calculated.
- 17.6 If the Customer fails to pay an amount due to Quartzelec by the Final Date for Payment and fails to give a Pay Less Notice under Clause 17.5, simple interest shall be added to the unpaid amount from

the Final Date for Payment until the actual date of payment. This shall be calculated on a daily basis at the annual rate of 8% above the Base Rate. The Parties acknowledge that the Customer's liability under this Clause 17.6 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

- 17.7 After Completion of the Works, Quartzelec shall submit a final application for payment indicating the total value of the Works executed including any variations agreed and any other amounts due under this Contract (and the date of submission of such final application shall be the **“Due Date for Final Application”**) and the Customer shall pay to Quartzelec the amount so indicated within 14 calendar days of the Due Date for Final Application less any previous payments and the provisions of Clauses 17.4 and 17.5 shall apply.
- 17.8 All amounts due under this Contract shall be paid by the Customer to Quartzelec in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 17.9 If the Customer fails to make any payment on the Final Date for Payment then without prejudice to any other right or remedy Quartzelec may have Quartzelec shall be entitled to:
- (a) cancel the Order Acceptance and suspend delivery and/or performance of any other Contracts;
 - (b) appropriate any payment made by the Customer to such Contract as Quartzelec may think fit;
 - (c) charge interest in accordance with clause 17.6.

18. **Materials, Risk and Retention of Title**

- 18.1 The Customer shall sign to acknowledge receipt of materials delivered to Site.
- 18.2 The materials supplied by or on behalf of Quartzelec (whether fixed or unfixed) shall remain Quartzelec's property until the Customer has paid to Quartzelec in full all sums payable or which may become payable by the Customer. Until that time, the Customer shall hold the materials as bailee and shall store them in such a way that they can be identified as Quartzelec's property and shall keep them separate from the Customers own property and property of any other person.
- 18.3 Notwithstanding Clause 18.2 above, the risk in the goods shall rest with the Customer from the time of delivery. The Customer shall insure the materials against loss or damage accordingly and in the event of any such loss or damage occurring shall hold the proceeds of such insurance on trust for Quartzelec.
- 18.4 The Customer's right to possession of the materials shall cease if:
- (a) The Customer has not paid all sums due to Quartzelec in full by the Final Date for Payment referred to in Clause 17; or
 - (b) The Customer is unable to pay its debts in accordance with section 123 of the Insolvency Act 1986, or otherwise falls within the provisions of that Act.

18.5 On cessation of the Customer's right to possession of the materials in accordance with this Clause, the Customer shall, at his own expense, make the materials available to Quartzelec and allow Quartzelec to repossess them.

18.6 The Customer hereby grants to Quartzelec, its employees and agents, an irrevocable licence to enter any premises where the materials are stored in order to inspect or repossess them.

19. **INDEMNITY AND INSURANCE**

19.1 Each of the Parties shall be liable for and shall indemnify the other against:-

(a) any liability, loss, claim or proceedings arising under any statute or common law in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Works, unless due to any act or neglect of the indemnified party or of any person for whom the indemnified party is responsible;

(b) any expense, liability, loss, claim or proceedings in respect of any injury or damage to any property arising out of or in the course of or caused by the carrying out of the Works, unless due to any act or neglect of the indemnified party or of any person for whom the indemnified party is responsible.

19.2 The Customer hereby certifies to Quartzelec that it has affected such Employer's Liability Insurance and Public Liability Policy as are necessary to cover the liabilities of the Customer and that such policies are with a reputable insurer up to a limit of at least £10,000,000 (ten million pounds) and shall be kept in force during and until completion of the Works.

19.3 The Customer shall insure the premises and materials (whether fixed or unfixed) to cover any damage thereto from any cause whatsoever.

19.4 Quartzelec reserves the right to inspect any insurance policy taken out pursuant to this Clause together with the receipt for the last premium.

20. **COPYRIGHT**

20.1 The Customer may use drawings and information supplied by Quartzelec only for the purposes of completing, maintaining, adjusting and repairing the Works. No licence is granted to the Customer to copy or use drawings or information so supplied in order to make or have made spare parts for the Works. Drawings or information supplied by Quartzelec shall not without Quartzelec's consent be used, copied or communicated to a third party by the Customer.

20.2 Drawings and information supplied by the Customer to Quartzelec for the purposes of preparing the Order Acceptance and Contract shall remain the property of the Customer. The Customer's drawings and information shall not without the consent of the Customer be used, copied or communicated to a third party by Quartzelec otherwise than is strictly necessary for the purposes of the Contract.

21. **CONFIDENTIALITY**

21.1 Neither party shall use and/or disclose any confidential information which is acquired by it about the other party's business and/or given by one party to the other party and/or generated by one party using the other party's confidential information except in the proper performance of this Contract.

22. **PUBLICITY**

22.1 Quartzelec reserves the right to erect site boards on the Customer's property during the course of the Works to advertise Quartzelec's presence.

22.2 Quartzelec shall seek the Customer's permission which shall not be unreasonably denied to take promotional photographs of the Works.

22.3 Quartzelec shall seek the Customers permission which shall not be unreasonably denied to write and issue press releases for promotional purposes.

23. **STANDARDS**

23.1 The Works shall comply as appropriate with:

- (a) BS7671:2008 Requirements for Electrical Installation.
- (b) The Electricity at Works Regulations 1989.
- (c) Quartzelec's current Codes of Practice appropriate to the nature of the equipment.

23.2 The Works shall be designed and installed in accordance with all relevant standards including the following:

- (a) Chartered Institute of Building Services Engineers Guides, volumes A to H; and
- (b) HVCA Ductwork Manufacture and Installation Standard DW/144.

24. **WARRANTY DURING DEFECTS LIABILITY PERIOD**

24.1 Subject to Clause 24.23, Quartzelec warrants to the Customer that the Works will correspond in all material respects with the Specification at Completion and will, under proper use, be free from material defects in design, materials and/or workmanship for the duration of the Defects Liability Period (or in the absence of such period being specified in the Order Acceptance) the period of 12 months running from the date of Completion of the Works.

"Proper use" shall be taken to mean installation, commissioning, operation and maintenance in accordance with Quartzelec's advice and good engineering practice.

24.2 Any defective materials provided by Quartzelec or defective workmanship on the part of Quartzelec shall, if notified in writing to Quartzelec during the Defects Liability Period (as set out in this Clause 24), be rectified by Quartzelec as soon as practicable after their notification by the Customer provided,

subject to Clause 24.3, that Quartzelec is satisfied that such defects arise out of defective materials or defective workmanship.

- 24.3 Quartzelec shall have no liability under the warranty in Clause 24.1 above in respect of:
- (a) any defect in the Works arising from Quartzelec's compliance with any instructions and/or Specification supplied and/or approved by the Customer;
 - (b) any faults and/or defects arising from any operation by the Customer, its servants or agents before the date of Completion, nor shall Quartzelec be liable for any loss or damage or expenses or costs arising directly or indirectly as a consequence of such operation;
 - (c) any faults and/or defects caused by fair wear and tear, wilful damage, abnormal working conditions, failure to follow Quartzelec's instructions, misuse, alteration and/or repair of the Works without Quartzelec's prior written approval and/or improper maintenance or negligence on the part of the Customer or a third party;
 - (d) Works in respect of which the total price has not been paid by the Final Date for Payment; and
 - (e) those parts, materials and/or equipment which are not manufactured by Quartzelec in respect of which the Customer shall only be entitled to the benefit of such warranty or guarantee as is given by the manufacturer to Quartzelec.
- 24.4 If any of the Works are defective and are covered by the warranty in Clause 24.1 Quartzelec shall at its sole option either repair the Works or supply replacement materials. Such repair or replacement shall be the Customer's sole remedy in respect of any claims it has under the warranty given by Quartzelec in Clause 24.1, which appears before the expiry of the Defects Liability Period
- 24.5 The undertaking and obligations of Quartzelec under this Clause are in place of and exclude all other warranties and conditions, whether oral, written, statutory, express or implied with regard to satisfactory quality.
- 24.6 At Quartzelec's reasonable request the Customer must procure sufficient access to the premises at which any alleged defective Works are held or alleged defective Works have been performed to enable inspection.
- 24.7 Any work carried out by Quartzelec, including but not limited to a visit to inspect the Works, which is not covered by the warranty in Clause 24.1 will be charged for at Quartzelec's normal rate on a time and materials basis.
- 24.8 The Customer shall procure sufficient access to the Site at which any Works were undertaken and/or have been performed to enable Quartzelec to repair any defective Works and reperform Works in accordance with Clause 24.4.
- 24.9 Such repair or replacement shall be provided by Quartzelec within a reasonable period of time of Quartzelec being notified of the defect provided it is notified, in writing within 30 calendar days of the defect becoming apparent or when it should reasonably have become apparent to the Customer.

- 24.10 Quartzelec shall not be liable to make good any defects in the Works which arise from any operation by the Customer, his servants or agents before the date of Completion, nor shall Quartzelec be liable for any loss or damage or expenses or costs arising directly or indirectly as a consequence of such operation.
- 24.11 In respect of items which have been made good under Clause 24.1, Quartzelec's obligation shall in any event expire 24 months after first delivery of the original item.
- 24.12 Notwithstanding any other provision of this Contract, (with the exception of Clause 25) Quartzelec shall have no liability to the Customer in respect of any losses, damages or expenses suffered or incurred by the Customer and shall not be liable to remedy any defects (referred to in Clause 24.1) to the extent that such losses, damages or expenses or defects were caused or contributed to by the Customer's failure to correctly maintain or operate the Works in accordance with the recommended codes of practice or other instructions provided to the Customer by Quartzelec.

25. **LIMITATION OF LIABILITY**

- 25.1 Subject to Clause 6 Quartzelec's total liability to the Customer under this Contract shall not exceed one half of the Contract Price.
- 25.2 Quartzelec shall have no Losses to the Customer, or any third party, for any:
- (a) loss of profits;
 - (b) loss of use and/or production;
 - (c) loss of revenues and/or anticipated savings'
 - (d) any increase in operating costs or any other financial loss;
 - (e) depletion of reputation and goodwill;
 - (f) loss and/or corruption of data and systems;
 - (g) pure economic losses;
 - (h) special damages;
 - (i) aggravated, punitive and/or exemplary damages;
 - (j) consequential and/or indirect losses or damage; and/or
 - (k) interruption of business, loss of business, contracts and/or opportunity.
- 25.3 Except for the financial cap on liability which shall apply only once in respect of all types of liability, each of the limitations and/or exclusions set out in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
- (a) liability in contract or warranty (including fundamental breach);
 - (b) liability in tort (including negligence);
 - (c) liability for breach of statutory duty; and

(d) liability for breach of common law and/or any other legal basis.

- 25.4 Quartzelec shall compensate the Customer for, on the one hand, any legal liability for personal injury to or death of any person or damage to third parties' property and, on the other hand, for damage to the Customer's property (other than the materials) to the extent that such personal injury or death or damage is caused by the negligence of Quartzelec or of its employees or agents. In the case of damage to property such compensation shall unless otherwise specified in the contract be limited to £2,000,000 (two million pounds) in respect of any one occurrence or series of occurrences originating from one incident.
- 25.5 Quartzelec shall have no liability to the Customer for defective Works to the extent the defect is caused or contributed to by the Customer and/or by the Customer's continued use of defective Works after the defect has become apparent or suspected or should reasonably have been apparent or suspected by the Customer.
- 25.6 The Customer shall indemnify Quartzelec against any and all claims in respect of or consequent to pollution or release of substances capable of causing harm to living organisms or interference with ecological systems arising from the materials or services except in respect of personal injury or death, whether or not resulting from the negligence of any person.
- 25.7 For the purpose of this Clause 25 Quartzelec contracts also on behalf of its employees, agents, subcontractors and suppliers who shall have no greater liability in relation to the contract than Quartzelec.
- 25.8 If the Customer is not the sole end user and ultimate owner of the Works, then the Customer shall ensure by its contract with the end user or ultimate owner that Quartzelec is given the benefit of the above stated exclusions and limitations of liability by all such users or owners and shall indemnify Quartzelec against claims of any kind by them.
- 25.9 All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in these Conditions are excluded from this Contract to the fullest extent permitted by law.

26. **TRANSFER OF UNDERTAKINGS REGULATIONS**

- 26.1 The Customer shall indemnify and keep indemnified Quartzelec against each and every claim, liability, costs, expense or demand whatsoever arising under or in relation to:
- (a) any contracts of employment (including, without prejudice to the generality of the foregoing, the termination thereof) with; or
 - (b) any duty or liability of the Customer or any contractor in relation to any matter whatsoever in respect of any person who is presently an employee of the Customer or any contractor or prior contractor to the Customer and whose contract of employment has effect or is alleged to have effect as if originally made with Quartzelec by reason of the operation of the Transfer of

Undertaking (Protection of Employment) Regulations 2006 or the EC Council Directive 2001/23/EC as a consequence of the Parties entering into this Contract and/or its termination.

26.2 Quartzelec shall indemnify and keep indemnified the Customer against each and every claim, liability, costs, expense or demand whatsoever arising under or in relation to:

- (a) any contracts of employment (including, without prejudice to the generality of the foregoing, the termination thereof) with; or
- (b) any duty or liability of Quartzelec or any contractor in relation to any matter whatsoever in respect of any person who is presently an employee of Quartzelec or any contractor or prior contractor to Quartzelec and whose contract of employment has effect or is alleged to have effect as if originally made with the Customer by reason of the operation of the Transfer of Undertaking (Protection of Employment) Regulations 2006 or the EC Council Directive 2001/23/EC as a consequence of the Parties entering into this Contract and/or its termination.

27. TERMINATION

27.1 Either party may immediately terminate the Contract by written notice if the other party:

- (a) breaches the terms of the Contract (and if remediable the breach has not been remedied within 30 calendar days of receiving notice requiring it to be remedied);
- (b) persistently breaches any one or more terms of the Contract;
- (c) fails to make any payment when due;
- (d) is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, take or suffer any similar action in any jurisdiction or any step is taken (including without limitation the making of an application on the giving of any notice) by it or by any other person in respect of any of these circumstances (except for the purposes of amalgamation or reconstruction and in such manner that the resulting company effectively agrees to be bound by or assume the obligations imposed on that other party under this Contract);
- (e) ceases or threatens to cease to carry on business; and/or
- (f) appears reasonably to the other party to be about to suffer any of the above events.

27.2 If Quartzelec has the right to terminate the Contract:

- (a) Quartzelec may withhold delivery of any undelivered materials and stop any materials in transit;
- (b) Quartzelec may withhold performance of any Works and cease any Works in progress;
- (c) Quartzelec may terminate the Customer's right to re-sell and retain possession of any of the materials owned by Quartzelec;

- (d) Quartzelec may enter the Customer's premises or any other premises where the materials are or may be stored and may repossess and sell or dispose of any materials owned by Quartzelec to discharge any sums owed by the Customer to Quartzelec under the Contract or any other agreement with the Customer; and
- (e) all monies owed by the Customer to Quartzelec shall immediately become due and payable, including those for which Quartzelec is yet to submit an invoice.

28. **APPOINTMENT AS CONTRACTOR OR PRINCIPAL CONTRACTOR**

- 28.1 This Clause shall apply only where the CDM Regulations apply and Quartzelec has been appointed by the Customer as the Contractor or Principal Contractor pursuant to the CDM Regulations.
- 28.2 All costs incurred by Quartzelec as a result of its appointment as Contractor or Principal Contractor will be passed on to the Customer as a separate charge entitled "Duties of Contractor/Principal Contractor".
- 28.3 For the purposes of this section:
 - (a) "Construction Phase Plan" shall mean the plan provided to Quartzelec and developed by Quartzelec to comply with Regulation 12 of the CDM Regulations.
 - (b) "Contractor" or "Principal Contractor" shall mean Quartzelec whose address is given at the beginning of this agreement or any successor appointed by the Customer in accordance with the CDM Regulations.
- 28.4 If the Customer replaces the Principal Designer or replaces Quartzelec as the Principal Contractor, the Customer shall notify Quartzelec immediately in writing of the name and address of the new Principal Designer or Principal Contractor as the case may be.
- 28.5 The Customer shall ensure:
 - (a) that the Principal Designer carries out all the duties of a CDM Co-ordinator under the CDM Regulations;
 - (b) where Quartzelec is replaced by another contractor as the Principal Contractor that the Principal Contractor carries out all the duties of the Principal Contractor under the CDM Regulations.
- 28.6 Quartzelec shall comply with all the duties of a Contractor or Principal Contractor set out in the CDM Regulations. Any amendment made by Quartzelec to the Construction Phase Plan shall be notified to the Customer in writing who will then notify the Principal Designer r.
- 28.7 Within a reasonable time of the Completion of the Works, Quartzelec shall provide, and ensure that any sub-contractor through Quartzelec provides, such information to the Principal Designer as the Principal Designer reasonably requires for the preparation of the Health and Safety File pursuant to Regulation 12(7) 1.

29. **ENTIRE AGREEMENT**

- 29.1 The Contract constitutes the entire agreement between the Parties and supersedes any previous agreement between the Parties relating to its subject matter.
- 29.2 The Parties agree that they have not entered into the Contract in reliance on any promise, assurance, representation, warranty, details and/or specification (whether in writing or not) that is not expressly set out in the Contract. Nothing in the Contract shall exclude liability for any fraudulent statement and/or act made prior to the date of the Contract.
- 29.3 Each of the Parties acknowledges and agrees that the only remedy available to it for breach of the Contract shall be for breach of contract under the terms of the Contract and it shall have no right of action against any other party in respect of any promise, assurance, representation, warranty, details and/or specification (whether in writing or not) that is not expressly set out in the Contract.

30. **FORCE MAJEURE**

- 30.1 Neither party shall be liable for any delay or failure to perform its obligations under the Contract (save in respect of payment of monies payable for the Works) as a result of a Force Majeure Event lasting more than 7 calendar days and any other similar events. If the Force Majeure Event causing the delay or failure continues in excess of 4 months the Contract may be terminated by either party after that period and while the case of the non-performance still exists by not less than 30 calendar days' notice in writing to the other Party, in which event the provisions of Clause 27 shall apply.

31. **ANTI-BRIBERY AND CORRUPTION COMPLIANCE**

- 31.1 Both Parties irrevocably and unconditionally warrant and represent that they shall:
- (a) comply with all applicable laws, statutes, regulations and codes relating to bribery, corruption, anti-trust, money-laundering, trade sanctions, financial sanctions and criminal matters including but not limited to the Bribery Act 2010 and all such legislation as the same may be modified, supplemented or replaced ("**Relevant Requirements**");
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with this Clause, including the Relevant Requirements, and the relevant policies and will enforce them where appropriate; and
 - (d) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind by Quartzelec in connection with the performance of this agreement.
- 31.2 Both Parties shall ensure that any person associated with this Contract who is performing services or providing goods and/or materials in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed

on the Parties in this Clause 31 (“**Relevant Terms**”). Both Parties shall be responsible for the observance and performance by such persons of the terms under the Contract, and shall be directly liable to the other party for any breach by such persons of any of the terms under this Contract.

31.3 Breach of this Clause 31 shall be deemed a material breach under Clause 27.

31.4 For the purpose of this Clause 31, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 31 a person associated with the Parties includes but is not limited to any sub-contractor of that party.

32. **GENERAL**

32.1 No variation of the Contract shall be binding unless agreed in writing by an authorised representative of Quartzelec.

32.2 No waiver by either party of any breach of the Contract by the other party shall be considered as a waiver of any subsequent breach of the same or any other provision.

32.3 Any invalidity, illegality or unenforceability of any or any part of a provision of the Contract shall not affect the validity, legality or enforceability of the remaining provisions of the Contract.

32.4 The Customer shall not assign, transfer, dispose of or sub contract (or purport to do any of the above in respect of) any of its rights or obligations under the Contract without the prior written consent of Quartzelec.

32.5 None of the terms and conditions of the Contract shall be enforceable by any person who is not a party to it. This shall not apply to any company within the same group of companies as Quartzelec who Quartzelec consents to being able to enforce the Contract in addition to Quartzelec. The rights of any third party to enforce the Contract may be varied and/or extinguished by agreement between the Parties without the consent of any third party.

32.6 The Contract shall be governed by the laws of England and the Parties agree to submit to the exclusive jurisdiction of the English Courts. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this Contract. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms 2010) shall apply but where they conflict with this Contract, this Contract shall prevail. Any variation to this Clause, must be agreed explicitly by both Parties in writing prior to the commencement of Works.

32.7 The adjudication provisions of Part II of the Housing Grants, Construction and Regeneration Act 1996 shall apply to this Contract.

32.8 Neither party shall exercise set off against the other.