



The SPATA Conditions of Contract for the Sale of Goods, or Supply of Goods and Services (Including Installation)

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The SPATA Conditions of Contract for the Sale of Goods, or Supply of Goods and Services (Including Installation)

1 Interpretation

1.1 In these Conditions:

"ADJUDICATOR" means the person nominated to act as the Adjudicator pursuant to Condition 13.2 or 13.3 herein.

"ADJUDICATION AGREEMENT" means the agreement between the Customer, the Contractor and the Adjudicator nominated by the Chairman for the time being of SPATA Limited.

"CONCILIATOR" means the person who the parties agree shall act as Conciliator pursuant to Condition 12 herein.

"CONDITIONS" means the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any additional terms and conditions agreed in Writing between the Customer and the Contractor.

"CONTRACT" means the agreement for the purchase and sale of the Goods or the supply of the Goods and/or Services described in Clause 2.1.

"CONTRACTOR" means the supplier of the goods or services to be provided pursuant to the Contract.

"CUSTOMER" means the purchaser of the goods to be supplied and or services to be provided pursuant to the Contract.

"DELIVERY" means the supply of the Goods to Site.

"DUE DATE FOR PAYMENT" means the date under the Contract by which a payment is due

"FINAL DATE FOR PAYMENT" means the date ascertained in accordance with Clause 5.12 by which payment must be made of any sum falling due under the Contract.

"GOODS" means the goods including any installment of the goods (or any parts for them) which the Contractor is to supply in accordance with these Conditions.

"NOTIFIED SUM" means the amount specified in the notice given by the Contractor under clause 5.4

"SERVICES" means all services which the Contractor is to provide in accordance with these Conditions.

"SITE" means the premises of the Customer, or such other location as may be agreed between the Customer and the Contractor where performance of the Contract is to take place.

"TAKEOVER" means (and shall be deemed to take effect on) a point in the Contract which is achieved at the earliest of:

- (a) the date agreed in Writing between the Customer and the Contractor as the date of Takeover and acceptance by the Customer of the Goods and/or Services supplied by the Contractor;
- (b) the date when the Customer adopts the Goods and/or Services for his own use;
- (c) the 14th day from receipt by the Customer of a notice in Writing from the Contractor that the Customer has taken over and accepted the Goods and/or Services, if no counter-notice in Writing has been served by the Customer on the Contractor within that 14 day period denying that Takeover has been effected.

"VARIATION" means any change to the quality or quantity of Goods to be delivered or Services to be supplied by the Contractor pursuant to Clause 11.1 or any other term or condition of the Conditions empowering the same.

"WRITING" includes but is not limited to a document in writing whether in the form of or sent by email, telex, cable, or facsimile transmission and comparable means of communication.

1.2 The headings in these Conditions are for convenience only and shall not affect the interpretation of these Conditions.

1.3 Words denoting natural persons include corporations and firms and shall be construed interchangeable in that manner.

1.4 References to the masculine in these Conditions include the feminine, and vice versa.

1.5 References to the singular include the plural, and vice versa,

2 Basis of Transaction

- 2.1 The Customer shall purchase the Goods and/or Services and the Contractor shall provide the Goods and/or Services in accordance with any written quotation of the Contractor which is accepted by the Customer, or any written order of the Customer which is accepted by the Contractor, subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and Conditions relied upon by the Customer.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Customer and the Contractor.
- 2.3 The Contractor's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Contractor in Writing. In entering into the Contract the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by the Contractor or its employees or agents to the Customer or its employees or agents as to the storage, application, use or protection of the Goods which is not confirmed in Writing by the Contractor is followed or acted upon entirely at the Customer's own risk, and accordingly the Contractor shall not be liable for any such advice or recommendation which is not so confirmed in Writing.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Contractor shall be subject to correction without any liability on the part of the Contractor.

3 Orders and Specifications

- 3.1 No order submitted by the Customer shall be deemed to be accepted by the Contractor unless and until confirmed in Writing by the Contractor's authorised representative save that the Contractor shall have the right to waive the requirement of this clause in Writing at any time.
- 3.2 The Customer shall be responsible to the Contractor for ensuring the accuracy of the terms of any order (including any applicable specifications) submitted by the Customer, and for giving the Contractor any necessary information relating to the Goods and/or Services within a sufficient and reasonable time to enable the Contractor to perform the Contract in accordance with its terms. In the event that the Contractor is of the opinion that by reason of any

deficiency of any applicable specification the quality or quantity of the Goods or the nature and date of the Services to be supplied should be changed in order to achieve Takeover then he shall notify the Customer of any such Changes which shall be treated for all purposes as a Variation ordered by the Customer pursuant to Clause 11 of the Conditions.

- 3.3 The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Contractor's quotation or the Customer's order (if accepted by the Contractor), together with any quantity, quality and or description of any goods or Services that are a Variation.
- 3.4 If any process is to be applied to the Goods by the Contractor in accordance with a specification submitted by the Customer, the Customer shall indemnify the Contractor against all loss, damages, costs and expenses awarded against or incurred by the Contractor in connection with or paid or agreed to be paid by the Contractor in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Contractor's use of the Customer's specification.
- 3.5 The Contractor reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable safety and or statutory requirements or, where the Goods and/or Services are to be supplied to the Contractor's specification, which do not materially affect their quality or performance. The Contractor shall notify the Customer of any such changes which shall be treated as a Variation ordered by the Customer pursuant to Clause 11 of these Conditions and such Variation shall not entitle the Customer to any reduction of the Contract Price.
- 3.6 No order which has been accepted by the Contractor may be cancelled by the Customer except with the agreement in Writing of the Contractor and on terms that the Customer shall indemnify the Contractor in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred or to be incurred by the Contractor as a result of cancellation.

4 Contract Price

- 4.1 The contract price shall be the Contractor's quoted price together with the price of any Variations ("the Contract Price"). All prices are valid for 30 days from date of communication to the Customer only, or until earlier acceptance by the Customer. After the period of 30 days from date of communication of a price to the Customer, the Contractor may change any price and shall notify such change in Writing to the Customer.

- 4.2 The Contractor reserves the right, by giving notice to the Customer at any time before Delivery, to increase the price of any Goods and Services relating to the Contract to reflect any increase in the cost to the Contractor of such Goods or Services which is due to any factor beyond the control of the Contractor such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture, change in Delivery dates or other dates specified within the Contract, any delay caused by any instructions of the Customer, failure of the Customer to give the Contractor adequate information and/or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation and unless otherwise agreed in Writing between the Customer and the Contractor all prices given by the Contractor include Delivery.
- 4.4 The Contract Price is exclusive of any applicable value added tax which the Customer shall be additionally liable to pay to the Contractor.
- 4.5 The Contract Price is based upon the supply free of charge by the Customer of such electricity and water at the Site as may be required by the Contractor. Any charges for electricity and or water for which the Contractor is liable shall be payable by the Customer in addition to the Contract Price.
- 4.6 The Customer shall be responsible for carrying out all ground and soil surveys and the Contract Price does not include for these. The price is based upon normal Site preparation and excavation costs following a surface inspection of the Site by the Contractor where such works are ordered. In the event that additional preparation and excavation costs are incurred by reason of (by way of example and not of limitation) rocks, sand, ground water, seepage, underground Services and other obstructions the Customer shall pay such extra costs in addition to the Contract Price. The Contractor shall from time to time give notice to the Customer of the amount of such costs incurred.

5 Terms of Payment

- 5.1 Subject to any different terms agreed in Writing between the Customer and the Contractor the Contractor shall be entitled to be paid the Contract Price as follows:
- 5.1.1 in the case of sale and Delivery of Goods only, without the provision of any Services, payment shall become due and shall be made forthwith upon Delivery;
- 5.1.2 in the case of all Contracts requiring the supply of Services payment shall become due as follows:-

- (a) 10% of the Contract Price on placement of the order by the Customer or on acceptance of the Contractor's quotation, whichever is the earlier.
- (b) 40% of the Contract Price 7 days after whichever is the earliest of commencement on Site or commencement of the Services or Delivery.
- (c) a further 40% of the Contract Price shall be paid on Takeover.
- (d) and the remaining 10% of the Contract Price shall be paid 30 days after Takeover.

5.2 The Customer shall make payment in accordance with Clause 5 and time of payment shall be of the essence of the Contract. Receipts for payment will be issued only on request.

5.3 If the Customer fails to make payment in full of a Notified Sum by the Final Date for Payment of such sum then, without prejudice to any other right or remedy available to the Contractor, the Contractor shall be entitled to:

5.3.1 Cancel the Contract or,

5.3.2 Suspend performance of any or all of his obligations under the Contract to the Customer provided that:

- (a) the Contractor first gives to the Customer at least seven days notice of intention to suspend such performance, stating the ground or grounds on which it is intended to suspend performance
- (b) the right to suspend performance ceases when the Customer makes payment in full of the Notified Sum
- (c) Where the Contractor exercises his right to suspend performance, the Customer shall be liable to pay to the Contractor a reasonable amount in respect of costs and expenses reasonably incurred by the Contractor as a result of his exercise of the right to suspend.
- (d) any period during which performance is suspended pursuant to the right at this section 5.3 shall be disregarded in computing for the purpose of any contractual time limit the time taken by the Contractor to complete any work directly or indirectly affected by its right to suspend. Where the contractual

time limit is set by reference to a date rather than a period, the date shall be adjusted accordingly

5.3.3 Charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above the Bank of England base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.4 The Contractor shall:

5.4.1 Give a notice in writing complying with clause **5.4.2** below to the Customer or a person specified under the Contract not later than two days after the date on which every payment becomes due under the Contract

5.4.2 A notice complies with this subsection if it specifies (a) the sum that the Contractor considers to be or to have been due at the payment due date in respect of the payment and (b) the basis on which that sum is calculated.

5.5 For the purposes of section 5.4 it is immaterial that the sum referred to in sub-sections 5.4.4. may be zero.

5.6 Subject as follows, where a payment is provided for under the Contract, the Customer must pay the Notified Sum to the Contractor by the Final Date for Payment.

5.6.1 The Customer or a specified person may in accordance with this section give to the Contractor a notice of the Customer's intention to pay less than the Notified Sum.

5.6.2 A notice under clause 5.6.1 must 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

It is immaterial for the purposes of this clause 5.6.2 that the sum referred to at (a) or (b) above may be zero.

5.6.3 A notice under clause 5.6.1:

- (a) must be given not later than the prescribed period before the final date for payment, and
- (b) may not be given before the notice from the Contractor under clause 5.4 by which the Notified Sum is determined
- (c) where the Customer gives a notice under clause 5.6.1, section 5.6 above applies only in respect of the sum specified by the Customer under clause 5.6.3.

5.7 In section 5.6.3(a) the “prescribed period” means 1 day before the Final Date for Payment.

5.8 If a dispute is referred to adjudication pursuant to the Contract and the adjudicator decides that more should be paid to the Contractor than the sum set out in the Customer’s notice under clause 5.6.2 then the decision of the adjudicator shall be construed as requiring payment of the additional amount not later than:

5.8.1 seven days from the date of the decision; or

5.8.2 the date which apart from the notice would have been the final date for payment,

which ever is the later.

5.9 The Customer’s right of set-off hereunder shall be limited to losses which the Customer has actually incurred at the time of the set-off. Under no circumstances may losses suffered under other Contracts be set off against the Contract price.

5.10 The Contractor shall be entitled to loss and expense by way of an addition to the Contract price in the event that for any reasons beyond his control following Delivery of any Goods the regular progress of the supply of those Goods or any Services relating thereto is disrupted or delayed.

5.11 Where the Contractor has given notice pursuant to Clause 4.2 of any increase in the Price of the Goods, or notified the Customer pursuant to Clause 4.6 of additional costs incurred or notified the Customer of the value of any Variation pursuant to Clause 11.3 or has notified the Customer of additional cost incurred by reason of matters referred to in Clause 5.3.3 or notified the Customer that he has suffered loss and/or expense by reason of the matters referred to in Clause 5.10 then 14 days after the date upon which the Customer receives the notification of the amount claimed that amount shall become due for payment.

- 5.12 Payment of any sum falling due under the Contract shall be finally made no later than 7 days after the sum becomes due.

6 Delivery and Supply of Services

- 6.1 Any dates quoted for Delivery are approximate only and the Contractor shall not be liable for any delay in Delivery of the Goods and/or the supply of Services howsoever caused. Time for Delivery of the Goods and/or supply of the Services shall not be of the essence unless previously agreed by the Contractor in Writing. The Goods (or any component parts thereof) may be delivered by the Contractor in advance of the quoted Delivery date upon giving reasonable notice to the Customer.

- 6.2 If the Contractor fails to deliver the Goods and/or supply Services for any reason other than any cause beyond the Contractor's reasonable control or the Customer's fault and the Contractor is accordingly liable to the Customer, the Contractor's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Goods and/or Services to replace those not delivered or supplied over the Contract price.

- 6.3 If the Customer fails to take Delivery of the Goods, or fails to give the Contractor adequate Delivery instructions at the time stated for Delivery or fails to provide access to the Contractor, its agents and employees (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Contractor's fault) then, without prejudice to any other right or remedy available to the Contractor, the Contractor may:

6.3.1 Store the Goods until actual Delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

6.3.2 After a period of seven days sell the Goods at the best price readily obtainable and, after deducting his reasonable storage and selling expenses, charge the Customer for any shortfall below the price under the Contract.

7 Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Customer at the time of Delivery or, if the Customer wrongfully fails to take Delivery the time when the Contractor has tendered Delivery.

- 7.2 Notwithstanding Delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Contractor has received in cash or cleared funds payment in full of the total Contract Price of the Goods.

7.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Contractor's fiduciary agent and bailee, and where installation has not been completed shall keep the Goods (or any component part thereof) separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Contractor's property.

7.4 Until such time as the property in the Goods passes to the Customer the Contractor shall be entitled at any time to require the Customer to deliver up the Goods (or any component parts thereof) to the Contractor and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods where it is practicable to do so.

8 Defects Liability

8.1 With effect from Takeover, the Contractor's defects liability period shall commence. The said defects liability period will be a period of 12 months.

8.2 The Contractor shall be responsible for making good by repair or replacement at his expense any defect in or damage to any part of the works which may appear or occur during the defects liability period and which arises from defective materials, workmanship or design. The said responsibility is also the Contractor's right. The Contractor's obligations under this clause shall not apply to any defects in designs furnished or specified by the Customer.

8.3 If any defect shall appear or damage occur in the Goods and/or Services supplied within the defects liability period the Customer shall forthwith inform the Contractor in Writing stating the nature of the defect.

8.4 If any such defect or damage be not remedied within a reasonable time the Customer may proceed to do the remedial work at the Contractor's expense at the cheapest available market price, provided that he does so in a reasonable manner and notifies the Contractor of his intention to do so giving the Contractor 14 days' notice to rectify the defect or damage. The costs reasonably incurred by the Customer shall then be payable by the Contractor to the Customer.

8.5 The Contractor shall, if required by the Customer during the defects liability period in Writing, search for the cause of any defect under the direction of the Customer. If the defect proves not to be due to any fault of the Contractor the cost of the work carried out by the Contractor in searching as aforesaid shall be borne by the Customer and added to the Contract price.

8.6 Notwithstanding the above sub-clauses:

8.6.1 the Contractor shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence of the Customer, abnormal operating Conditions, failure to follow the Contractor's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without due notice to the Contractor, frost damage resulting from incorrect winterisation of the pool or equipment, failure to maintain correct pH or pool chemistry, the use of undissolved chemicals or drainage of the pool without prior consultation with the Contractor.

8.7 If any defects of the kind referred to in sub-clause 8.2 above shall appear in the Goods and/or Services after the defects liability period but within a period of 3 years after Takeover in the case of all defects except in the pool shell and within a period of 6 years after Takeover in respect of defects in the pool shell the same shall be made good by the Contractor by repair or replacement at the Contractor's option provided that the defects would not have been disclosed by reasonable examination prior to the expiry of the defects liability period.

8.8 The Contractor shall not be liable to the Customer by way of indemnity or by reason of any breach of contract or statutory duty or by reason of tort (including but not limited to negligence) for any loss of profit, loss of use, loss of production, loss of contract or for any financial or economic loss or damage, direct or consequential, whatsoever.

8.9 In no circumstances whatsoever shall the liability of the Contractor to the Customer under these Conditions exceed the Contract Price.

8.10 The Contractor's liability under this clause shall be in lieu of any condition or warranty implied by law as to the quality or fitness for any particular purpose or the workmanship of any part of the Goods or Services supplied by the Contractor. Neither the Contractor nor his sub-contractors nor their respective servants or agents shall be liable, whether in contract, tort (including but not limited to negligence) or by reason of any breach of statutory duty or otherwise in respect of defects in or damage to the Goods or Services or for any damage or loss of whatsoever kind attributable to such defects or damage except as provided in these Conditions. For the purpose of this sub-clause the Contractor contracts on his own behalf and on behalf of and as trustee for his sub-contractors, servants and agents. Nothing in this clause shall affect the liability of the Contractor for his liability for death or personal injury caused by his wilful or negligent acts or omissions.

9 **Lien**

The Contractor shall have a lien over any Goods of the Customer which are being or have been worked on by the Contractor and are in the Contractor's possession or custody until payment in full of any amount which has fallen due under the Contract and these Conditions.

10 **Insolvency of Customer**

10.1 This clause applies if:

10.1.1 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer or a receiver, or administrative receiver is appointed; or

10.1.3 the Customer ceases, or threatens to cease, to carry on business; or

10.1.4 the Contractor reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

10.2 If this clause applies then, without prejudice to any other right or remedy available to the Contractor, the Contractor shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods and/or Services have been delivered and/or supplied but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11 **Variations**

11.1 Notwithstanding any special condition or other term which the Customer and the Contractor may agree empowering the Customer to vary the Goods and/or Services, the Customer may vary the specification or quantities for the Goods and/or Services provided that the Contractor may, in his absolute discretion, refuse to execute any Service and/or to supply any Goods, by way of Variation to the Contract if the Variation, together with all Variations hitherto ordered by the Customer, would increase the cumulative total of the Contract Price, as varied, by more than 10% of the original Contract Price.

11.2 In the absence of any condition between the parties determining the valuation of Variations, Variations shall be valued in accordance with the Contractor's tender analysis or, where no such analysis has been submitted to the Customer at or prior to the time when the Contract is made then the value of Variations shall be such sum or sums as is reasonable in all the circumstances.

11.3 The Contractor shall give notice of the value of any Variation as part of the Notified Sum, whereupon the provisions of clause 5 will apply.

12 **Conciliation**

Where a party is dissatisfied with any matter in connection with the carrying out of this Contract or a dispute has arisen, either party may request conciliation in accordance with the procedure set out in the SPATA Conciliation Rules at Appendix 1 hereto but this will not restrict the parties' rights to adjudicate under Clause 13.

13 **Adjudication**

13.1 Either party shall have the right to refer any dispute arising under the Contract to adjudication in accordance with the procedure set out herein. The object of the procedure is to secure the appointment of the Adjudicator and referral of the dispute to him within 7 days of the Adjudication Notice.

13.2 Either Party may at any time give notice in writing of his intention to refer any dispute arising under the Contract to Adjudication by giving a written notice of adjudication to the other party ("The Adjudication Notice"). The Adjudication Notice shall include;

13.2.1 the details of and the date of the Contract between the parties;

13.2.2 the dispute which the Adjudicator is being asked to decide;

13.2.3 details of the nature and the extent of the redress sought.

13.3 Following service of the Adjudication Notice the party referring that dispute shall request the Chairman for the time being of SPATA Ltd (the Nominating Body) to nominate an Adjudicator and shall forthwith provide the said Chairman with a copy of the Adjudication Notice and a copy of the Contract.

- 13.4 In the event that the Nominating Body fails to communicate the selection of an adjudicator within 5 days of receiving the request to do so then the referring party may request any other adjudicator nominating body to select an adjudicator and shall forthwith provide the adjudicator nominating body with a copy of the Adjudication Notice and the Contract.
- 13.5 Upon receipt by the parties of the name of the nominated Adjudicator the Parties shall thereupon execute with the Adjudicator the Adjudication Agreement. Any failure by either Party to execute the Adjudication Agreement or any other adjudication agreement shall not invalidate the decision of the Adjudicator.
- 13.6 Where an Adjudicator has been selected the referring party shall not later than 7 days from the date of the Adjudication Notice refer the dispute in writing to the Adjudicator (The Referral Notice). The Referral Notice shall be accompanied by copies of any relevant extracts of the Contract and such other documents as the referring party intends to rely upon. The referring party shall, at the same time as he sends to the Adjudicator the Referral Notice, send a copy of the Referral Notice and copies of the documents referred to in sub-clause 13.5 to the other party to the dispute.
- 13.7 The Adjudicator shall decide all disputes referred to him within 28 days of the date of receipt of the Referral Notice or such period exceeding 28 days as the parties to the dispute may, after the giving of the Adjudication Notice, agree.
- 13.8 If the referring party so consents the Adjudicator may reach his decision within 42 days of the date upon which the dispute was referred.
- 13.9 The Adjudicator shall act impartially in carrying out his duties and deciding the dispute between the parties.
- 13.10 The Adjudicator may take the initiative in ascertaining the facts and the law for the purpose of determining the dispute which may include without limitation any of the following;
- 13.10.1 requiring from the parties further information
- 13.10.2 requiring the parties to carry out tests or open up work or further open up work.
- 13.10.3 visiting the site of the Works or any workshop where work is being or has been carried out.

- 13.10.4 obtaining from any employee or representative of the parties such information as he considers relevant to determining the dispute subject to giving notice to the party in question.
- 13.10.5 obtaining from others such information or advice as he considers necessary on technical and on legal matters subject to giving prior notice to the Parties together with a statement or estimate of the cost involved.
- 13.11 The Adjudicator, his employees or agents shall not be liable for anything done or omitted to be done in the discharge or purported discharge of the Adjudicator's functions as Adjudicator unless the act or omission is in bad faith and the parties shall indemnify the Adjudicator against every liability which the Adjudicator shall incur to any other person whatsoever and against all claims demands and proceedings damages including any costs and expenses relating thereto by reason of anything done or omitted to be done in the discharge or purported discharge of the Adjudicator's functions as Adjudicator unless the act or omission is in bad faith.
- 13.12 The Adjudicator may resign upon giving notice in writing to the parties where:
 - 13.12.1 the dispute varies significantly from the dispute referred to him and he considers for that reason he is not competent to decide it.
 - 13.12.2 circumstance arise following referral of the dispute which the Adjudicator considers will affect his ability to decide the dispute impartially.
- 13.13 The Adjudicator must resign by giving notice in writing to the parties if:
 - 13.13.1 He considers that the dispute referred to him is not a matter that the parties have agreed to refer to adjudication.
 - 13.13.2 Where the dispute is the same or substantially the same as one which has previously been referred to adjudication, and the adjudicator in that adjudication has decided the dispute.
- 13.14 Where the Adjudicator resigns he shall be entitled to payment of his fees and expenses in accordance with his terms of appointment if any or such reasonable amount as he may determine. The Adjudicator shall determine on the basis of the facts known to the parties when the matter was referred to him and the degree to which the circumstance giving rise to his resignation was within the control of the parties how payment shall be apportioned. The parties shall be jointly and severally liable for any sum that remains outstanding following the

making of a determination on how payment shall be apportioned. Payment will be due forthwith following determination of how payment shall be apportioned.

- 13.15 In all other circumstances the fees and expenses of the Adjudicator shall be paid by the Parties in accordance with the Adjudicator's terms of appointment if any, failing which the Adjudicator's reasonable fees and expenses shall be born equally by the parties who will be jointly and severally liable for the same.
- 13.16 Where the Adjudicator appointed to decide the dispute resigns or fails to decide the dispute within the time period required the referring party may request the selection of an Adjudicator by The Nominating Body.
- 13.17 The Adjudicator shall give reasons for his decision.
- 13.18 The Adjudicator may order the referring party to pay the other party's legal costs or other expenses reasonably incurred in the conduct of the adjudication if in his opinion the claim made or remedy sought in the adjudication is frivolous or vexatious. Except as provided above each party shall bear their own costs and expenses.
- 13.19 The decision of the Adjudicator may be submitted to the jurisdiction of the court for enforcement.
- 13.20 The decision of the Adjudicator shall be complied with forthwith upon receipt.
- 13.21 The decision of the Adjudicator shall be binding on the parties and they shall comply with it until the dispute is finally determined by legal proceedings, or by agreement between the parties.

14 **Legal Proceedings**

Without prejudice to a party's right to refer a dispute to Adjudication pursuant to Clause 13.0 herein, any dispute or difference shall be resolved by legal proceedings and the parties submit to the exclusive jurisdiction of the English courts.

15 **General**

- 15.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal

place of business or in the case of works at a person's home, at that home address or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

- 15.2 Where such notice is sent by first class pre-paid post it shall be deemed to have been received the second full working day after it was sent. Where notice is given by hand, telex, cable or facsimile and such notice is not received or delivered during normal working hours, it shall be treated as having been received during normal working hours on the day following the day it was received.
- 15.3 No waiver by the Contractor of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 15.5 The Contract shall be governed by the laws of England.
- 15.6.1 Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a public holiday that day shall be excluded.
- 15.6.2 This Contract does not affect any statutory rights available to the Customer as a "consumer" as defined in such statutes and subordinate legislation.

APPENDIX 1

Conciliation Procedure

This is to be the preferred method of dealing with all disputes wherever possible.

Upon receipt of a complaint against a SPATA Member or details of any dispute (other than by way of Adjudication Notice and a request for nomination of the Adjudicator), SPATA will confirm with the person making the complaint or referring the dispute whether they wish to initiate the conciliation procedure set out below.

Where the Parties confirm that they wish to conciliate the complaint or dispute in question SPATA Limited may at its sole discretion provide a list of potential conciliators.

Upon agreeing the Conciliator the Parties will enter into a conciliation agreement based upon the SPATA Limited conciliation agreement attached hereto.

The Conciliator will first call for written details of the complaint and will then convene a meeting of the two Parties at which he will take the chair and will proceed to investigate all aspects of the matters in dispute between them, including questions of liability and possible remedies.

He will endeavour to lead the two Parties towards a mutually acceptable solution and may offer his informed opinion and advice, but will have no power to enforce a solution of any kind upon either of the Parties who will retain all their rights to resort to litigation if agreement proves impossible.

Any settlement reached in the conciliation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties.

Immediately after the meeting the Conciliator will submit Minutes to both Parties setting out details of all matters agreed and listing those, if any, which remain in dispute. The minutes will be confidential and may not be disclosed in any legal proceedings.

Unless otherwise agreed between the Parties the Conciliator's costs would be payable by them in equal portions regardless of the outcome of the meeting.

Confidentiality

Every person involved in the conciliation will keep confidential and not use for any collateral or ulterior purpose: all information (whether oral, written or otherwise) produced for, or arising in relation to, the Mediation including the settlement agreement (if any) arising out of it except insofar as is necessary to implement and enforce any such settlement agreement.

Experience has shown that, whilst this procedure does not produce a legally binding Award, it does in most cases result in a mutually acceptable agreement at a vast saving in time and cost and, in those few cases where agreement proves impossible, it serves to eliminate irrelevant argument and spurious claims and to concentrate the attention of the Parties on the real problems.

SPATA Limited

CONCILIATION AGREEMENT for a CONCILIATOR proposed by the Chairman for the time being of SPATA Limited and agreed to by the Parties hereto.

This Agreement

is made on the day of 20

BETWEEN ("the Parties")

Insert names and
addresses of the
Parties to the Conciliation

(1)
.....
.....
.....
.....

(2)
.....
.....
.....
.....

and ("the Conciliator")

Insert name and address
of the Conciliator

.....
.....
.....
.....

Whereas

the Parties have agreed to the proposal of the Chairman for the time being of SPATA Limited to conciliate

Brief description of
the matter to be
Conciliated

.....
.....
.....
.....
.....

And Whereas

the Parties have agreed to the proposal that:

.....

act as Conciliator in respect of the above-mentioned matters.

Now it is agreed that

Appointment and acceptance

1. The Parties hereby appoint the Conciliator and the Conciliator hereby accepts such appointment in respect of the said matters.

Conciliation Provisions

2. The Conciliator shall observe the Conciliation Procedure contained in the Parties Contract Appendix I as if they were set out in full in this Agreement, or such other conciliation procedure as is agreed to by the Parties in writing.

Conciliator's fee and reasonable expenses

3. The Parties will be jointly and severally liable to the Conciliator for his fee as stated in the Schedule hereto for conducting the conciliation and for all expenses reasonably incurred by the Conciliator as referred to in the Conciliation Procedure.

Unavailability of Conciliator to act

4. If the Conciliator becomes ill or becomes unavailable for some other cause and is thus unable to act as Conciliator he shall immediately give notice to the Contracting Parties to such effect which shall terminate the agreement.

Following such termination the Parties shall pay the Conciliator his fee or any balance thereof and his expenses reasonably incurred prior to the termination.

As Witness

the hands of the Parties and the Conciliator

Signed by or on
behalf of:

the Parties

(1)

in the presence of

(2)

in the presence of

Signed by:

the Conciliator

in the presence of

Schedule

Fee

The lump sum fee is £

or

The hourly rate is £

SPATA Limited

ADJUDICATION AGREEMENT for an ADJUDICATOR nominated by the Chairman for the time being of SPATA Limited.

This Agreement

is made on the day of 20

BETWEEN ("the Contracting Parties")

Insert names and
addresses of the
Contracting Parties

(1)
.....
.....
.....
.....

(2)
.....
.....
.....
.....

and ("the Adjudicator")

Insert name and address
of the Adjudicator

.....
.....
.....
.....

Whereas

the Contracting Parties have entered into a Contract

Brief description of
the works/the
sub-contract works

.....
.....
.....
.....
.....

on the terms of

The SPATA Conditions of Contract for the Sale of Goods or Supply of Goods and Services (including installations) in which the provisions on adjudication ("the Adjudication Provisions") are set out in Clause 13.

And Whereas

the Chairman for the time being of SPATA Limited has nominated:

.....

as Adudicator in respect of the dispute/s described in the Notice of Adjudication served pursuant to Clause 13.1 of the said Conditions.

Now it is agreed that

Appointment and acceptance

1. The Contracting Parties hereby appoint the Adjudicator and the Adjudicator hereby accepts such appointment in respect of the said dispute/s.

Adjudication Provisions

2. The Adjudicator shall observe the Adjudication Provisions as if they were set out in full in this Agreement.

Adjudicator's fee and reasonable expenses

3. The Contracting Parties will be jointly and severally liable to the Adjudicator for his fee as stated in the Schedule hereto for conducting the adjudication and for all expenses reasonably incurred by the Adjudicator as referred to in the Adjudication Provisions.

Unavailability of Adjudicator to act

4. If the Adjudicator becomes ill or becomes unavailable for some other cause and is thus unable to complete the adjudication he shall immediately give notice to the Contracting Parties to such effect.

Termination

5.
 - 5.1 The Contracting Parties jointly may:
 - 5.5.1 terminate the Adjudication Agreement at any time on written notice to the Adjudicator;
 - 5.5.2 terminate an adjudication at any time and immediately give written notice to the Adjudicator thereof.

Following such termination the Contracting parties shall, subject to Clause 5.2, pay the Adjudicator his fee or any balance thereof and his expenses reasonably incurred prior to the termination.

- 5.2 Where the decision of the Contracting Parties to terminate the Adjudication Agreement under Clause 5.1 is because of a failure by the Adjudicator to give his decision on the dispute or difference within the time-scales in the Adjudication Provisions or at all, the Adjudicator shall not be entitled to recover from the Contracting Parties his fee and expenses.

As Witness

the hands of the Contracting Parties and the Adjudicator

Signed by or on
behalf of:

the Contracting Parties

(1)

in the presence of

(2)

in the presence of

Signed by:

the Adjudicator

in the presence of

Schedule

The lump sum fee is £

or

The hourly rate is £