

ANDREWS AIR CONDITIONING AND REFRIGERATION LIMITED**TERMS AND CONDITIONS FOR SALE OF GOODS AND SUPPLY OF SERVICES****1. DEFINITIONS**

1.1 The following terms shall have the following meanings:

- (a) 'AAC&R' means Andrews Air Conditioning & Refrigeration Limited its successors and assigns.
- (b) 'Contract' means the agreement consisting of the Quotation and these conditions between AAC&R and the Customer to provide Services and/or supply Equipment to the Customer or its successors or others for whom the said Customer is responsible.
- (c) 'Contract Price' means the sum stated in AAC&R Quotation as the price payable to AAC&R for performance of the Contract Works or Services and/or supply of the Equipment.
- (d) 'Customer' means the Customer of AAC&R to whom this document is addressed and includes successors or others for whom the said Customer is responsible.
- (e) 'Defect' and 'Defective' means Equipment and Services supplied not in accordance with the Contract. For the avoidance of doubt 'Defect' and 'Defective' does not include deterioration resulting from fair or excessive use, damage however caused, improper use, lack of proper maintenance by the Customer or others for whom it is responsible.
- (f) 'Equipment' means the plant, equipment, and materials supplied by AAC&R as described in AAC&R's Quotation.
- (g) 'Quotation' means a quotation of AAC&R for the provision of Services and supply of Equipment to the Customer subject to these conditions.
- (h) 'Services' means labour, materials and parts to effect Installation, Repair or any other Services provided by AAC&R as described in AAC&R's Quotation.
- (i) 'Site' means the area within which the Equipment is to be installed, or Services are carried out together with any other area which AAC&R shall be permitted to use in connection with the Contract Works.
- (j) 'Contract Works' means Equipment, and Services where these are provided under the Contract.
- (k) 'Variation' means any change, or addition to, or omission from the specification of any Equipment, or Services, or any change in the manner or time in which such installation of Equipment, or Services are to be carried out.

2. EXISTENCE AND SCOPE OF CONTRACT

- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all contracts for the supply of Equipment and provision of Services by AAC&R and any variation to these conditions and any representations about the Equipment and Services shall have no effect unless expressly agreed in writing and signed on behalf of AAC&R. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of AAC&R which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a Quotation for Equipment and/or Services by the Customer from AAC&R shall be deemed to be an offer by the Customer to buy Equipment and/or Services subject to these conditions.
- 2.5 No order placed by the Customer shall be deemed to be accepted by AAC&R until a written acknowledgement of order is issued by AAC&R or (if earlier) the Company delivers the Equipment or supplies the Services to the Customer.

- 2.6 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any Quotation is given on the basis that no Contract shall come into existence until AAC&R despatches an acknowledgement of order to the Customer. Any Quotation is valid for a period of 30 days only from its date, provided that AAC&R has not previously withdrawn it.
- 2.8 If the Contract includes any installation work or other Services, it is agreed between the parties that all the Contract Works shall be construction operations for the purposes of the Housing Grants, Construction and Regeneration Act 1996, Part 11 which Act shall in its entirety apply to contract.

3. SALE OF GOODS – DELIVERY AND ACCEPTANCE

- 3.1 This **CLAUSE 3** shall apply in all cases where the Contract is for the supply of Equipment and no installation Services at the site are provided by AAC&R under the Contract notwithstanding other Services may be provided by AAC&R in connection with the Goods.

Delivery

- 3.2 The Equipment is delivered to the Customer when AAC&R makes them available to the Customer or any agent of the Customer or any carrier (who shall be the Customers agent whoever pays its charges) at AAC&R's premises or other place of delivery agreed by AAC&R.
- 3.3 Risk in the Equipment passes when it is delivered to the Customer.
- 3.4 AAC&R may at its discretion deliver the Equipment by instalments in any sequence.
- 3.5 When the Equipment is delivered by instalments no default or failure by AAC&R in respect of any one or more instalments shall affect the operation of the contract in respect of the Equipment previously delivered or which remain undelivered.
- 3.6 Any dates quoted by AAC&R for the delivery of the Equipment are approximate only and shall not form part of the contract, and the Customer acknowledges that in the performance expected of AAC&R no regard has been paid to any quoted delivery dates.
- 3.7 If the Customer fails to take delivery of the Equipment or any part of it on the due date or to provide any instructions or documents required to enable the Equipment to be delivered on the due date, AAC&R may on giving written notice to the Customer store or arrange for the storage of the Equipment and on the service of the notice risk in the Equipment shall pass to the Customer. Delivery of the Equipment shall be deemed to have taken place and the Customer shall pay to AAC&R all costs and expenses including storage and insurance charges arising from its failure.
- 3.8 AAC&R shall not be liable for any penalty, loss, injury, damage or expense arising from any cause at all, nor shall any such delay or failure entitle the customer to refuse to accept any delivery or performance or to repudiate the contract.

Acceptance and Notice of Complaint

- 3.9 The Customer shall be deemed to be satisfied with and have accepted the Equipment on delivery UNLESS it shall have complied with the provision of this **Clause 3**.
- 3.10 Any claim that the Equipment or any part of it has been delivered damaged or are not of the correct quantity or do not comply with their description shall be notified by the Customer to AAC&R by written endorsement on the delivery note in respect of such Equipment and in writing to AAC&R within 48 hours of their delivery.
- 3.11 Any claim that the Equipment or any part of it has been lost in transit or is defective or in the case of Services of a defect in workmanship shall be notified by the Customer to AAC&R within 7 days of delivery of the Equipment or completion of the Services.
- 3.12 Any claim under this condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective Equipment or part thereof.
- 3.13 AAC&R shall be afforded reasonable opportunity and facilities to investigate any claims made under this Condition and the Customer shall if so requested in writing by AAC&R promptly return any of the Equipment that is the subject of any claim and any packing materials securely packed and carriage paid to AAC&R for examination.
- 3.14 AAC&R shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these conditions.

4. SUPPLY OF GOODS AND SERVICES- TIME ACCEPTANCE AND DEFECTS

- 4.1 This **Clause 4** shall apply in all cases where the Contract is for the supply of Equipment and Services including installation Services by AAC&R at the site.
- 4.2 The Customer shall allow access to the site to enable AAC&R to carry out and complete the Contract Works.
- 4.3 Any dates quoted by AAC&R for delivery of Equipment or completion of any Service are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of AAC&R no regard has been paid to any such dates.
- 4.4 AAC&R shall not be liable for any penalty loss injury charge or expense arising from its failure to meet any dates referred to in **Clause 4.3**, nor shall any such failure entitle the Customer to refuse performance or to repudiate the Contract.
- 4.5 When AAC&R considers it has substantially completed the supply of Equipment and/or Services including testing and initial commissioning where appropriate, AAC&R shall notify the Customer that the Contract Works are complete providing that there may be Equipment and Services remaining to be supplied or completed including:
- (a) Equipment and/or Services of a de minimus nature
 - (b) Manuals, instructions, information to be provided (if any) in pursuance of AAC&R obligations under the CDM Regulations or otherwise under the Contract
 - (c) Completion of testing and/or commissioning which is prevented by circumstances beyond AAC&R control including but not limited to climatic conditions on the site.
- 4.6 In the event that supply of Equipment or Services referred to in **Clause 4.5 (a) to (c)** remains to be completed after the time notified by AAC&R under **Clause 4.5**, AAC&R shall complete the said supply in a reasonable time having regard to all the circumstances.
- 4.7 On receipt of notice by AAC&R under **Clause 4.5** the Customer shall forthwith inspect the work on the site and the Customer shall be deemed to be satisfied with and have accepted the Contract Works save in respect of matters referred to in **Clause 4.5 (a) to (c)** notified to the Customer, UNLESS it immediately notifies AAC&R of its dissatisfaction in writing giving reasons.
- 4.8 In the event that AAC&R does not agree with the Customer that the work on Site is not substantially complete within the meaning of **Clause 4.5**, either party may refer the matter to adjudication under **Clause 19**.
- 4.9 The parties agree that on such referral under **Clause 4.8** all further work including matters notified by AAC&R as incomplete may be suspended without further notice until the Adjudicator's Decision is received by both parties and notwithstanding the Adjudicator's decision as to his costs, each party will bear its own cost in respect of suspension of the work. The right to suspend the work shall cease 4 days after receipt by AAC&R of the Adjudicator's Decision.
- 4.10 If any Defect appears or becomes apparent within 6 months following acceptance of the works under **Clause 4.5**, the Customer shall immediately notify AAC&R and afford AAC&R reasonable opportunity to inspect, to investigate the cause, and to correct the Defect. On receipt of notification of a Defect, AAC&R shall within a reasonable time inspect the Defect and may as its discretion investigate and correct the Defect as its own cost.

5. VARIATIONS

- 5.1 All variations shall be in writing signed by both parties or shall be requested in writing by the Customer and accepted expressly as a Variation by AAC&R
- 5.2 No Variation shall vitiate the Contract.
- 5.3 AAC&R may require the basis of charging any Variation to be agreed in writing before any Equipment or Service comprising a Variation is provided to the Customer.
- 5.4 In the event that the basis of charging a Variation is not agreed as provided in **Clause 5.3** AAC&R may at its absolute discretion refuse to accept the Variation or may require the subject of the proposed Variation to be supplied under a separate contract.
- 5.5 If AAC&R accepts a Variation without first having agreed the basis of charging, then the Variation shall be valued as the work contained therein proceeds on a fair and reasonable basis

having regard to all the relevant circumstances including any prices for similar Equipment or Services contained in the Contract.

6. INFORMATION PROVIDED BY CUSTOMERS AND ASSUMPTIONS

Information Provided by Customer.

- 6.1 Where the Quotation and any information or document is identified as provided by the Customer, then the Customer warrants the completeness and accuracy of such information or document and AAC&R shall be entitled to rely on such information or document for the purpose of discharging its obligations under the Contract.
- 6.2 If the said information or document contains any error or inconsistency, the correction of which would affect performance of the Contract Works in any way whatsoever and if such correction is required in writing by the Customer or is necessary for the performance of the Contract Works, any resulting effect on the Contract Works shall be carried out by AAC&R and otherwise it shall be treated as though it were a Variation.

Assumptions made by AAC&R

- 6.3 Where the Quotation states that an assumption has been made, the Equipment and/or Services specified and the prices therefore included in the Contract Price are based on such assumption being correct.
- 6.4 If at any time any said assumption is found to be incorrect and correction would affect the performance of the Contract Works in any way whatsoever, and if such correction either is requested in writing by the Customer or is necessary for the performance of the Contract Works, any resulting effect on the Contract Works shall be carried out by AAC&R and treated as though it were a Variation.

7. PRICES

- 7.1 The Contract Price is based on prices and rates, terms and duties applying at the time of the AAC&R Quotation.
- 7.2 If after the date of the AAC&R Quotation AAC&R costs are affected by any increase in the prices or rates to AAC&R of materials, plant, equipment, transport, labour and any part of AAC&R overhead costs, or if there is any imposition of a tax or duty, or any increases in the rate of any existing tax or duty, AAC&R shall be entitled to be reimbursed by the Customer the amount of its said increased costs.
- 7.3 The Contract Price and all prices contained in the AAC&R Quotation are nett and no provision is made for the Customer to be allowed discount.
- 7.4 The parties agree that AAC&R may review and increase the Contract Price provided that AAC&R give the Customer written notice of any such increase 1 month before the proposed date of that increase. If such increase is not acceptable to the Customer, it may, within 30 days of such notice being received or deemed to have been received in accordance with **Clause 16**, terminate the Contract by giving 30 days written notice to AAC&R.

8. PAYMENT

- 8.1 In consideration of the supply of the Equipment and/or the provision of the Services by AAC&R, the Customer shall pay the Contract Price.
- 8.2 AAC&R shall be entitled to invoice the Customer for the Contract Price on or after the date of delivery of the Equipment or substantial completion of provision of the Services (as defined in clause 4.5).
- 8.3 The Customer shall pay each invoice which is properly due and submitted to it by AAC&R in full and without set-off within 30 days of the date of the invoice [to a bank account nominated in writing by AAC&R].
- 8.4 The Customer shall raise any dispute relating to an invoice for the Equipment and / or Services no later than 12 days following the date of the invoice following which the Customer shall be prevented from raising any such dispute.

- 8.5 In the event that payment is not made in accordance with the agreed terms, either in full or otherwise, then the whole of the account whether due or not shall become payable and become overdue and be payable forthwith. Furthermore in the event of late or non payment in accordance with these terms and conditions (or any other terms so agreed in writing), AAC&R reserve the right to rely on the Late Payment of Commercial Debts (Interest) Act 1998, and charge, at a daily rate, until payment, interest upon the debt then due at the rate prevailing at the date of default (currently 8% above the prevailing Bank of England base rate) together with the late payment charges set out in the Act, until payment or sooner settlement.
- 8.6 The Customer hereby agrees to indemnify and keep indemnified AAC&R against all legal and other costs incurred in the recovery of any sum which becomes overdue for payment including but not limited to the cost of any AAC&R employees relating to action taken in accordance with **Clause 8.5**.
- 8.7 Without prejudice to any other remedy available to it, AAC&R shall be entitled to suspend supply of the Equipment and/or provision of the Services without liability to the Customer for so long as any amount due to AAC&R remains unpaid and for up to six days after the Customer makes full payment of the amount due.

9. TITLE

- 9.1 Notwithstanding the earlier passing of risk, title to and property in the Equipment shall pass to the Customer when the amount due under the invoice for the Equipment and Services (including interest and costs) has been paid in full, and until such payment the Customer shall hold the Equipment in a fiduciary capacity as bailee for AAC&R and shall store or mark them so that they can at all times be identified as the property of AAC&R.
- 9.2 AAC&R may at any time before title passes or when a sum due to AAC&R from the Customer is due and unpaid and without any liability to the Customer repossess and dismantle and use or sell any of the Equipment and by doing so terminate the Customer's right to use sell or otherwise deal in them and for the purpose of determining what if any of the Equipment is held by the Customer and inspecting them enter any premises of or occupied by the Customer.
- 9.3 Until title to the Equipment passes to the Customer the entire proceeds of sale of the Equipment shall be held in trust for AAC&R and shall be held in a separate designated account and not mingled with any other monies or paid into any overdrawn bank account and shall be at all times identifiable as AAC&R's money.
- 9.4 AAC&R may maintain an action for the price of the Equipment notwithstanding that title in them has not passed to the Customer.
- 9.5 The Customer grants AAC&R and its agents an irrevocable licence to enter at any time any vehicles or premises owned or occupied by the Customer or in its possession for the purpose of repossessing and removing any such Equipment in the property in which has remained in AAC&R under **Clause 9.1** hereof. AAC&R shall not be responsible for and the Customer shall indemnify AAC&R against liability in respect of damage caused to such vehicles or premises in such repossession and removal being damage it was not reasonably practicable to avoid.
- 9.6 The Customer must ensure that if the Equipment is or has become affixed to any land or building they shall be capable of being identified as the property of AAC&R and removed without material injury to such land or building and to take all necessary steps to prevent title to the Equipment from passing to the landlord of such land or building. The Customer warrants to repair and make good any damage caused by the affixation of the Equipment or their removal from any land or building and to indemnify AAC&R against all loss damage or liability it may incur or sustain as a result of such affixation or removal.
- 9.7 If the Equipment is affixed by AAC&R to any land or building in performance of the Contract, AAC&R's rights to repossess the Equipment and any obligations in respect thereof shall be the same as if the said Equipment were affixed by the Customer, save that AAC&R shall mark the Equipment so affixed as the property of AAC&R in such a manner that such mark shall not damage the Equipment and may be removed by the Customer when title to and property in the Equipment has passed to it.
- 9.8 The Customer's right to possession of the Equipment shall cease if it does anything or fails to do anything which would entitle an administrator or administrative receiver to take possession of

any assets or would entitle any person to present a petition for winding-up or if it enters into liquidation.

10. EXTENT OF LIABILITY

- 10.1 Unless otherwise provided in these Terms and Conditions under no circumstances shall AAC&R have any liability of whatever kind for:
- (a) Any fault or imperfection resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions of AAC&R or the manufacturer of any of the Equipment, or neglect, or from any instructions or materials provided by the Customer.
 - (b) Any of the Equipment which has been adjusted, modified or repaired except by AAC&R.
 - (c) The suitability of any of the Equipment for any particular purpose or use under specific conditions whether or not the purpose or conditions were known by or communicated to AAC&R.
 - (d) Any substitution by AAC&R of any materials or components not forming part of any specification of the Equipment agreed in writing by AAC&R.
 - (e) Any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by AAC&R contained in AAC&R's catalogues, sales literature, price lists, or elsewhere which are merely intended to represent a general impression of the Equipment and do not form part of the contract and shall not be treated as warranties or representations.
 - (f) Any technical information recommendation statement or advice furnished by AAC&R its servants or agents not given in writing in response to a specific written request from the Customer before the contract is made.
 - (g) Any variations in the quantities or dimensions of any of the Equipment or changes of their specifications or substitution of any materials or components if the variation or substitution does not materially affect the characteristics of the Equipment and the substituted materials or components are of a quality equal or superior to those originally specified.
- 10.2 Except as expressly provided elsewhere, AAC&R shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the contract or any negligence, breach of statutory or other duty on the part of AAC&R, or in any other way out of or in connection with the performance or purported performance of or failure to perform the contract.
- 10.3 If the Customer establishes that any of the Equipment has not been delivered, has been delivered damaged, is not of the correct quantity, or does not comply with its description, AAC&R shall at its option, replace with similar Equipment any of the Equipment which is missing lost or damaged or does not comply with its description, and shall allow the Customer credit for its invoice value or repair any of the Equipment which is damaged.
- 10.4 If the Customer establishes that any of the Equipment is defective, AAC&R shall at its option replace with similar Equipment or repair any defective Equipment or rectify any defective workmanship or at the Customers request allow the Customer credit or to the extent that the Equipment is not of AAC&R's manufacture assign to the Customer (so far as AAC&R is able to do so) any warranties given by the manufacturer of the Equipment to AAC&R.
- 10.5 **Clause 10.4** shall not apply unless:
- (a) If so required by AAC&R all defective Equipment is first returned to AAC&R's premises carriage paid by the Customer;
 - (b) The Equipment has not been altered in any way whatsoever, nor have they been subjected to misuse or unauthorised repair;
 - (c) The Equipment has been properly and correctly stored or installed or connected (unless AAC&R carried out such installation and connection) and used by the Customer in accordance with the manufacturer's instructions; and
 - (d) In the case of Equipment requiring service or maintenance the Customer has entered into a contract for their maintenance with AAC&R.
- 10.6 **Clause 10.4** shall not apply to plumbing work or repair of faults caused by failure or stoppage in power or defects or blockage in drainage systems or defects in water supply or scale formation resulting in pipe work blockage unless any of the foregoing was installed by AAC&R.

- 10.7 The delivery of any repaired or replacement Equipment shall be at AAC&R's premises or other delivery point specified for the original Equipment.
- 10.8 No claim against AAC&R shall be entertained for any defect arising either from any design or specification provided or made by the Customer, or from any adjustments alterations or other work done to the Equipment or Services provided by any person except AAC&R.
- 10.9 AAC&R shall not be liable where any of the Equipment, the price of which does not include carriage, is lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacement for such loss or damaged Equipment will if available be supplied by AAC&R at the prices ruling at the date of despatch and shall be a Variation.
- 10.10 Except as expressly provided elsewhere in the Contract, AAC&R shall not be liable for any claims in respect of economic loss, loss of production, loss of profit, loss of opportunity loss of bargain or other indirect or consequential injury loss or damage caused directly or indirectly by any breach of the contract or any negligence on the part of AAC&R or on the part of any of its employees agents or others for whom it is responsible in connection with or arising out of the supply of the Equipment or the Services or the installation repair or maintenance of the Equipment or in connection with any statement given or made, or failure to give advice or warning on behalf of AAC&R except that such exclusion shall not apply to any implied term as to quality or fitness for any general or particular purpose where the Customer deals as a Consumer as defined in Section 12 of the Unfair Contract Terms Act 1977.
- 10.11 Nothing in this agreement limits or excludes the liability of AAC&R:
- (a) for death or personal injury resulting from negligence; or
 - (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by AAC&R; or
 - (c) for any liability incurred by a Customer dealing as a Consumer as a result of any breach by AAC&R of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- 10.12 AAC&R's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall be limited to the Contract Price.

Design

- 10.13 To the extent that the Contract Works includes the provision by AAC&R of design, AAC&R shall supply such Services using reasonable professional care and skill.
- 10.14 Unless otherwise provided in the Contract, AAC&R does not warrant that the Contract Works as described in the Quotation or its incorporation within the work of others will satisfy the Customers requirements.

11. TERMINATION

- 11.1 Without prejudice to any other rights or remedies which the parties may have, AAC&R may terminate the Contract without liability to the Customer immediately on giving notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
 - (b) the Customer commits a breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified in writing of the breach; or
 - (c) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
 - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or

- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party; or
 - (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
 - (g) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
 - (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
 - (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
 - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 11.1(c) to condition 11.1(i) (inclusive); or
 - (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - (l) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).
- 11.2 Any Equipment which has been custom made for the Customer and/or for which AAC&R has placed an order with a third party manufacturer will be charged in full unless written notice of cancellation is received not less than 8 weeks before the delivery date notified to the Customer, and providing manufacture of such Equipment or any components has not commenced at the date of that notice.
- 11.3 Orders for Equipment held in stock by AAC&R may be cancelled by the Customer giving written notice at any time before the Equipment is allocated or set aside for the Contract by AAC&R. If cancellation is received after such Equipment or components have been allocated or set aside by AAC&R then a packing and administration charge equivalent to 15% of the Order value shall be payable by the Customer.
- 11.4 On termination of the Contract (however arising), all sums payable by the Customer to AAC&R shall become immediately due and owing and the accrued rights of the parties as at termination shall not be affected.

12. SERVICES

- 12.1 This **Clause 12** shall apply if the Contract is for supply of Equipment and Services including installation Services by AAC&R at the Site.
- 12.2 AAC&R shall be entitled to carry out the Services during normal working hours. If the Customer requests AAC&R to perform Services outside normal working hours such request shall be a Variation under **Clause 5.1**
- 12.3 AAC&R reserve the right to amend the scheduling and routines of the Maintenance Agreement.
- 12.4 Unless otherwise provided expressly in AAC&R's Quotation the Service shall exclude the following:
- (a) All electrical mains power supplies and cables necessary for the Services, suitably rated fused switch isolator between the incoming mains distribution board and AAC&R's installed equipment.
 - (b) Any specialist builders' work of a structural nature including but not limited to drilling of holes through reinforced walls, special support slabs, walls. And cutting and weatherproofing of roofs, painting, redecorating and making good the premises after AAC&R installation work, removal and re-fixing of interlock design ceiling tiles, and all remedial work necessitated by accidental damage of any of the foregoing of by accidental breakage of glass during the carrying out of the Services
 - (c) All necessary Planning Approvals, Building Regulation consents or other consents required for the performance of the Services
 - (d) Any craneage, hoisting gear, scaffold, ladders and moveable platforms

- 12.5 Equipment delivered to Site which remain unfixed and Equipment installed and Services carried out in connection therewith shall at all times be at the sole risk of the Customer and if any part thereof is lost, damaged or destroyed through any cause whatsoever AAC&R shall be entitled to charge for the cost of restoration of any Equipment or Services so lost, damaged or destroyed as a Variation. The Customer shall insure and keep insured in the joint names with such reputable insurers as AAC&R shall approve the full value of the Equipment and/or the Services, including AAC&R's tools plant and equipment on site and the cost of any relevant professional fees or Services against every kind of loss damage or destruction. The Customer shall produce to AAC&R on demand the policy or policies under which such insurance is effected together with the latest premium receipts. If the Customer shall default in effecting insurance AAC&R may effect the same on behalf of the Customer and the cost thereof shall be reimbursed by the Customer to AAC&R on demand.
- 12.6 If the Services are to be performed at the premises of the Customer or at its request at the premises of any other person then the Customer warrants and undertakes to AAC&R throughout the term of the contract as follows:
- (a) That the Customer has full power and authority to enter into the contract and to permit AAC&R to perform the Services and that all necessary Planning Approvals, Building Regulation consents or other consents authorising the Services have been obtained.
 - (b) To grant to AAC&R's employees agents and contractors full and unrestricted safe access to the site as AAC&R shall from time to time require in order to discharge its obligations under the contract
 - (c) To make available free of charge at the Site such facilities as AAC&R shall reasonably require to enable the Services to be performed safely expeditiously and without any interruption by any activity of the Customer including but without limitation adequate and safe working space, storage, office furniture equipment and all electrical mains power water and/or other fuel supplies and cables necessary for the Services, suitably rated fused switch isolator between the incoming mains distribution board and AAC&R's tools plant and equipment, any craneage hoisting and/or lowering gear specialist lifting tackle scaffolding ladders and removable platforms.
 - (d) To provide adequate security and protection for all the Equipment, tools, plant and equipment and materials on site.
 - (e) To provide prior to commencement of installation and at the Customer's cost all builder's work including but without limitation foundations, drilling of holes through reinforced walls, special support slabs, cutting and weathering of roofs, cutting away and making good as required and ready availability of all plant and equipment so as to ensure that premises are in a fit state for the Contract Works.
 - (f) To take all reasonable precautions to protect the health and safety of AAC&R's employees agents and contractors while carrying out the services.
 - (g) To allow AAC&R's employees, agents and contractors reasonable access to the Customer's employees for the purpose of investigation and discussion in connection with the Services and to communicate the identity of the employee who shall act as the contact point and channel of communication with AAC&R in the provision of the Services.
- 12.7 Without prejudice to any other right or remedy it possesses under the Contract, AAC&R may claim the amount of any loss and/or expense incurred by it resulting from any breach by the Customer of it's obligations under **Clause 12.1 to 12.6**.

13. CONFIDENTIALITY

- 13.1 The customer shall not at any time whether before of after completion or termination of the Contract divulge or use any unpublished technical information deriving from AAC&R or any other confidential information in relation to AAC&R's affairs or business.

14. STATUTORY COMPLIANCE

- 14.1 The Customer warrants and represents to AAC&R that it will obtain every necessary licence or permit or approval required and give every necessary notice or declaration and/or comply with any legal requirement for or relating to the use or installation of the Contract Works.

15. FORCE MAJEURE

- 15.1 AAC&R shall not be liable for any delay or failure in performance of any of its obligations under the contract caused by factors outside its control.

16. NOTICE

- 16.1 To be served effectively, any notice or communication in writing required to be given pursuant to these Conditions shall in the case of a notice or communication to AAC&R be sent to it at its address stated on AAC&R's Quotation and shall in the case of a notice or communication to the Customer at its registered office if the Customer is a company and in any other case to the address of the Customer last known to AAC&R. Any such notice or communication may be given by registered or recorded delivery post or facsimile transmission. To prove service in the case of a notice given by facsimile transmission it shall be sufficient to show that it was despatched to the correct facsimile number. Service shall be deemed to have been effected 24 hours after despatch by post or facsimile transmission.

17. GENERAL

- 17.1 AAC&R may subcontract the performance of the contract in whole or in part.
- 17.2 The Customer shall not assign or subcontract the contract in whole or in part, without first obtaining AAC&R's written consent which consent shall not be unreasonably withheld.
- 17.3 If the Equipment is manufactured or supplied or other Services performed in accordance with any design or specification provided or made by the Customer the Customer shall indemnify AAC&R against and shall compensate AAC&R in full on demand for all claims expenses and liabilities of any nature in connection therewith including any claim whether actual or alleged that the said design or specification infringes the intellectual property or other rights of any third party.
- 17.4 All tools, patterns, materials, drawings, specifications and other data provided by AAC&R shall remain its property, and all patents, copyright and registered or unregistered design or the right to apply for the same arising out of or in connection with its performance or the Contract, shall be the property of AAC&R.
- 17.5 If any provisions contained in these Conditions shall be deemed to be invalid for any reason the condition shall be read as if the invalid provision had to that extent been deleted therefrom and the validity of the remaining provisions of these Conditions shall be affected thereby.

18. SETTLEMENT OF DISPUTES

- 18.1 Should any dispute or difference arise between the parties under the contract at any time including after its completion and whether before or after the termination, abandonment or breach of the contract then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. For the avoidance of doubt, the following conditions are drafted to comply with Section 108 of the Housing Grants, Construction and Regeneration Act 1996 and any doubts or ambiguities shall be construed accordingly. Nothing in this clause shall be construed to deprive either party of its rights to commence proceedings in the Courts.
- 18.2 If any such dispute or difference arises then one party ("the Applicant") may serve upon the other ("the Responder") a notice in writing ("the Notice") which shall state in sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.
- 18.3 The Notice under **Clause 18.2** shall also be served forthwith by the applicant on the Adjudicator named in AAC&R's Quotation or if not so named, forthwith either upon his identity being subsequently agreed or upon him being appointed under **Clause 18.4** below as the case may be.
- 18.4 In the event that no Adjudicator is named in the contract, then the parties shall within four days of the Notice being served upon the Respondent agree upon a suitable Adjudicator. Failing agreement the Applicant shall and the Respondent may apply for an appointment to the

Academy of Construction (whilst at the same time serving a copy of the application on the other party) whose written notification of an appointment of an Adjudicator shall be served on both parties and shall be binding on both parties.

19. ADJUDICATION

- 19.1 The adjudication is to be carried out in accordance with **Andrews Sykes Group plc Rules for Adjudication – Construction projects** (a copy of which is available at www.andrews-sykes.com or shall be provided on request) and with the object of securing the appointment of and the referral of the dispute to the Adjudicator within seven days and requiring a Decision by him within twenty-eight days of such referral.

20. LAW

- 20.1 The contract shall be governed by English law and the parties consent to the exclusive jurisdiction of the English courts in matters regarding the contract except the extent that AAC&R invokes the jurisdiction of the Courts of any other country.