



# **RWE Generation UK plc General Conditions of Contract for Minor Works**

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## Contents

<b>1</b>	Definitions and Interpretation	<b>3</b>
<b>2</b>	Carrying out the works	<b>6</b>
<b>3</b>	General obligations of the contractor	<b>6</b>
<b>4</b>	Commencement and completion	<b>8</b>
<b>5</b>	Completion and defective work	<b>9</b>
<b>6</b>	Employer's instructions	<b>10</b>
<b>7</b>	Risk and insurance	<b>10</b>
<b>8</b>	Contract price	<b>11</b>
<b>9</b>	Payment	<b>11</b>
<b>10</b>	Intellectual property	<b>12</b>
<b>11</b>	Liability	<b>13</b>
<b>12</b>	Force Majeure	<b>14</b>
<b>13</b>	Termination	<b>14</b>
<b>14</b>	Consequences of termination	<b>15</b>
<b>15</b>	General	<b>15</b>
<b>16</b>	Notices	<b>17</b>
<b>17</b>	Adjudication	<b>17</b>
<b>18</b>	CIS Scheme	<b>18</b>
<b>19</b>	Pension Provisions	<b>18</b>
<b>20</b>	System Access	<b>18</b>
<b>21</b>	Governing Law	<b>19</b>

## 1. Definitions and interpretation

1.1 In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

<b>"Appointed Person"</b>	the person or persons confirmed by the Contractor to the Employer pursuant to condition 3.8 as responsible for providing to the Employer all Method Statements, Site Specific Risk Assessments and other information required by the Employer in connection with the Services.
<b>"Business Day"</b>	a day (other than a Saturday, Sunday or a public holiday in England) when the banks in London are open for business but excluding any days on which the Site is not open for business.
<b>"CDM Regulations"</b>	the Construction (Design and Management) Regulations 2015 or any statutory re-enactment or amendment thereof for the time being in force and the Code of Practice entitled "Managing Health and Safety in Construction" approved and issued by the Health & Safety Commission in connection with such regulations.
<b>"Certificate of Practical Completion"</b>	the certificate issued pursuant to condition 5.1.
<b>"CIS Regulations"</b>	the Finance Act 2004 and any regulations made under Section 74 of the Finance Act; the Income Tax (Construction Industry Scheme) Regulations 2005 (CIS 2004/2005) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2007 (CIS 2004/672) and 2015 (CIS 2015/429) and any other statute or subordinate legislation relating to the construction industry scheme as modified from time to time or replaced whether before or after the date of the Contract.
<b>"Commencement Date"</b>	the date specified in the Purchase Order.
<b>"Conditions"</b>	these general conditions of contract.
<b>"Contract"</b>	means the contract comprising the Purchase Order and these Conditions.
<b>"Contractor"</b>	the entity which is named as the Contractor in the Purchase Order.
<b>"Contract Price"</b>	the price for carrying out the Works as set out in the Purchase Order.
<b>"Defects Liability Period"</b>	the period of 12 months commencing on the date of issue of the Certificate of Practical Completion.
<b>"Documents"</b>	all drawings (including CAD drawings), reports, specifications, calculations, designs, graphs, sketches, design details, models, computer programmes, photocopying, brochures, reports, notes of meetings, codes, data, documents and other written or recorded material produced by or on behalf of the Contractor in connection with the Works.
<b>"Employer"</b>	The company from within the RWE Group which is named as the contracting entity in the Purchase Order.

<b>"Employer's Contact"</b>	all or any one of the individuals identified in the Purchase Order.
<b>"Event of Force Majeure"</b>	has the meaning given in condition 12.1.
<b>"RWE Group"</b>	RWE AG and its subsidiaries with "subsidiary" having the meaning ascribed to such term in Section 1159 of the Companies Act 2006.
<b>"RWE Group Policy Document"</b>	any relevant rules, policies or standard techniques used by the RWE Group including without limitation the provisions of the Employer's Sustainability Schedule attached as an appendix to the Purchase Order, the relevant Employer's health and safety requirements for working on the Employer's sites, the Employer's Code of Conduct and such other policies as the Employer may notify to the Contractor from time to time, copies of which shall be available for inspection at the Employer's offices.
<b>"Method Statement"</b>	the method statement to be completed by each Appointed Person detailing the manner in which the Works are to be carried out and completed.
<b>"Pay Less Notice"</b>	has the meaning given in condition 9.6.
<b>"Purchase Order"</b>	means the letter issued by the Employer to the Contractor setting out details of the Works to be carried out by the Contractor.
<b>"Requirements"</b>	all general or local Acts of Parliament and the regulations and bye-laws of any local or other statutory authority, directions or guidance relative to any of the foregoing, which may be applicable to the Works and the rules and regulations of all public bodies and companies whose property or rights are or may be affected in any way by the Works and all British standards, which shall include but not be limited to the CDM Regulations and the Site Management Regulations.
<b>"RIDDOR"</b>	the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.
<b>"Safety Incident"</b>	an accident, incident or near-miss, whether or not death or personal injury or other property damage is caused.
<b>"Scheduled Completion Date"</b>	the date specified in the Purchase Order as the date by which the Works must be completed, as such date may be varied in accordance with the Conditions.
<b>"Serious Incident"</b>	(a) a fatal accident; or (b) an accident involving a serious injury, such as an amputation, fracture, electrical shock or burn, loss of sight (temporary or permanent), or any injury resulting in admittance to hospital for more than 24 hours.
<b>"Site"</b>	the site or sites at which the Works are required to be carried out and completed as set out in the Purchase Order.

<b>"Site Materials"</b>	all unfixed materials and goods delivered to, placed on or adjacent to the Site and intended for incorporation in the Works.
<b>"Site Meeting"</b>	has the meaning given in condition 3.8.
<b>"Site Specific Risk Assessment"</b>	the risk assessment to be completed by each Appointed Person following a Site Meeting.
<b>"Site Waste Management Regulations"</b>	the Site Waste Management Plans Regulations 2008 or any statutory re-enactment or amendment thereof from time to time.
<b>"Specification"</b>	any specification(s) in relation to the Works as set out in the Purchase Order.
<b>"Staff"</b>	any of the Contractor's employees, agents, sub-contractors or suppliers engaged in the carrying out of the Works.
<b>"Statutory Deduction"</b>	the deduction in force at the time of payment under section 61 of the Finance Act 2004, or any re-enactment or update thereof.
<b>"Statutory Scheme"</b>	the Scheme for Construction Contracts Statutory Instrument 1998 no.649 or any such enactment or amendment to such legislation as is in force from time to time.
<b>"TUPE"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006.
<b>"Variation"</b>	the addition, omission or substitution of any work or services in the Works including the manner and timing of the performance of the Works.
<b>"Works"</b>	the design (where applicable) and construction of the works, as set out in the Purchase Order.

1.2 In the Contract, unless the context otherwise requires:

- (a) a reference to a statute or statutory provision includes:
- (i) any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it; and
  - (ii) any repealed statute or statutory provision which it re-enacts (with or without modification).

## **2. Carrying out of the Works**

- 2.1 The Employer appoints the Contractor as its contractor to carry out the Works on the terms of and to the standards required in the Contract and the Contractor agrees to carry out the Works. The appointment of the Contractor is not exclusive and nothing in the Contract or otherwise shall be deemed to give the Contractor exclusive rights to carry out works on behalf of the Employer.
- 2.2 These Conditions shall prevail over any terms in any Purchase Order, any acknowledgement from the Contractor of such Purchase Order, or (subject to condition 15.2) in other correspondence between the parties relating to the subject matter of the Contract (including but not limited to any quote provided by the Contractor).

- 2.3 The Contract shall commence on the date specified in the Purchase Order and shall (unless terminated at an earlier date pursuant to these Conditions) terminate automatically once the Works have been completed and paid for in accordance with the Contract.

### **3. General Obligations of the Contractor**

- 3.1 The Contractor shall, and shall procure that its Staff shall at all times during the period of the Contract:

- (a) execute and complete the Works in a proper and workmanlike manner and strict accordance with the Contract, the Specification, the Method Statement, the Requirements and RWE Group Policy Documents;
- (b) comply with and adhere to any instructions issued to the Contractor by the Employer relating to the Works including, but not by way of limitation, instructions relating to the sequencing and timing of the execution of the Works;
- (c) comply with all rules and regulations of the Employer relating to the execution of the Works or to the Site set out or referred to in the Contract and shall give all notices required by the Requirements in relation to the Works;
- (d) comply with and adhere strictly to any instructions issued to him by the Employer relating to the Works and shall comply with any Site safety policies in place;
- (e) carry out the Works in conjunction with and co-operate with the Employer and other contractors or professionals engaged by the Employer in respect of the Works;
- (f) permit and facilitate the execution of work on Site not forming part of the Works by the third parties entitled to be on the Site as may be specified by the Employer; and
- (g) keep the Site in a clean and tidy condition to the satisfaction of the Employer's Contract.

- 3.2 In addition to complying with RIDDOR the Contractor shall immediately notify the Employer in writing of any Safety Incident relating to the Contract so the Employer can make full and accurate notifications as required by law. The Contractor shall make notifications of any Serious Incident immediately by telephone, and in the case of any other Safety Incident without delay and in any event by no later than 10am on the Business Day immediately following the Safety Incident taking place.

- 3.3 The Contractor shall have in place an accident investigation procedure to deal with all Serious Incidents. Copies of all Serious Incident investigation reports shall be supplied by the Contractor to the Employer promptly following the conclusion of the investigation.

#### ***Contractor's responsibility for design***

- 3.4 To the extent that the Contractor is responsible for any design of the Works, the Contractor:
- (a) warrants that he has exercised and will exercise in the design of the Works, all the skill, care and diligence to be expected of a properly qualified and competent specialist experienced in carrying out works of a similar scope, nature and size to the Works;
  - (b) shall co-ordinate and integrate the design with the works being undertaken by other consultants or contractor engaged by the Employer and shall co-operate with the Employer and the other consultants and contractors in the co-ordination of the Contractor's design with the overall design of the Works; and
  - (c) warrants that the Contractor's design will, when completed satisfy in all respects the Requirements, any performance specification or requirement which is contained in the Purchase Order or which have been notified or communicated to the Contractor, and fully comply with any directly applicable provision of any treaty or of any regulation, Act of Parliament, any instrument rule or order made under any Act of Parliament, regulation or bye-law of any local authority or of any statutory undertaker which has any jurisdiction with regard to the Works.
- 3.5 The Contractor's obligations under condition 3.4 shall be without prejudice to any warranties on the part of the Contractor implied at common law or by statute and the Contractor acknowledges that the Employer is relying exclusively on the Contractor in carrying out of the design of the

Works.

## ***Prohibited Materials***

- 3.6 The Contractor warrants to the Employer that it shall ensure that:
- (a) the Works will, when completed, comprise only materials and goods which are new and of sound and merchantable quality and all workmanship, manufacture and fabrication will be to the highest standards available at the date of execution of the same and consistent with the intended use of the Works;
  - (b) any materials used or specified for use in the Works shall be in accordance with the guidelines contained in the current version of the publication "Good Practice in the Selection of Construction Materials" published by Ove Arup & Partners; and
  - (c) the Contractor shall not specify for use or use or permit to be used in the Works any products or materials which at the time of specification or use do not conform with British Standards or other appropriate applicable European standards or codes of practice or generally recognised good building practice and/or at the time of specification or use are generally known to be deleterious, in the particular circumstances in which they are used, to health, safety and/or durability of buildings or structures.

## ***Site Conditions***

- 3.7 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and all information available in connection with them and shall be deemed to have fully acquainted itself with the same and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the construction of the Works (including the sub-surface conditions where applicable), the materials necessary for the completion of the Works, the means of communication with and restrictions of access to the Site. The Contractor shall not be entitled to make any claim for loss and/or expense, any addition to the Contract Price or to an extension of time to complete the Works arising from the Contractor's failure to do so.

## ***Site Meeting and Planning the Works***

- 3.8 Where the Contractor is performing Works and the Employer requests a Site Meeting, within two Business Days of receipt of the Purchase Order, the Contractor shall contact the Employer's Contact to arrange a meeting at the relevant Site (the "**Site Meeting**") and shall at the same time confirm the identity and contact details of the Appointed Person.
- 3.9 At the Site Meeting the Employer shall provide the Contractor with all information in the Employer's possession in relation to the Site necessary for the performance of the Works.
- 3.10 The Employer does not warrant the adequacy, accuracy or sufficiency of the information provided to the Contractor pursuant to condition 3.9. The Contractor shall take all necessary steps to secure all necessary information for carrying out the Works at the Site in accordance with the Contract and for checking the adequacy, accuracy and sufficiency of the information provided to the Contractor by the Employer.
- 3.11 At the Site Meeting, the Employer's Contact and the Appointed Person will identify all risks and hazards of undertaking the Works and agree:
- (a) an exhaustive list of works required for and to be included in the Works; and
  - (b) the Commencement Date and Scheduled Completion Date for the carrying out of the Works (if not set out in the Purchase Order).
- 3.12 The Employer's Contact shall confirm to the Appointed Person in writing within 2 Business Days of the Site Meeting the agreed position on the matters referred to in condition 3.11.
- 3.13 No later than 10 Business Days prior to the Commencement Date, the Appointed Person shall provide to the Employer's Contact the Site Specific Risk Assessment and a Method Statement for carrying out the Works.

- 3.14 The Employer's Contact shall check the Site Specific Risk Assessment and Method Statement to ensure that appropriate hazards and risks identified at the Site Meeting have been addressed and, once so satisfied, shall confirm this to the Contractor. The reviewing of the Method Statement by the Employer's Contact or the giving of any comment or approval by the Employer's Contact shall not in any way relieve the Contractor of its obligations under the Contract or of its duty to check that all appropriate hazards and risks identified at the Site have been addressed.

## **4. Commencement and Completion**

### ***Commencement and completion of the Works***

- 4.1 The Contractor shall commence the execution of the Works from the Commencement Date and shall thereafter proceed regularly and diligently with the Works and shall complete each part of the same on or before the expiry of the Scheduled Completion Date.

### ***Extensions of Time***

- 4.2 If it becomes apparent that the Works will not be completed by the Scheduled Completion Date (or any later date fixed in accordance with the provisions of this condition 4.2 or condition 4.3) for reasons beyond the control of the Contractor, the Contractor shall so notify the Employer who shall make, in writing, such extension of time for completion as may be reasonable. Reasons within the control of the Contractor include any default of the Contractor or of others employed or engaged by or under him for or in connection with the Works and of any supplier of goods or materials for the Works.
- 4.3 The Scheduled Completion Date may be extended by the Employer's Contact if there is an Event of Force Majeure or on the instructions of the Employer, provided that the Contractor and/or the Employer has informed the other of the Event of Force Majeure in accordance with condition 12.2. The Employer's Contact shall inform the Contractor in writing of the revised Scheduled Completion Date.

### **4.4 *Liquidated damages***

If by the Scheduled Completion Date (or such extended date) the Certificate of Practical Completion has not been issued, the Contractor shall be liable to Employer in the sum stated in the Purchase Order as liquidated damages for every day or part thereof during which the Works so remain uncompleted up to the limit stated in the Purchase Order.

The Employer and the Contractor agree that any liquidated damages sums stated in the Purchase Order is a genuine pre-estimate of the loss likely to be suffered by the Employer in the event of delay. If any of the provisions of the Contract requiring the payment of liquidated damages are found to be void, invalid or otherwise unenforceable such that the Employer is unable to enforce its entitlement to payment of the same the Employer shall be entitled to claim un-liquidated damages

## **5. Completion and Defective Work**

- 5.1 Practical completion of the Works shall occur when the Works reach a state when, notwithstanding any defect or outstanding items therein, they are taken or are fit to be taken into use or possession by the Employer. When the Employer is satisfied that the Works are complete, the Employer's Contact shall promptly issue a Certificate of Practical Completion.
- 5.2 If any defects, shrinkages or other faults appear prior to the expiry of the Defects Liability Period due to any failure of the Contractor to comply with his obligations under the Contract, the Employer's Contact shall issue a notice in writing to the Contractor specifying such defects, shrinkages and other faults. The Contractor shall make good such defects, shrinkages and other faults at no cost to the Employer within a reasonable time after receipt by the Contractor of the notice.
- 5.3 When in the opinion of the Employer all defects that have arisen prior to the expiry of the Defects Liability Period have been rectified the Employer's Contact shall issue a certificate to that effect.
- 5.4 Where the Contractor fails to rectify any defects, shrinkages or other faults notified by the Employer pursuant to condition 5.2 within the time required, the Employer shall be entitled to

undertake such rectification work and to recover the cost of the same from the Contractor as a debt and/or to deduct the same from any monies otherwise due to the Contractor.

## **6. Employer's Instructions**

6.1 The Employer may issue written instructions (including instructing a Variation) which, subject to this condition 6, the Contractor shall forthwith carry out.

6.2 If any instruction issued by the Employer:

- (a) shall require the Contractor to undertake work not provided for in, or to be reasonably inferred from the Contract; or
- (b) shall impose any significant additional obligation or restriction or shall require the omission of any work or of any obligation or restriction,

and provided that such instruction has not arisen from, and compliance with it does not reveal any negligence, omission or default of the Contractor, his servants, agents, contractors, suppliers or other persons engaged by the Contractor upon the Works, the Employer and the Contractor shall endeavour to agree an addition to the Contract Price.

6.3 If the Employer and Contractor fail to agree a price under condition 6.2, any instructions issued under condition 6.1 shall be valued by the Employer on a fair and reasonable basis using any relevant prices or rates included in the Purchase Order.

## **7. Risk and Insurance**

### ***Risk in the Works***

7.1 The Works and each part of them shall be at the risk of the Contractor until the issue of the Certificate of Practical Completion.

### ***Protection of the Works***

7.2 The Contractor shall protect the Works to prevent damage to them as required and shall maintain such protection until the date of issue of the Certificate of Practical Completion. The Contractor shall also protect occupiers of adjacent properties and the public from danger, discomfort, disturbance, trespass or nuisance caused by the Works.

### ***Contractor indemnity***

7.3 The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of personal injury to or the death of any person caused by the carrying out of the Works, unless the same is due to any act or neglect of the Employer or of any person for whom the Employer is responsible.

7.4 The Contractor shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personnel (other than the Works or Site Materials) caused by the carrying out of the Works, save to the extent the same is due to any act, neglect or default of the Employer.

### ***Insurance by the Contractor***

7.5 If the Contractor is responsible for any design of the Works, the Contractor shall take out and maintain professional indemnity insurance cover with a reputable insurance company on the basis and with a limit of indemnity of not less than £5,000,000 each and every claim to cover any claims made against the Contractor in respect of any negligence, omission or default on the Contractor's part in the performance of its obligations under the Contract for the duration of the Works and for a period of 6 years from the date of issue of the Certificate of Practical Completion.

7.6 The Contractor shall take out and maintain at its cost a contractor's all risks insurance policy for the full reinstatement value of the Works from the Commencement Date until the date of issue of the Certificate of Practical Completion.

7.7 The Contractor shall take out and maintain at its cost a third party legal liability insurance policy to cover loss, damage, injury or death to any third party, persons or property arising out of the

Works provided by the Contractor. Such insurance shall have a limit of liability of a minimum of £5,000,000 for each and every claim.

- 7.8 The Contractor shall take out and maintain at its costs employer's liability insurance in respect of its employees as required by the Requirements. Such insurance shall have a limit of liability of a minimum of £5,000,000 each and every claim and the level of such insurance shall be adjusted in line with the statutory minimum requirements prevailing from time to time.
- 7.9 The Contractor shall provide evidence to the Employer whenever reasonably requested of the placing of the insurance policies detailed above.

### ***Title in goods and materials***

- 7.10 The title, ownership, property and beneficial interest in all materials and goods shall vest in the Employer upon delivery of such materials and goods to the Site, if they have not previously become the Employer's property. The Employer reserves the right to not make any payment for the materials and goods unless, if requested by the Employer, the Contractor provides the Employer with documentary evidence from the supplier(s) of the materials that the Contractor has an unqualified right to pass ownership of the materials to the Employer. Such right shall not be unreasonably exercised by the Employer.

## **8. Contract Price**

- 8.1 The Contractor acknowledges that it has taken account of all work necessary to complete the Works in agreeing the time for completion and the Contract Price. The Contract Price and/or the Scheduled Completion Date shall not be adjusted or altered except in accordance with the express provisions of the Contract.

## **9. Payment**

- 9.1 The Contractor shall, following the issue of the Certificate of Practical Completion, submit to the Employer an invoice in accordance with the provisions of the Purchase Order, showing the sums which the Contractor considers are due under the Contract. The due date for the payment of sums properly due shall be the date on which the Employer receives the Contractor's invoice.
- 9.2 The Employer shall, within 5 calendar days of the due date issue a notice specifying the amount of the payment it proposes to make in relation to the Contractor's invoice and the basis on which it is calculated.
- 9.3 The final date for payment shall be the number of calendar days as expressed in the Purchase Order after receipt by the Employer of a valid VAT invoice for the amount notified under Clause 9.2.
- 9.4 Subject to any Pay Less Notice served in accordance with condition 9.6, the Employer shall pay the Contractor the amount stated in the notice on or before the final date for payment described in condition 9.3.
- 9.5 If the Employer fails to give a payment notice in accordance with condition 9.2, the amount to be paid by the Employer in respect of Contractor's invoice shall, subject to any Pay Less Notice served in accordance with condition 9.6, be the amount specified in the invoice submitted by the Contractor in accordance with condition 9.1.
- 9.6 Where the Employer intends to pay less than the sum stated in the Employer's payment notice (or the sum stated in the Contractor's invoice where condition 9.5 applies), the Employer shall notify the Contractor in writing not less than 1 calendar day before the final date for payment specifying both the amounts it considers due to the Contractor on the date such notice is given and the basis on which that amount has been calculated ("**Pay Less Notice**"). Where a Pay Less Notice is given the payment to be made on or before the relevant final date for payment shall be not less than the amount stated as due in the Pay Less Notice.
- 9.7 If the Employer fails to make any payment as provided in this condition 9, subject to any deduction that the Employer is entitled to make under the Contract, the Contractor shall be entitled:
- (a) to stop work until the failure is remedied, by giving 14 calendar days' written notice to the Employer, in which event any additional expense and cost incurred (including overheads

and financing charges allocated to them but excluding any allowance for profit) by the Contractor as a result of the stoppage and the subsequent resumption of work shall be added to the aggregate of the Contract Price otherwise due; and/or

- (b) to terminate the Contract by giving 30 calendar days' written notice to the Employer, whether or not the Contractor has previously stopped work under this condition 9.7.

9.8 If either party fails to pay any sum payable under the Contract when due (whether payable by agreement or by an order of the court or otherwise) the liability of that party shall be increased to include interest on that sum from the date when such payment was due until the date of the actual payment at a rate of 4% over the base rate from time to time of the Bank of England. Such interest shall accrue from day to day and shall be compounded annually.

9.9 Where under the Contract any party agrees to pay to any other party any sum or to furnish to any other party consideration which (in either case) is consideration for a taxable supply that sum or consideration shall be exclusive of Value Added Tax payable on it and the recipient of the supply shall pay an amount equal to such Value Added Tax in addition to any sum or consideration on receipt of a valid Value Added Tax invoice from the relevant party.

## **10. Intellectual Property**

10.1 Copyright in any Documents produced by the Contractor in connection with the Works shall remain vested in the Contractor but the Contractor hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to copy and use the Documents for any purpose whatsoever relating to the Works including but without limitation, the execution, completion, reconstruction, reinstatement, modification, maintenance, letting, promotion, advertisement, sale, repair and use of the Works. Such licence shall enable the Employer and its appointee to copy and use the Documents for an extension of the Works but such use shall not include a licence to reproduce the design contained in them for any extension of the Works. Save as provided in this condition 10.1, the Contractor shall not be liable for any such use by the Employer of any of the Documents for any purpose other than that for which the same were prepared and/or provided by the Contractor.

10.2 The Contractor shall indemnify the Employer against all claims or proceedings suffered or incurred by the Employer arising out of or in connection with the infringement or alleged infringement of any copyrights, design rights, registered design, patent or other intellectual property rights of third parties by reason of the carrying out of its obligations under the Contract.

### ***Remedy for failure by Contractor***

10.3 Without prejudice to his other rights and remedies, the Employer may at any time give to the Contractor notice specifying any negligence, omission or default of the Contractor in the performance of his obligations under the Contract and, if the Contractor fails to remedy or take steps diligently to remedy the same on or before the expiry of 5 Business Days from service of such notice, the Employer shall be entitled to employ and pay other persons to remedy the same and all damage, loss and/or expense suffered or incurred by the Employer in so doing may be deducted from any monies otherwise due to the Contractor under the Contract or shall be recoverable by the Employer from him as a debt.

## **11. Liability**

11.1 Each party shall inform the other of any default or breach under the Contract and afford the other a reasonable opportunity to correct such default or breach.

11.2 Each party accepts unlimited liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;
- (b) fraud or fraudulent misrepresentation; and
- (c) any other liability which cannot by law be excluded or limited.

11.3 The Employer accepts liability for physical damage to the Contractor's tangible property resulting directly from the Employer's negligence up to £250,000 in aggregate in respect of the Contract. Except as provided in this condition 11.3 and condition 11.2, the Employer's liability

in respect of all other defaults or breaches under the Contract (save for its liability to pay the Contract Price due and any interest due under condition 9.8) shall be limited to £100,000 in aggregate.

- 11.4 The Employer shall not be liable for the following loss or damage however caused and even if foreseeable:
- (a) economic loss including without limitation loss of profits, business, contracts, revenues, goodwill, production and anticipated savings of every description;
  - (b) loss arising from any claim made by any third party; or
  - (c) loss or damage arising from the Contractor's failure to fulfil its responsibilities or any matter under the Contractor's control.
- 11.5 Save for liability arising under condition 11.2, neither party shall be liable for indirect or consequential loss.
- 11.6 The Contractor shall be liable for any damage caused through not acquainting himself fully of the Site conditions as stated in condition 3.7.
- 11.7 Except as provided in condition 11.2, the Contractor's liability under the Contract shall not exceed £2,000,000 in aggregate.

## 12. Force Majeure

- 12.1 Subject to condition 12.2, neither party shall be deemed to be in breach of the Contract, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations under the Contract to the extent that such delay or non-performance is due to any Act of God, explosion, lightning, tempest, flood, fire, terrorism, war, hostilities, act of public enemy, invasion, revolution or riot or is due to any cause beyond its reasonable control (an "**Event of Force Majeure**") provided that the following shall not be treated as Events of Force Majeure (i) a strike by or lockout or other industrial dispute or trade dispute involving any employees of the Contractor or any suppliers, agents or sub-contractors; or (ii) non-supply of machinery by any supplier to the Contractor; or (iii) the Contractor's failure to hire suitably qualified personnel or labour; or (iv) mechanical or electrical breakdown or failure of equipment, machinery or plant owned by or provided to the Contractor.
- 12.2 The party affected by the Event of Force Majeure shall immediately give the other party written notification of the nature and extent of the Event of Force Majeure and shall make all reasonable efforts to prevent and reduce to a minimum the effect of any Event of Force Majeure. The parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 12.3 If the Contractor is affected by the Event of Force Majeure and the written notice in relation to the Event of Force Majeure has not been withdrawn within 1 month, the Employer may terminate the Contract with immediate effect by serving a written notice on the Contractor and the Contractor shall be entitled to be paid the value of the Contract Price properly incurred by the Contractor up until the date of termination, less any deductions it is entitled to make, in accordance with the Contract prior to the date of termination. The service of such notice shall be without prejudice to any rights or obligations which have accrued prior to termination.
- 12.4 When the effects of the Event of Force Majeure cease both parties shall take all reasonable steps to ensure resumption of normal performance of their obligations under the Contract.

## 13. Termination

- 13.1 Without prejudice to any right or remedy either party may have against the other for breach or non-performance of the Contract, either party may, with immediate effect by notice in writing to the other, terminate the Contract on or at any time after the happening of any of the following events:
- (a) the other party commits a material breach of the Contract provided that where such breach is capable of remedy the party in breach has been advised in writing of the breach and has not rectified it within 30 calendar days of receipt. For the purposes of this condition 13.1 a breach shall be considered capable of remedy if time is not of the

essence in performance of the obligation and if that party can comply with the obligation within the 30 day period;

- (b) the passing of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up or the dissolution of the other party;
- (c) the making of an administration order or the appointment of an administrator under the out of court procedure under the Enterprise Act 2002 or the appointment of a receiver or an administrative receiver over, or the taking possession or sale by an encumbrancer of, any of the other party's assets;
- (d) the other party makes an arrangement or composition with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally;
- (e) the other party ceases to do business at any time for 30 consecutive days; or
- (f) the other party for any reason whatsoever being substantially prevented from performing or becoming unable to perform its obligations.

## **14. Consequences of Termination**

- 14.1 All rights and obligations of the parties shall cease to have effect immediately upon termination of the Contract except that termination shall not affect:
  - (a) the accrued rights and obligations of the parties at the date of termination; and
  - (b) conditions 7, 10, 11, 14, 15, 16, 17, 18 and 19, which shall remain in force.
- 14.2 If the Contractor's employment is terminated and notwithstanding that the validity of such termination is disputed by the Contractor, the Contractor shall immediately protect and secure the Works and shall immediately then leave the Site and shall deliver to the Employer the Documents.
- 14.3 On expiry or termination of the Contract for any reason whatsoever the Employer shall be under no obligation to offer employment to any employee, agent, sub-contractor or member of the Contractor's team who has been carrying out the Works in accordance with the Contract.
- 14.4 On termination of the Contract for any reason whatsoever, the Contractor shall (subject to condition 15.5) be entitled to be paid the value of the Contract Price properly due under the Contract. The Employer shall have no liability to the Contractor for any loss of profit, loss of contracts, loss of revenue or any indirect or consequential losses arising out of or in connection with such termination.
- 14.5 It is acknowledged and agreed between the parties that TUPE does not apply to the transfer of the Works under the Contract.
- 14.6 Notwithstanding clause 14.5, the Contractor undertakes to hold harmless and fully indemnify and keep the Employer indemnified against any and all losses which the Employer and any relevant sub-contractor may incur arising out of or in connection with:
  - (a) any claim or allegation relation to the employment and/or dismissal of any person whose employment transfers or is alleged to transfer to the Employer and or a relevant sub-contractor by virtue of TUPE; and
  - (b) any failure on the part of the Contractor to comply with Regulation 11 and/or 13 of TUPE.
- 14.7 The Contractor warrants that there is no organised grouping of employees whose principal purpose is carrying on the activities of Works on behalf of the Contractor.

## **15. General**

### **15.1 Assignment and sub-contracting**

- (a) The Contract shall be binding on and enure for the benefit of the successors in title of the parties but, except as set out in condition 15.1 (b), shall not be assigned or sub-contracted by any party without the prior written consent of the other; in addition, a party

to the Contract may not hold the benefit of the Contract or any rights under it on trust for any third party or parties.

- (b) The Employer may assign the benefit of the Contract to any other member of the RWE Group.

## 15.2 **Variation**

No purported variation of the Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties.

## 15.3 **Releases and Waivers**

- (a) Any party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it in the Contract by any other party or parties without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.
- (b) No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under the Contract or otherwise.
- (c) The rights, powers and remedies conferred on any party by the Contract and the remedies available to any party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.

## 15.4 **Costs and Expenses**

Each party shall bear its own costs and expenses incurred in the preparation, execution and implementation of the Contract.

## 15.5 **Set off**

The Employer may at any time set off any liability of the Contractor to the Employer against any liability of the Employer to the Contractor howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination. Any exercise by the Employer of its rights under this condition shall be without prejudice to any other rights or remedies available to the Employer under the Contract or otherwise.

## 15.6 **Confidentiality**

- (a) Except as referred to in condition 15.6(b), each party shall treat as strictly confidential and shall not disclose to any third party any information received or obtained as a result of entering into or performing the Contract which relates to the provisions or subject matter of the Contract, or the negotiations relating to the Contract.
- (b) Any party may disclose information which would otherwise be confidential if and to the extent that:
  - (i) it is required to do so by law or any securities exchange or regulatory or governmental body to which it is subject wherever situated;
  - (ii) it considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on a confidential basis;
  - (iii) the information has come into the public domain through no fault of that party;
  - (iv) the information was previously disclosed to it without any obligation of confidence; or
  - (v) each party to whom it relates has given its consent in writing.

## 15.7 **No partnership**

Nothing in the Contract shall create, or be deemed to create, a partnership between the parties.

## 15.8 **Entire agreement**

The Contract sets out the entire agreement and understanding between the parties in respect of the subject matter of the Contract.

## 15.9 **Acknowledgement**

The Contractor acknowledges that it has entered into the Contract in reliance only upon the representations, warranties and promises specifically contained or incorporated in the Contract and, save as expressly set out in the Contract, the Employer shall have no liability in respect of any other representation, warranty or promise made prior to the date of the Contract unless it was made fraudulently.

## 15.10 **Invalidity**

To the extent that any provision of the Contract is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of the Contract and it shall not affect the enforceability of the remainder of the Contract nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

## 15.11 **Exclusion of third party rights**

No express term of the Contract or any term implied under it is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

## 16. **Notices**

16.1 Any notice to be given to a party under the Contract shall be in writing (which excludes email) signed by or on behalf of the party giving it, and shall be delivered personally, or sent by recorded delivery, to the address of the party set out in the Purchase Order. Either party may, by a notice given in accordance with this condition 16, change its address for the purposes of this condition.

16.2 A notice shall be deemed to have been served:

- (a) at the time of delivery if delivered personally; or
- (b) 2 Business Days after posting in the case of an address in the United Kingdom and 5 Business Days after posting for any other address.

## 17. **Adjudication**

17.1 Either party may at any time refer a dispute or difference arising between the parties under the Contract to adjudication in accordance with the Housing Grants, Construction and Regeneration Act 1996 and any adjudication shall be undertaken in accordance with the Part I Statutory Scheme, which Part shall take effect as if it was incorporated into this clause.

17.2 Nothing in this condition shall prevent either party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

## 18. **CIS Scheme**

The Employer is a "Contractor" for the purposes of the CIS Regulations. To the extent that the CIS Regulations apply to any payment under the Contract, the Contractor shall supply the Employer with details which allow the Employer to verify with Her Majesty's Revenue & Customs the Contractor's identity and whether payments made under the Contract should be made gross or net of the Statutory Deduction.

## 19. **Pension Provisions**

19.1 If the Contractor does not already have in place an occupational pension scheme that allows all eligible employees and earnings at or above the National Insurance lower earnings level to join within 12 months of starting work for it, or if the Contractor is not an exempt employer under the provisions of the Welfare Reform and Pensions Act 1999 (the "Act"), the Contractor shall provide to the Employer such evidence as the Employer may reasonably require that the Contractor has arranged for its relevant employees as defined in the Act to have access to a stakeholder pension scheme in accordance with the Act and the Stakeholder Pension Scheme Regulations 2000.

- 19.2 There will be no contract between the Employer and any of the Contractor's third party workers, and the Contractor will be responsible, at its cost, for all vetting and auditing of its third party workers (including but not limited to checking identities, c.v's, references, qualifications, DBS records, ISA checks, FSA compliance, rights to work in UK, driving licenses, etc). The Contractor will indemnify the Employer and the RWE Group against any loss, liability, damage, expense, claim, fine, demand, proceeding, charge, expense, claim, fine, demand, proceeding, charge, expense or cost suffered or incurred by it (and/or the RWE Group) as a result of any breach by the Contractor of its obligations under this clause.

## **20. System Access**

- 20.1 During and in the course of furnishing the Services, the Contractor shall: (i) not access, and shall not permit anyone to access, the Employer's computing systems without the Employer's express written authorisation; (ii) employ anti-virus procedures when appropriate; (iii) comply with the Employer's information security policies and procedures; (iv) ensure that it has in place a plan approved by the Employer in relation to ensuring business continuity both in relation to general day-to-day service disruptions and disaster recovery affecting either the Contractor's, the Employer's or the RWE Group's business.
- 20.2 Where authorised by the Employer in advance, the Employer may provide the Contractor with remote access to its computing systems. Where the Employer provides such access the Contractor will comply with the Employer's IT policies and procedures, including those relating to access to its systems (which will be provided on request).
- 20.3 The Contractor shall use any remote access only to provide Services. The Employer may terminate the Contractor's access to the Employer's systems at any time without notice to the Contractor. The Contractor shall immediately notify the Employer of any actual or threatened security breach in or unauthorised access to the Employer's systems.

## **21. Governing Law**

- 21.1 The Contract and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it shall be governed by the laws of England and Wales.
- 21.2 Subject to condition 17, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with the Contract.