

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in Belfast are open for business.

Charges: the charges payable by the Customer for the supply of the Services pursuant to clause 6.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.11.

Contract: the contract between the Customer and the Supplier for the supply of Services in accordance with these Conditions.

Customer: means Apex Housing Association Limited (a company registered on the Credit Union/Industrial & Provident Society register maintained in Northern Ireland under number IP000125), Apex Housing Association (Ireland) Ltd (a company registered as a limited company in the Republic of Ireland under number 229123) or Fairbuild Homes (NI) Limited (a company registered in Northern Ireland with company number NI040719) as the case may be.

Customer Materials: has the meaning set out in clause 3.3(i).

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or regarding the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order for the supply of Services, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Supplier's quotation as the case may be.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Specification.

Specification: the description or specification for the Services agreed in writing by the Customer and the Supplier.

Supplier: the person or firm from whom the Customer purchases the Services.

1.2 In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to same as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.
- (f)

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services pursuant to these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

(a) the Supplier issuing written acceptance of the Order; or
(b) any act by the Supplier consistent with fulfilling the Order,
at which point and on which date the Contract shall come into existence
(**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. **SUPPLY OF SERVICES**

3.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.

3.2 The Supplier shall meet any performance dates for the Services specified in the Order or otherwise notified to the Supplier by the Customer.

3.3 In providing the Services, the Supplier shall:

- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Services are provided in accordance with this Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
- (e) provide all equipment, tools, vehicles and such other items as are necessary for the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied to it by the Customer (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions;
- (j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.

3.4 The Supplier shall ensure that all personnel used to perform the Services are suitably skilled and qualified for the tasks allocated to them and shall put forward substitute personnel in any circumstance where the Customer is dissatisfied with the ability of a given individual (including Key Personnel) to provide the Services to standards the Customer reasonably requires.

3.5 Where the Order or any quotation/submission given to the Customer by the Supplier regarding the Services names any particular individuals those individuals shall be deemed Key Personnel for the purposes of providing the Services.

- 3.6 The Supplier shall use all reasonable endeavours to ensure that Key Personnel are used to deliver the Services for the duration of the Contract.
- 3.7 In the event that any of the Key Personnel leave the employment of the Supplier during the Contract, the Supplier shall not appoint a substitute for such Key Personnel unless it has first satisfied the Customer that the skills and competence of the proposed substitute are commensurate with those of the outgoing Key Personnel.

4. CUSTOMER REMEDIES

- 4.1 If the Supplier fails to perform the Services by the applicable dates, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent performance of the Services which the Supplier attempts;
 - (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute services from a third party;
 - (d) where the Customer has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or
 - (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
- 4.2 These Conditions shall extend to any substituted or remedial services provided by the Supplier.
- 4.3 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

5. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services;
- (b) provide such information to the Supplier as the Supplier may reasonably request and the Customer considers reasonably necessary for the purpose of providing the Services.

6. CHARGES AND PAYMENT

- 6.1 The Charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 6.2 The Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 6.3 In consideration of the supply of the Services by the Supplier, the Customer shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to the Supplier's bank account.
- 6.4 All amounts payable by the Customer under the Contract are stated exclusive of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 6.5 If the Customer fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the base rate for the time being of Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Customer disputes in good faith.
- 6.6 The Supplier shall maintain complete and accurate records of the time spent and materials used in providing the Services, and shall allow the Customer to inspect such records at all reasonable times.
- 6.7 The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier (whether under the Contract or howsoever arising) against any amounts payable by it to the Supplier under the Contract.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 In respect of any goods that are transferred to the Customer under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to transfer all such items to the Customer.
- 7.2 The Supplier assigns to the Customer all legal and beneficial rights in all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 7.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 7.4 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 7.2.
- 7.5 All Customer Materials are the exclusive property of the Customer.

8. INDEMNITY

- 8.1 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:
- (a) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
 - (b) any claim brought against the Customer for actual or alleged infringement of third party Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services.
- 8.2 For the duration of the Contract and for a period of 5 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 8.3 This clause 8 shall survive termination of the Contract.

9. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to it by the

other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

10. TERMINATION

10.1 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier 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 article 103 of the Insolvency (Northern Ireland) Order 1989 ("IO 89"), or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of article 242 of IO 89, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Supplier 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;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (d) (being an individual) the Supplier is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Supplier attaches or takes possession of or a distress, execution, 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 7 days;
- (f) (being a company) 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 Supplier;
- (g) (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1(a) to clause 10.1(h) inclusive;
- (j) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (k) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

10.2 Without limiting its other rights or remedies, the Customer may terminate the Contract by giving the Supplier 30 days written notice.

11. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the

Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

- (b) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. GENERAL

- 12.1 Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from providing any of the Services for more than 14 days, the Customer shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.
- 12.2 The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.
- 12.3 The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 12.4 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail. The provisions of this clause shall not apply to the service of legal proceedings.
- 12.5 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.6 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 12.7 If any court or competent authority finds any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 12.8 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.9 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.10 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.11 Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Customer.
- 12.12 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Northern Ireland law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Northern Ireland.