

**CONTRACTS FOR THE DESIGN (WHERE REQUIRED), INSTALLATION (WHERE REQUIRED) AND SUPPLY OF WORKS
 These Terms and Conditions and Schedules together with the Purchase Order
 form the contract between the Employer and the Contractor (the "Contract")**

Whereas

- A. The Employer wishes to engage the Contractor and the Contractor is willing to carry out the *works* in accordance with the terms of the Contract.

Now it is hereby agreed as follows:

1 Definitions

Actual Costs means cost incurred providing the *works*. Actual costs do not include the Contractor's costs of office overhead (being an office other than the Site office), do not include costs of insurance, and does not include Disallowed Costs.

CDM Regulations means the Construction (Design and Management) Regulations 2015 and the related Approved Code of Practice issued by the Health & Safety Commission.

Commencement Date means the date specified in the Purchase Order or the date the Contractor commences the *works* or the date on which the Contractor is requested in writing to commence the *works* by the Employer, whichever is earlier.

Completion has the same meaning as Complete in clause 17.1.

Completion Date means the date set out in the Purchase Order unless later changed in accordance with this Contract

Confidential Information means any secret or confidential, commercial, financial, marketing, technical or other information regarding the *works* or the Employer.

Contractor means the party with whom the Employer contracts under this Contract as more particularly identified in the Purchase Order.

Contractor's Persons means the Contractor's employees and agents, all persons employed or engaged on or in connection with the *works* or any part of them and any other person properly on Site in connection therewith excluding the Employer, Employer's Persons and Statutory Undertaker.

Defect means part of the *works* that is not in accordance with the Contract, the Scope, Statutory Requirements, or GAL Technical Standards.

Deliverables means all documents, products and materials developed by the Contractor or Contractor's Persons as part of or in relation to the *works* in any form or media including, without limitation, drawings, maps, plans, diagrams, designs, pictures, models, samples, computer programs, calculations, data, specifications and reports (including drafts).

Disallowed Costs means a cost which the Project Manager decides:

- a. is not justified by the Contractor's accounts and records;
- b. should not have been paid to a subcontractor or supplier in accordance with this Agreement;
- c. it was incurred only because the Contractor carried out a Defect or to correct a Defect;
- d. it was incurred due to a failure to comply with a requirement in the Contract or Scope;
- e. is a cost for plant and materials which were not used to provide the *works* (after allowing for reasonably wastage) unless resulting from a Variation;
- f. the cost was incurred for resources which did not provide the *works* (after allowing for reasonably availability and utilisation) or for a resource which was not removed from Site after the Project Manger instructed it be removed;
- g. preparation for the conduct of an adjudication or legal proceedings; and
- h. costs which exceed the fair and reasonable costs that would be charged for works of a similar nature carried out under similar conditions in the current market.

Employer's Persons means all persons employed, engaged or authorised by the Employer, excluding the Contractor, the Contractor's Persons, any Statutory Undertaker.

Excluded Matters see clause 36.

Force Majeure: means an event which stops the Contractor completing the *works* by the Completion Date or at all and which neither Party could prevent and which an experienced Contractor would have judged to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it.

GAL Technical Standards: means the Employer's standards which apply to the *works* which are either appended to the Purchase Order or which are available upon request from the Contractor.

Instruction mean a written instruction provided by the Project Manager or a verbal instruction provided by the Project Manager and confirmed in writing by the Contractor which is not denied by the Project Manager.

Insolvency Event has a meaning give to it in clause 35.4.

Key Date: means as date by which design deliverables (insofar as the Contractor is providing any design) are required as stated in the Purchase Order unless later changed in accordance with this Contract;

Losses has meaning as set out in clause 26.6.

The Employer: means Gatwick Airport Limited, 5th Floor, Destinations Place, Gatwick Airport, West Sussex, RH6 0NP Company Reg No: 01991018; VAT Reg No: GB974838854.

Overhead & Profit: means cost of management and support staff at the office off Site including NI, health care, company cars, mobile telephones and the like head office accommodation costs including rent, rates, taxes, utilities, stationery, cleaning, telecoms, information technology and the like. Insurance including premiums, excess payments. Sales and marketing costs including hospitality and entertainment. General administration, interest and finance charges. One-off

salary costs including bonus, long term sickness payments, redundancy/severance, additional NI payments, relocation costs, recruitment and the like, legal fees, non-site based travel and accommodation, costs of tendering, non-Gatwick specific training, time spent by site based personnel working on head office activities and profit

Project Manager means person named in the Purchase Order or any replacement notified by the Employer to the Contractor.

Purchase Order means the official purchase order issued by the Employer which incorporates these Terms and Conditions ("Terms & Conditions").

Rights means patents, rights to inventions, copyright and related rights (including rights in software), trademarks, trade names, rights in any format, rights in goodwill or to sue for passing off, domain names, rights in designs, database 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 (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

Site means the site upon which the *works* are carried out and the delivery address for the *works* as stated in the Purchase Order.

Statutory Requirements means any statute, statutory instrument, regulation, rule, permission or order made under any statute or directive having the force of law which affects the *works* or performance of any obligations under this Contract and any regulation or bye-law or permission of any local authority or statutory undertaker which has any jurisdiction with regard to the *works* or which the *works* are to be connected.

Statutory Undertaker means any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by it upon or in connection with that work.

Variation has meaning as set out in clause 8.1.

Variation Instruction has meaning as set out in clause 8.1

works means those designs (where applicable) materials, goods, works, equipment to be supplied to the Employer and installed by the Contractor as are more particularly described in the Purchase Order.

Scope means those documents listed in and/or attached to the Purchase Order.

- 1.1 Defined terms in these Terms and Conditions that are not listed above are to have the meaning ascribed to them in the Purchase Order.
- 1.2 These Terms & Conditions shall extend to substituted or remedial design services and/or repair or replacement *works*.
- 1.3 In the Contract, unless there are no sectional completion dates, each reference and clause relevant to the *works*, Completion and Completion Date shall apply, as the case may be, to either the whole of the *works* or any section thereof.
- 1.4 References to the Contractor include the Contractor's Persons.

2 General Obligations

- 2.1 With effect from the Commencement Date, the Contractor shall carry out and complete the *works* in accordance with this Contract and any Statutory Requirements, in consideration for which the Employer shall pay the Price to the Contractor.
- 2.2 The Contractor must provide everything required to design the *works* (insofar as the Contractor is responsible for the design) and to supply the *works* unless otherwise expressly stated in the Purchase Order.
- 2.3 The Contractor shall comply with and give all notices, pay all taxes, duties and fees, other than those specifically identified in the Purchase Order as being the responsibility of the Employer, obtain all licenses, permits and approvals, as required by any Statutory Requirements and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so
- 2.4 The Contractor warrants that:
 - (a) all design (insofar as the Contractor is responsible for design) and workmanship and the selection of any specifications to be used in the *works* shall be of the standard specified in the Scope and shall be designed selected and provided with the reasonable skill and care to be expected of a fully qualified and competent designer experienced in designing *works* of a similar size, nature and scope to the *works*;
 - (b) subject to clause 2.4a) it shall not use or specify for use in the *works* any materials which do not comply with the GAL Technical Standards, Statutory Requirements current at the time of specification or use and current good building practice or which are unsuitable for use in the *works* or works generally or are deleterious or generally suspected to be deleterious to health or safety or the durability of the *works*.
- 2.5 The Contractor shall when providing the *works*:
 - (a) perform any reviews or testing reasonably required by the Employer in order to demonstrate that the *works* (as designed by the Contractor) are properly designed and manufactured;
 - (b) co-ordinate design of the *works* (insofar as the Contractor is responsible for the design), the method of installation, attaching or fitting the *works*, and compatibility of the completed *works* with the rest of the project and environment provided by the Employer and other suppliers;
 - (c) use good quality standards and techniques;
 - (d) not do or omit to do anything which may cause the Employer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business and of which the Contractor is aware or ought to be aware and the Contractor acknowledges that the Employer may rely or act on the design provided by the Contractor; and

- (e) maintain complete and accurate records of time spent and materials used by way of allocation sheets which record the information. Such records are to be made available to the Employer for inspection at any time subject only to the Employer giving the Contractor reasonable prior written notice.

3 works

- 3.1 The Contractor warrants that any goods supplied by the Contractor shall be new, of good quality and where the Employer makes known to the Contractor the purpose for which the *works* are intended to be used, either expressly or by implication, the goods used in the *works* shall subject to clause 2.4 (a) be fit for that purpose and for any other purpose held out by the Contractor either expressly or by implication. The Employer relies on the Contractor's skill and judgement in performing its obligation so as to satisfy this clause.
- 3.2 The Contractor shall provide suitable packaging and protection for any goods provided by the Contractor to ensure they reach the Employer in good condition.
- 3.3 Subject to clause 2.4(a), the *works* where applicable, shall be free from defects in design (insofar as the Contractor is responsible for design), materials and workmanship and subject to the terms of the Purchase Order.
- 3.4 If product guarantees are generally provided in respect of the particular *works* supplied, the Contractor shall, if requested by the Employer, provide a product guarantee guaranteeing the *works* or parts thereof to the Employer.
- 3.5 The Contractor shall provide any and all Operation and Maintenance Manuals (O&M Manuals) required for the proper installation, testing, commissioning and lifetime use in service of the *works*.
- 3.6 The Contractor shall, unless instructed otherwise, specify, procure and provide plant which qualifies for the Enhanced Capital Allowance (ECA) tax scheme in order to maximise energy cost savings and to reduce the Plant's environmental impact. The Contractor must specify, procure and install plant which is listed on the Energy Technology Product List (ETPL) [available at - <https://www.gov.uk/government/publications/enhanced-capital-allowance-scheme-energy-technology-product-list>] or the Water Technology List (WTL) [available at - <http://www.watertechnologylist.co.uk/>] at the point of purchase, or which will meet the criteria for ECA qualifying as defined by HMRC [available at - <https://www.gov.uk/government/publications/eligibility-criteria-for-technologies-that-qualify-for-the-energy-saving-enhanced-capital-allowance-scheme>].

4 Design Services

- 4.1 The Contractor shall perform the design of the *works* as stated in the Purchase Order.
- 4.2 The Contractor shall when performing the design :
- (a) meet any Key Dates for the delivery of a design deliverable as specified in the Purchase Order or any programme or Task Information Delivery Plan (TIDP) provided to the Contractor subsequently;
 - (b) upon the Employer's request, cease to employ as a designer of the *works* any person(s) to whom the Employer may reasonably object. The Contractor shall replace such person(s) as soon as possible with others acceptable to the Employer.
 - (c) subject to clause 2.4a) ensure that it has or obtains all the information it requires to properly complete the design of the *works* for the Employer in accordance with the terms of the Purchase Order including but not limited to all CDM Regulations information, all relevant details regarding any existing structure onto which the *works* may be placed, connected, attached etc. and all performance specifications and other specifications for the works in respect of which the *works* are to become a part;
 - (d) subject to clause 2.4a) ensure that the *works* are compatible with and co-ordinated properly with the rest of the project;
 - (e) comply with its duties as a designer under the CDM Regulations and if required by the Purchase Order carry out the role of principal designer under the CDM Regulations and comply with its obligations as Principal Designer under the CDM Regulations;
 - (f) on Completion of the *works* provide completed as-built drawings; and
 - (g) comply with BIM requirements set out in the EIR document appended to the CPO and with the GAL Technical Standards relating to BIM including but not limited to GAL Technical Standard 20000-XX-Q-XXX-STD-165003 – Building Information Modelling and 20000-XX-Q-XXX-GLN-165001 – BIM Standard, Methods & Procedures

5 Discrepancies in Documents

- 5.1 Save for those surveys or reports listed in the Purchase Order, the Contractor shall not rely on any documents provided by the Employer or any other party in relation to the *works*. Save for those documents identified in the Purchase Order, no warranty is given by the Employer as to the accuracy, consistency, or completeness of such documents or any information or statements contained therein.
- 5.2 The Contractor shall use the drawings and other data provided in the Scope, however, the information provided does not relieve the Contractor from his responsibility to undertake any checking, due diligence, surveys or investigations necessary to carry out and complete the *works*. The Project Manager's acceptance of a communication from the Contractor or of his work does not change the Contractor's responsibility to provide the *works* in accordance with this Contract nor does it change the Contractor's liability for his design. For avoidance of doubt this clause does not make the Contractor liable or responsible for the correctness of the design in the Scope.
- 5.3 As soon as possible the Contractor shall scrutinise the Statutory Requirements, the Scope, the GAL Technical Standards and all other drawings, specifications and information supplied by the Employer or made available for inspection and shall no later than the time period specified in the Purchase Order notify the Employer in writing of any error, omission, inadequacy, discrepancy, inconsistency or divergence within or between one or more of the Statutory Requirements, the GAL Technical Standards and the Scope supplied by the Employer or made available for inspection and such notification shall set out the Contractor's proposal for overcoming the same.
- 5.4 The Employer will review the written notification and issue an Instruction to the Contractor and/or or make such arrangements as are necessary to resolve the issue.

- 5.5 The Contractor shall comply with the Employer's Instructions and such compliance shall be at the Contractor's own cost. No Instruction dealing with the error, omission, inadequacy, discrepancy, inconsistency or divergence issued under this clause shall be treated as a Variation affecting either the Price or the Programme unless:
- (a) there is a change to the Statutory Requirements or GAL Standards after the date of execution of the Contract and such change results in an omission, conflict, discrepancy, inconsistency or divergence between the Statutory Requirements or GAL Standards and the Scope, in which event compliance by the Contractor with the Employer's Instruction shall be treated as Variation; or
 - (b) the error, omission, inadequacy, conflict, discrepancy, inconsistency or divergence is in the Scope or in or between one or more of the Statutory Requirements, Scope and the GAL Technical Standards provided by the Employer and the Contractor notified the Employer of the same under clause 5.3 within the number of weeks specified in the Purchase Order following the Commencement Date in which event the Employer's Instruction shall be treated as a Variation.

6 Approvals

- 6.1 The Contractor shall comply with any Employer's requirements regarding the submission for acceptance of documents and/or samples relating to the *works*.
- 6.2 Deliverables and samples requiring acceptance shall be revised/alterd and returned to the Employer in accordance with the procedures and timetable set out in the Purchase Order. If no acceptance procedure/timetable is set out in the Purchase Order then the Contractor shall submit those documents and samples that require acceptance to meet the reasonable requirements of the Employer.
- 6.3 The Contractor shall not commence manufacture or procurement of the *works* until all necessary acceptances which must be obtained prior to commencement are obtained and all necessary procedures which must be complied with prior to commencement have been complied with. Such procedures and acceptances will be set out in the Scope.
- 6.4 The Contractor is deemed to have included in its programming of the *works* for the time and costs associated with obtaining all the acceptances required by the Employer and included in the Scope. The Employer shall review and comment upon all submissions within the time period for doing so set out in the Purchase Order.
- 6.5 No acceptance or failure to accept or revision of any sample or Deliverables by the Employer shall diminish or reduce or relieve the Contractor of his obligations and the warranties given under this Contract.
- 6.6 The Contractor shall allow the Employer onto its premises in order to inspect any materials or *works* being stored or manufactured.

7 Instructions

- 7.1 Subject to clauses 9.3 to 9.5, the Employer may issue Instructions to the Contractor, which the Contractor must forthwith carry out.
- 7.2 Except as provided in clause 8 and clause 9, the Contractor shall not be entitled to any additional payment or to an extension of time to the Completion Date for complying with any Instructions from the Employer.
- 7.3 If the Contractor does not comply with an Instruction from the Employer to the Employer's satisfaction, within 7 days of receiving that Instruction then (save where the Instruction was impossible, or unsafe to comply with or would result in the *works* being non-compliant with the Contract and save where the Contractor has warned the Employer of the same within 5 working days of receiving that instruction) the Employer may have the subject work of that Instruction carried out by others and the cost of doing so shall be a debt due from the Contractor to the Employer.

8 Variations

- 8.1 An alteration or modification to the design, quality or quantity of the *works* ("Variation") or Instruction to carry out a Variation ("Variation Instruction") shall not vitiate this Contract. For avoidance of doubt a Variation may include an omission in the *works*.
- 8.2 No change in the design of the *works* approved by the Employer shall be a Variation if the change is required in order to comply with Statutory Requirements, or GAL Technical Standards or to ensure compatibility or co-ordination with the rest of the *works* (unless the specification of the *works* has changed since the date of issue of the Purchase Order or unless the Scope expressly allows a concession in respect of the GAL Technical Standards).
- 8.3 The Contractor shall carry out any Variation directed by the Employer by the issue of a Variation Instruction.
- 8.4 The Contractor shall not substitute any alternative *works* or change an approved design of the *works* or change the quantities to be supplied to the Employer unless authorised in writing by the Employer.

9 Change Control Procedure

- 9.1 The Contractor must notify the Employer in writing within the time period set out in the Purchase Order if it considers that anything it has to do in relation to the *works* is a Variation. Such notification shall be a condition precedent to payment of any additional sums for the Variation.
- 9.2 The Employer will then within review period set out in the Purchase Order review the notification and issue an acknowledgment of receipt to the Contractor stating:
- (a) what (if any) further information the Employer requires from the Contractor to enable it to consider the matter properly; and
 - (b) whether or not the Contractor is required to provide a quotation for carrying out that Variation.
- 9.3 Where the Employer requires a quotation from the Contractor for carrying out the Variation in question, the Contractor must advise the Employer of the cost of carrying out the *works* in question and any other effect it may have on the progress of the *works* or the Price within 7 days of receipt of the Instruction or any longer period agreed between the Project Manager and the Contractor.
- 9.4 Once the Employer has obtained all the information it reasonably requires to assess what type of further Instruction is required, it will issue the Contractor with either:

- (a) a Variation Instruction directing it to carry out and complete the Variation;
 - (b) an Instruction confirming that the Employer considers that the design or changes to the *works* are not a Variation and are part of the *works* and that the Contractor is to carry out and complete the *works* in any event; or
 - (c) an Instruction stating that the Contractor is no longer required to carry out the part of the *works* that were the subject of the notification.
- 9.5 When issuing a Variation Instruction under clause 9.4(a) the Employer may accept the Contractor's quotation for the Variation or, if the Employer does not agree with the Contractor's quotation, the Employer may instruct the Contractor to carry out the Variation in any event and the Variation will be valued by the Employer in the next payment by reference to the Schedule of Rates set out in the Purchase Order.
- 9.6 If there are no such rates or prices applicable, then any additional services or *works* provided or omission shall be priced on the basis of Actual Costs plus the percentage of overhead and profit stated in the Purchase Order.
- 9.7 The Contractor's entitlement to payment for such Variations shall be conditional upon the Contractor providing the Employer with such contemporaneous evidence as the Employer may reasonably require to enable the Employer to verify the actual costs associated with the Variation.
- 9.8 If the Employer fails to issue an Instruction under clause 9.4 or the Employer issues an instruction under clause 9.4b) the Contractor shall carry out the *works* and may submit a position statement to the Employer regarding why it considers the works instructed are a Variation. Upon receipt of the position statement, the Employer shall issue an Instruction (if none was issued) or may change its Instruction to a Variation Instruction or may maintain its position under its Instruction issued pursuant to clause 9.4b). The dispute between the Parties regarding whether or not the works are a Variation shall be dealt with under the dispute resolution procedures under this Contract.
- 9.9 The Contractor shall be entitled to be paid for a Variation which has been the subject of a Variation Instruction by the Employer, unless the Variation is due to the Contractor's own default, culpable delay, or breach of the Contract. Such written Variation Instruction from the Employer shall be a condition precedent to payment to the Contractor for a Variation or a change to the Price or Completion Date.

10 Price – lump sum

- 10.1 If so stated in the Purchase Order, the Price is a lump sum. The Contractor shall carry out the *works* for the Price which shall be a fixed lump sum for the duration of the Contract subject to any adjustments in accordance with the terms of this Contract
- 10.2 The Schedule of Rates shall be used only for the pricing of any Variations and if the Price is a lump sum price, the Price shall not be adjusted if the *works* include quantities which differ from those stated in the Schedule of Rates unless the quantities were changes in accordance with this Contract.
- 10.3 Any rates included in the Schedule of Rates are composite rates and include all materials, parts and design changes required in order to provide the part of the *works* to which the rate applies.
- 10.4 The Price shall be exclusive of Value Added Tax.

11 Price - re-measurement

- 11.1 If so stated in the Purchase Order, the Price is the price for each Activity carried out at the rate for that Activity set out in the Schedule of Rates. The Budget Price is the price set out in the Purchase Order for the *works* as estimated in the Schedule of Rates. This shall be subject to re-measurement and if the quantities in the Budget Price differ then the actual quantities shall be priced using the Schedule of Rates and the Budget Price shall be adjusted accordingly as the *works* proceed and the final measurement of quantities priced using the Schedule of Rates shall be the Price.
- 11.2 Any rates included in the Schedule of Rates are composite rates and include all materials, parts and design changes required in order to provide the part of the *works* to which the rate applies.
- 11.3 The Price shall be exclusive of Value Added Tax.
- 11.4 The Employer may request that a target cost incentive mechanism be applied to cost reimbursable basis. In that event the parties will agree the target cost mechanism in a schedule to be attached to the Purchase Order.

12 Cost Reimbursable

- 12.1 If so stated in the Purchase Order, the Price for carrying out and completing the works is the Actual Costs plus Overhead and Profit.
- 12.2 The Contractor shall notify the Employer as soon as he is aware that the Actual Costs may exceed the Budget Price. In that event the Contractor and Employer shall meet to agree measures to reduce the Actual Costs in order to achieve the Budget Price as far as is reasonably possible. Any plan agreed by the Parties to reduce the Actual Costs shall be implemented by the Contractor.

13 Price Fluctuations

- 13.1 Save for changes in the Statutory Requirements made after the Commencement Date, there shall be no changes to the lump sum Price or the Schedule of Rates.

14 Payment

- 14.1 Unless otherwise stated in the Purchase Order, the Price will be subject to the terms of any trading agreement between the parties identified in the Purchase Order (Rebate Agreement/ Framework Agreement/ Works Package) under which rebates/ other payments are payable to the Employer in relation to the quantities of *works* purchased by the Employer from the Contractor.
- 14.2 The Contractor shall issue an application for payment to the Employer for payment in respect of services performed or *works* delivered to the Employer on or before the date set out in the Purchase Order (the "Application Date"). Such application for payment must be issued by no later than the Application Date.

- 14.3 The Due Date for Payment of all services performed or *works* delivered up to the Application Date is set out in the Schedule of Payment Dates agreed in the Framework Agreement provided that the Contractor submitted an application for payment on or before the Application Date failing which there is no Due Date for Payment that month and that application is treated as an application for the following month.
- 14.4 No later than 5 days after Due Date for Payment the Employer will issue a notice ("Payment Notice") which sets out the amount due to the Contractor for *works* provided which amount shall be due on the Due Date for Payment less any deductions or set offs permitted under the Contract.
- 14.5 The Final Date for Payment shall be set out in the Purchase Order.
- 14.6 Not later than 7 days before the Final Date for Payment, the Employer may give a notice stating its intention to pay less than the sum notified in the Payment Notice ("Pay Less Notice"). Any such Pay Less Notice shall specify the sum the Employer considers to be due on the date of the Pay Less Notice and the basis on which that sum is calculated.
- 14.7 The Employer shall pay to the Contractor not later than the Final Date for Payment thereof, the sum notified in the Pay Less Notice, if none is validly given, then the Employer shall pay the sum notified in the Payment Notice.
- 14.8 If the Employer issues a Payment Notice despite the fact that the Contractor failed to issue its application on time then this shall not amount to a waiver of clause 14.3 insofar as there is no Due Date for Payment and no obligation to issue a Payment Notice unless and until the Contractor submits its application on time.
- 14.9 Any Payment Notice or Pay Less Notice is not validly given or made unless it is in writing and in accordance with this clause and is served on time. For the purposes of these clauses, a notice sent by email to the e mail address set out in the Purchase Order shall be validly served on the date of receipt thereof. If an out of office or failure notice is received the notice should be delivered by hand or post to the Employer's registered address marked attention of the Project Manager or to the Contractors address set out in the Purchase Order.
- 14.10 The Contractor shall invoice the Employer, no later than the Receipting Date set out in the Purchase Order, for the notified sum (provided no Pay Less Notice is issued in respect thereof). The invoice will quote the order number, be accompanied by a copy of the relevant delivery note where applicable (with regard to the *works*) and be sent to Accounts Payable Gatwick Airport Limited PO Box 450 Horley RH6 6AU.
- 14.11 The Price will be exclusive of Value Added Tax and inclusive of packaging, insurance and carriage of the *works*, unless otherwise agreed in writing by the Employer. No extra charges shall be effective unless agreed in writing and signed by the Employer.
- 14.12 All invoices for *works* not yet installed or fixed on Site must be accompanied by a priced schedule of such *works*.
- 14.13 Invoices for unfixed *works* stored off-Site will not be paid to the Contractor unless authorised in writing by the Employer which authorisation is at the Employer's sole discretion and the Employer is not obliged to provide such authorisation.
- 14.14 The Employer may, without limiting its other rights or remedies, set off any amount owing to it by the Contractor in respect of any contract against any amount payable by the Employer to the Contractor under the Purchase Order or in relation to any other project or contract between the Contractor and the Employer.
- 14.15 If The Employer fails to pay any amount properly due and payable by it under the Purchase Order, the Contractor shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgement.
- 14.16 Any sum claimed for *works* provided up to the issue of the certificate of Completion shall be claimed within 45 days after the issue of the certificate of Completion and no further sums shall be claimed after that date. The Employer shall not be liable for any sums claimed if the amount claimed for *works* provided prior to the Completion Date is not applied for within this time period.

15 Programme

- 15.1 The Contractor shall commence the *works* on the Commencement Date, sequence the *works* so as to accord with the requirements of the Programme referred to in Purchase Order (if any), and deliver completed design deliverables by any Key Dates (if applicable) and Complete the *works* on or before the Completion Date stated in the Purchase Order (if any). The Contractor must progress the *works* with due expedition and without delay so as to achieve delivery of the design deliverables by the Key Dates (if applicable) and to achieve Completion by the Completion Date (if any). If no Completion Date is agreed the Contractor shall Complete the *works* within a reasonable time.
- 15.2 This clause is subject to the extension of time provisions at clause 16.

16 Extension of Time

- 16.1 Within 14 days of it becoming apparent that the progress of the *works* is delayed or is likely to be delayed beyond a Key Date (if applicable) or the Completion Date, the Contractor shall give written notice to the Employer giving particulars of the cause of the delay, its anticipated effects including the extent of any anticipated delay to the Key Dates and/ or Completion of the *works* and applying for any adjustment to the Key Date and/or Completion Date to which the Contractor considers it is entitled on account of the matters referred to in the notice. The Contractor shall provide, on request, any further information required by the Employer in respect of such matters.
- 16.2 If upon review of the written notice submitted by the Contractor and any other relevant circumstances, the Employer is of the opinion that Completion of the *works* is likely to be or has been delayed beyond the Completion Date and that such delay was or will be caused by;
- (a) any impediment, prevention or default on the part of the Employer or the Employer's Persons reasonably entitling the Contractor to an extension of time (except to the extent caused or contributed to by any impediment, prevention or default, whether by act or omission of the Contractor);
 - (b) a Variation;
 - (c) objects of historical or archaeological significance are found on Site which affect the *works*;

- (d) works carried out by Statutory Undertakers and provided that the Contractor has provided all information and notices and made any applications in relation thereto so as not to delay the carrying out of such works timeously;
- (e) exceptionally adverse weather conditions occur at the Site which means conditions that by comparison with local weather records are shown to occur on average less frequently than once in ten years;
- (f) physical or ground conditions are discovered on Site which an experienced contractor would have judged at the date of the Purchase Order to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it;
- (g) permissions or approvals from statutory bodies and provided that the Contractor has provided all information and notices and made any applications in relation thereto so as not to delay the obtaining of the approval or permission timeously; or
- (h) (h) Force Majeure event. then the Employer shall, (save where this Contract provides otherwise) award in writing an extension of time by fixing such revised Key Date (where applicable) and Completion Date as the Employer considers to be fair and reasonable.

16.3 Notification under clause 16.1 shall be a condition precedent for any extension of time to the Key Date and Completion Date.

16.4 The Contractor shall in no circumstances be entitled to claim direct loss and/or expense incurred during the period of any delay to the Key Date or Completion Date save for:

- a) loss and/or expense provided in a Variation quotation issued by the Contractor in accordance with clause 9; or
- b) loss and/ or expense caused by an event set out in clause 16.2a), 16.2c), 16.2f) or 16.2g) or
- c) if the Employer directs that no Variation quotation is required under clause 9.2b).

16.5 For avoidance of doubt if there is concurrent delay insofar as an event set out in clause 16.2a) to 16.2 h) and the Contractor's delay both cause critical delay to the Key Date or Completion Date then the Contractor shall be entitled to an extension of time for the period of concurrent delay but to no loss and/or expense incurred during the period of concurrent delay.

17 Completion

17.1 The Employer will either issue a certificate of Completion or the Employer will notify the Contractor in writing when it considers the *works* are Complete. The *works* will be Complete when the Contractor has:

- (a) done all the work which the Scope states he is to do; and
- (b) corrected notified Defects which would have prevented the Employer from using the *works* and Others from doing their work; and
- (c) provided all of the Deliverables which the Purchase Order requires the Contractor to provide;
- (d) provided product guarantees (if Employer requires);

18 Damages for Delay and Disruption

18.1 If the Contractor fails to deliver a design Deliverable by the Key Date then the Employer is entitled to deduct Key Date damages in the sums set out in the Purchase Order from the sums due to the Contractor for each period of delay from the Key Date until the Contractor provides the completed design Deliverable.

18.2 If the Contractor fails to Complete the *works* by the Completion Date then the Employer may be entitled to deduct the delay damages in the sums set out in the Purchase Order from the sums due to the Contractor for each period of delay from the Completion Date until the Contractor Completes the *works*. If no delay damages are set out in the Purchase Order then the Employer shall give the Contractor written notice of the delay together with the amount of any loss and/or expense or damages (and the basis of the calculation) that the Employer has suffered or is likely to suffer as a result thereof. The Employer shall be entitled to recover any such loss and/or expense and/or damages by way of deduction from the Price or as a debt. Subject to clause 18.3, the total delay damages payable under this Contract shall be limited to and shall not exceed 100% of the total of the Prices.

18.3 As soon as it becomes apparent that the delay damages will be payable, the Parties shall use their best endeavours to agree a programme of works which ensures that the *works* progress without any further delay and that the remainder for the *works* proceeds according to the period originally programmed for Completion of the remainder of the *works*, in other words that the periods originally programmed for each activity, other than the activity causing delay and resulting in delay damages, do not change. The programme shall be resource based and shall identify labour, plant and equipment resources on a daily basis. If the Parties are unable to agree a programme within 3 weeks of either Party seeking agreement from the other Party then the issue will be referred to an independent time expert who shall direct what resources and activities need to be programmed in order to ensure that the *works* are not delayed further. The independent time expert will be agreed by the parties. If the Contractor fails to adhere to the agreed or directed programme then the limitation of the delay damages will increase from 100% of the total of the Prices to a limitation of 150% of the total of the Prices.

19 Collateral Documents

19.1 Within 7 days of signing this Contract, the Contractor must provide to the Employer each of the following:

- (a) collateral warranties (as specified in the Purchase Order);
- (b) evidence of the insurance which the Contractor is required to have in effect under this Contract (to the satisfaction of the Employer);
- (c) copies of its other insurance and tax related documents required by Statutory Requirements or by the Purchase Order;

(d) any other document or documents required by the Purchase Order.

19.2 Within 7 days of being requested to do so by the Employer the Contractor shall provide such warranties and/or guarantees as the Employer may reasonably request.

19.3 Any warranties provided by the Contractor under this Contract shall not contain any unusual terms or limits on liability.

20 Storage and Call Off of works

20.1 If the Purchase Order requires the *works* to be delivered in a number of separate packages on specified dates over a specified period of time and the Contractor obtains or manufactures the *works* as a single lot, the Contractor shall store the *works* until such time as they are to be delivered or are called off by the Employer as set out below.

20.2 The materials, plant and equipment supplied for the *works* shall be stored in a secure environment and in conditions that are appropriate for maintaining them in an "as new" condition.

21 Call Off of works

21.1 Where the *works* are subject to call off by the Employer, in other words the Employer can require delivery at a time and date convenient to the Employer acting reasonably; call off for delivery will be initiated by the Employer issuing an Instruction to the Contractor.

21.2 In the Instruction the Employer will as a minimum:

- (a) identify in detail the *works* required (quantity, specification etc.);
- (b) detail the required quantity;
- (c) confirm required delivery location;
- (d) confirm required delivery date; and
- (e) provide any special instructions relating to the call off.

22 Delivery and cancellation

22.1 The Employer may cancel the delivery of the whole or any part of the *works* at any time immediately upon written notice until such time as the *works* are delivered on Site. Such cancellation shall be treated as a Variation Instruction and the services or *works* cancelled shall be omitted accordingly. If all of the *works* ordered are cancelled then this shall be treated as a termination under clause 35.2 and the payment provisions relating to termination under that clause shall apply.

22.2 The Contractor shall deliver the *works* during the Employer's usual business hours on the date and to the address stated on the Purchase Order, or any other address or date notified by the Employer to the Contractor in writing.

22.3 With regard to the delivery of goods in respect of which a delivery date is set out in the Purchase Order, time is of the essence of the Purchase Order and the Contractor shall be responsible for any losses which the Employer may incur arising from late, part or non-delivery of the goods.

22.4 All materials, goods, plant and equipment are to be supplied "Carriage Paid" (including loading and off-loading) to the destination specified in the Purchase Order and the Contractor warrants that if the materials, goods, plant and equipment are carried in any road transport vehicle or vehicles such vehicles are properly licensed under any road traffic legislation in the United Kingdom (or regulations or rules passed there under), to carry such items.

22.5 If the Contractor delivers works which do not comply with the terms of the Purchase Order, then, without limiting its other rights or remedies, the Employer shall be entitled (whether or not it has accepted the *works*) to one or more of the following remedies:

- (a) to require the Contractor to repair or replace the defective *works* within the relevant time period for rectification of the *works* set out in clause 24 below,
- (b) to deduct from any sums due, the price of the defective *works* supplied,
- (c) to recover from the Contractor any expenditure incurred by the Employer in obtaining substitute *works* from a third party; and
- (d) to claim damages for any additional costs, loss and/ or expense incurred by the Employer arising from the Contractor's failure to supply the *works* in accordance with the Purchase Order.

22.6 Unless agreed otherwise in advance by the Employer (by the issue of a Variation Instruction in respect of Variations only), all demurrage and waiting time associated with the Contractor making deliveries to the Site are deemed to be included in the Price.

22.7 Unless agreed otherwise in advance by the Employer (by the issue of a Variation Instruction), the Contractor shall unpack the *works*, and remove from site and safely and legally dispose of all packaging. The costs of so doing are deemed to be included in the Price.

23 Title, Vesting and Risk

23.1 Title to the material, goods, plant and equipment supplied shall pass unencumbered from the Contractor to the Employer immediately on delivery in accordance with the Purchase Order, unless payment for the same is made prior to delivery, in which case title shall pass once payment has been made.

23.2 The *works* shall not be subject to any lien or retention of title.

23.3 If payment for the *works* is made in advance then the Contractor shall provide either a vesting certificate to this effect or an advance payment bond to the value of the *works*.

23.4 In relation to the *works* paid in advance, the Contractor shall:

- (a) store the *works* separately from all other similar materials held by the Contractor so that they remain readily identifiable as the Employer's property;
- (b) mark the *works* clearly as the property of the Employer;

- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the *works*;
 - (d) maintain the *works* in satisfactory condition and keep them insured against all risks for their full price on the Contractor's behalf from the date they are delivered to the Contractor;
 - (e) notify the Employer immediately if it becomes subject to any of the Insolvency Events listed in clause 35.4; and
 - (f) give the Employer such information relating to the *works* as the Contractor may reasonably require from time to time.
- 23.5 If the Contractor becomes subject to any of the Insolvency Events listed in clause 35.4, without limiting any other right or remedy the Employer may have:
- (a) the Contractor's right to use the *works* ceases immediately; and
 - (b) the Employer may at any time:
 - (i) require the Contractor to deliver up all parts of the *works* in its possession; and
 - (ii) if the Contractor fails to do so promptly, enter any premises of the Contractor or of any third party where the *works* are stored in order to recover them.
- 23.6 Whatever the mode of transit used by the Contractor to deliver works to the Site, the works are to remain at the Contractor's risk as regards deterioration, damage, or loss until they are delivered to and accepted by the Employer.
- 23.7 Risk in the works shall therefore only pass to the Employer upon the issue of a Certification of Completion. This clause may not apply if the Contractor has agreed an exception to this clause and such agreement is included in the Scope document attached to this Purchase Order.

24 Defects

- 24.1 The Contractor shall rectify any defects that become apparent within the Defects Rectification Period set out in the Purchase Order within 2 weeks of being instructed to save where :
- (a) in the Employer's sole opinion affects the performance or capacity of the airport operations or systems supporting airport operations or which affects the safety of passengers and/or others using and/or working at the airport shall be not more than 4 hours; and/or
 - (b) where the Defect poses in the Employer's sole opinion an immediate risk to the airport operations and/or the safety of passengers and/or others using and/or working at the airport, the Employer shall be at liberty to take any and all necessary actions to correct or mitigate the Defect. The costs associated with any mitigation and/or correction of the Defect shall be borne by the Contractor, and such costs shall be to the Contractor's account; and/or
 - (c) after Completion of the *works* the Employer may at its sole discretion extend the defect correction period of 2 weeks for certain Defects by a period(s) notified in a defects correction programme issued to the Contractor.

25 Retention

- 25.1 The Employer shall be entitled to withhold a percentage of the Price due to the Contractor being the retention percentage set out in the Purchase Order. The Retention sum retained is halved on Completion of the works and then the remaining sum held is released on completion of a period of 12 months after provided that all notified Defects during the 12 month period are rectified and that all Deliverables have been approved by the Employer and any errors in or incomplete Deliverables are corrected or completed to the Employer's satisfaction.
- 25.2 The Employer shall be entitled to set off against any retention sum held or any other sums due under the Contract any costs incurred rectifying Defects which the Contractor has failed to rectify in accordance with the Contract or any damages caused by any default or omission of the Contractor.

26 Insurance and Indemnity

- 26.1 The Contractor shall effect and maintain professional indemnity insurance (where applicable in the Purchase Order) and product liability in respect of its potential liabilities to the Employer and third parties arising out of or in connection with the Contract for the amounts specified in the Purchase Order.
- 26.2 If the Purchase Order provides that the required minimum limit of indemnity shall be provided in the aggregate (rather than for any one occurrence or series of occurrences arising out of the same event) then the provision of such insurance in the aggregate is agreed strictly in accordance with the following additional conditions:
- 26.2.1 the Contractor shall notify the Employer immediately if at any time the remaining aggregate cover available to it under the relevant insurance policy drops below the level of indemnity required in the Purchase Order;
 - 26.2.2 upon receipt of such notice from the Contractor the Employer may at its absolute discretion require the Contractor to take out additional cover at the Contractor's own expense to bring the level of cover back up to the level of indemnity cover required in the Purchase Order;
 - 26.2.3 if the Contractor does not take out the required additional cover or is unable to do so within 60 days of notice from the Employer that it is required to do so, the Employer may either:
 - (a) take out the required level of cover itself and charge the Contractor the costs it incurs in doing so; or
 - (b) at its sole discretion terminate the Framework Agreement and any Call-off Contract let under it.
- 26.3 Without prejudice to the foregoing Contractor's obligations to indemnify the Employer or any of its other obligations under this Contract or the law, in addition to the insurances stated in clause 26.1 the Contractor shall put in place any other insurances listed in the Purchase Order for the periods stated in Purchase Order.
- 26.4 If the Contractor needs airside vehicle access, and the relevant Purchase Order procures construction *works* only then the Employer shall maintain a Vehicle Airside Liability policy with a limit of indemnity of £50 million for any one occurrence or series of occurrences arising from any one event and with a sub-limit of £50 million for liability for war and terrorism risk is to be maintained for the duration of the Contract. If the relevant Purchase Order procures construction works and other items which are not deemed construction works, the Contractor will provide an insurance policy for its airside activities

including the use of motor vehicles that covers all actions, claims, costs and demands in respect of loss, damage or injury to property or persons (including fatal injuries) for which it is liable arising in connection with the use of the vehicles airside with a limit in indemnity of £5 million for any one event including the extended coverage endorsement AVN52E, F or G and with a limit of £5 million for war hijacking and other perils.

- 26.5 The Employer shall provide All Risks cover for loss destruction or damage (including Terrorism) to the permanent works, materials, temporary works, demolition works, plant, supplies, temporary buildings and the contents thereof, camps and the contents thereof and all other property used for or in connection with and work ancillary thereto in connection with the *works*. The cover does not apply to temporary buildings or constructional plant and equipment or employees personal effects, tools or other property. The Contractor shall carry equivalent All Risks to cover temporary buildings, constructional plant, equipment and the policy excess relevant to the *works*. Such excesses and the details of the All Risks cover may change from year to year and are available upon request. Changes to the terms of the All Risks cover shall not be a Variation under this Contract. The details of the All Risk provided shall be in accordance with the Gatwick Airport Annual Contract Works and Third Party Liability Insurance Programme issued to the Contractor on an annual basis and forming part of the Framework Agreement.
- 26.6 The Contractor shall be liable for, and shall indemnify the Employer against any expense, liability, loss, damage, claim or proceedings, costs (including reasonable legal costs) (all hereinafter referred to as "Losses" incurred by the Employer in respect of
- (a) any personal injury to or death of any person arising out of or in the course of or caused by the carrying out of the *works*, except to the extent that the same is due to any act or neglect of the Employer or an Employer's Person or any Statutory Undertaker ;
 - (b) any loss, injury or damage whatsoever to any property real or personal (save for the *works* themselves) in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the *works* and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Persons;
 - (c) any negligent act or omission of the Contractor which involves The Employer in any liability under any third party agreement which is listed in the Purchase Order, the operative terms of which that The Employer has made known to the Contractor at the date of this Purchase Order or thereafter as a Variation and provided that the Employer shall be under an obligation to mitigate such Losses;
 - (d) any income tax, national insurance contributions including secondary contributions to the extent permitted by law (including any interest, penalties or gross-up thereon) arising in respect of the Contractor or the Contractor's Persons, for which the Employer is called upon to account to the relevant taxing authority; and
 - (e) any claim made against the Employer for actual or alleged infringement of a third party's Rights arising out of, or in connection with, the manufacture, supply or use of the *works* or receipt, use or supply of the *works* and provided that the Employer shall be under an obligation to mitigate such Losses.
- 26.7 The Contractors' or subcontractors' temporary buildings, constructional plant and equipment or employees' personal tools and effects, the subject of or used in connection with the Contract whether on Site or not, shall in every respect be at the Contractor's risk.
- 26.8 If the Contractor shall at any time fail to comply with the requirements of the above clause for any reason whatsoever or fail to produce a certificate of insurance when requested to do so, the Contractor shall promptly notify the Employer and the Employer may effect such insurance on behalf of the Contractor and the amount of any premium paid by The Employer may be deducted from any sum due under this Contract or recovered as a debt from the Contractor.

27 Intellectual Property Rights and Confidentiality

- 27.1 The Contractor acknowledges and agrees that:
- the Contractor shall grant (or, if such grant cannot legally take place until later date, agrees to grant) to the Employer and its appointee with effect from the Commencement Date or in the case of the intellectual property not yet in existence with effect from the creation of such intellectual property, an irrevocable royalty-free non-exclusive non-terminable licence to use the intellectual property and to reproduce any or all of the Deliverables for any purpose connected with the *works* including (without limitation) the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the *works*. Such licence shall enable the Employer and its appointee to use and reproduce the Deliverables for the extension of the *works* but shall not include a licence to reproduce the intellectual property in the Deliverables for any extension of the *works*. The licence shall be transferrable to third parties with an interest in the *works*.
- 27.2 The Contractor shall keep secret and confidential all Confidential Information disclosed or obtained as a result of this Contract and shall not use or disclose the same save for the proper performance of the Contract or if required to do so by a competent legal authority or by any Statutory Requirements.
- 27.3 No publicity or advertising relating to this Contract and/or any matter or thing connected with this Contract shall be released by the Contractor without the prior written consent of the Employer.
- 27.4 The licence and sub-licence (if any) granted under clause 27.1 shall not include the right to reproduce any Rights contained in a BIM Model (other than to the extent produced by the Contractor) for any extension of the Project.

28 Health and Safety

- 28.1 The Contractor warrants that it will comply and shall ensure that the Contractor's Persons comply, with all applicable laws, statutes, ordinances and other legislation and regulations and bye-laws of any legally constituted public authority in relation to health and safety in the design and delivery out of the *works* and shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so. In particular, the Contractor undertakes to carry out and fulfil in all respects the duties of a designer under and in accordance with the CDM Regulations 2015. The Contractor warrants its competency to carry out the *works*.

28.2 If the Contractor or the Contractor's Persons visit the Site, the Contractor shall comply with and shall ensure that the Contractor's Persons comply with any Site rules, including any rules relating to health and safety and admittance to the Site.

29 Principal Designer

29.1 If the Purchase Order states that the Contractor is the Principal Designer under the CDM Regulations then the Contractor warrants that it has the sufficient skills, knowledge and experience to fulfil this role and the Contractor shall undertake the following obligations including but not limited to:

- (a) Plan, manage and monitor the pre-construction phase and coordinate matters relating to health and safety during the pre-construction phase.
- (b) Take into account the general principles of prevention and, where relevant, the content of the Construction Phase Plan and Health and Safety File.
- (c) Identify and eliminate or control foreseeable risks to the health or safety of any person carrying out or liable to be affected by construction work; maintaining or cleaning a structure; or using a structure designed as a workplace.
- (d) Assist in the provision of pre-construction information.
- (e) Prepare and provide relevant information to other duty holders.
- (f) Prepare information to be included in and develop the Health and Safety File.
- (g) Liaise with all duty holders to help in the planning, managing, monitoring and coordination of the construction phase.

29.2 If the Purchase Order stated that the Contractor is not the Principal Designer under the CDM Regulations then the Contractor is responsible for fulfilling the Designer's obligations as defined below under the CDM Regulations including but not limited to:

- (a) Not commence work in relation to a project unless satisfied that the Employer is aware of the duties owed under the CDM Regulations.
- (b) Take into account the general principles of prevention and any pre-construction information to eliminate, so far as is reasonably practicable, foreseeable risks to the health or safety of any person:
 - (i) carrying out or liable to be affected by construction work;
 - (ii) maintaining or cleaning a structure; or
 - (iii) using a structure designed as a workplace.
- (c) The designer must:
 - (i) take steps to reduce or, if that is not possible, control significant and foreseeable risks through the design process;
 - (ii) provide information about those risks to the Principal Designer; and
 - (iii) ensure appropriate Health & Safety File information is provided to the Employer in a timely manner and where relevant to the Project.
- (d) The Contractor shall provide, with the design, sufficient information about the design, construction or maintenance of the structure, to adequately assist the Employer, Principal Designer, other Designers, Principal Contractor and contractors to comply with their duties under the CDM Regulations.

30 Principal Contractor

30.1 If the Purchase Order states that the Contractor is the Principal Contractor under the CDM Regulation then the Contractor shall carry out its duties under the CDM Regulations including:

- (a) During the pre-construction phase and before setting up a construction site a construction phase plan must be drawn up or arrangements for a construction phase plan must be drawn up. The Contractor shall submit to the Employer for acceptance a Construction Phase Plan that shall comply with the CDM Regulations. Reasonable time must be allowed for both parties to have suitable and sufficient time to review the Construction Phase Plan and where required further allow for additional information and/or clarification required to be included within the Construction Phase Plan where such information is omitted or deemed necessary in order to comply with the CDM Regulations, prior to any works starting on site.
- (b) The Contractor shall develop the Health and Safety File in accordance with the format agreed with the Employer. The Contractor's information for the Health and Safety File shall be produced in accordance with the CDM Regulations, GAL Part A's, B's & C's and policy for the production of the Health & safety File which will include not be limited to the fire risk assessment as required under the Regulatory Reform (Fire Safety) Order 2005 and any other information required paying particular attention to the requirements of the Management of Health & safety at Work Regulations and the Workplace (Health, Safety & Welfare) Regulations.

31 GADS, Environment and safety records

31.1 The Contractor shall comply with all relevant the Gatwick Airport Directives ("GADs") and the Employer's environmental, health and safety policies which are available upon request.

31.2 The Contractor shall notify the Employer immediately in the event of any incident occurring where it becomes aware of any personal injury or any damage to property which could give rise to personal injury.

31.3 The Contractor will ensure that it maintains such records as are necessary to evidence compliance with this Contract and ensure that all records are fully auditable and information is freely available to support any accreditations that the Employer has attained or is working towards.

32 Permits to Work and Registered Contractors

- 32.1 The Contractor shall not carry out any works at the Airport unless it has a permit to work issued and unless it complies with the constraints specified in any permits to work.
- 32.2 The Contractor is to obtain all necessary permits to undertake the *works* from the Contractor Support Centre (CSC).
- 32.3 The details of the procedures for applying for permits and costs thereof and the *works* constraints related are set out in at the Contractor's GDEP homepage, access to the documents referred to in are via the hyperlinks set out in that document.
- 32.4 The Contractor shall pay the CSC charges promptly and on time. Failure to pay the CSC charges will result in the Contractor's account with CSC being closed and the Contractor shall be liable for all delay and costs incurred in respect of the Project if it is unable to obtain permits to work due to failure to pay the CSC promptly.
- 32.5 The Contractor shall comply with the Employer's 'dial before you dig' policy and shall contact the relevant persons as per the policy found on the Contractor's GDEP homepage.
- 32.6 The Contractor shall and shall ensure that all sub-contractors and suppliers register on AirDat as a contractor and submit a registered contractor's questionnaire. The Employer shall be entitled to terminate this Contract if the Contractor is not registered or is not accepted on the register. The Employer shall be entitled to require the removal of any sub-contractor or supplier at the Employer's discretion.

33 Airside works

- 33.1 The Contractor shall ensure that all personnel required to drive airside hold a current AirDat driving permit.
- 33.2 Airside is designated as a Security Restricted Area under Section 11a of the Aviation Security Act 1982 as amended by the Aviation and Maritime Act 1990 and Regulation EU 300/2008.
- 33.3 It is an offence to enter into the area without permission of the Airport CEO and other lawful authority. Offenders may be prosecuted or fined.
- 33.4 The Contractor shall carry out any works Airside with all necessary permissions and permits issued by The Employer.
- 33.5 The Contractor shall comply with the Employer's rules, procedures and regulations which apply to airside access and working. The Employer may change these rules, procedures and regulations as it deems fit at any time and such change shall not be deemed to be a Variation unless such change also results in change to the quality, quantity or design of the *works* or changes the access to carry out the *works*.

34 Security Passes and Security

- 34.1 The Contractor shall comply with all security requirements and regulations of the Employer.
- 34.2 The Employer shall have the right to carry out any search of staff or vehicles used by the Contractor.
- 34.3 The Contractor shall not, without the prior written consent of the Employer, take any photographs or make any other graphical reproduction at or of The Employer Airport or any premises, property or equipment owned by The Employer or any third party unless strictly necessary to carry out the *works*.
- 34.4 It is the responsibility of the Contractor to obtain at his own cost and in good time from the Employer all security passes, Airside or Landside, and other documents required for his personnel and vehicles. All security passes and documentation shall be returned to the Employer immediately upon termination of this Contract or Completion of the *works* whichever be the earlier, failing which the Contractor shall pay or allow to the Employer £250.00 for each and every security pass not returned and may be liable to prosecution under the provisions of the Aviation and Maritime Security Act 1990. The theft or loss of any security pass or other documentation referred to herein shall in the first instance be reported by the Contractor to the Police and the Employer. Contractor shall provide appropriate holders to prevent ID passes from dangling or their becoming an entrapment risk.
- 34.5 The Contractor shall ensure that all the Contractor's Persons complete the relevant security application forms and obtain one or both of the Security Passes. The aforementioned individuals shall not be allowed on Site until they have obtained the Security Passes. The Employer Security Pass application process is detailed at: www.gatwickairport.com/idcentre and further on the Employer Airport Directive referenced GAD/F29/14 (Landside Passes).
- 34.6 The Contractor shall allow a minimum period of eight (8) weeks in his programme for the process of obtaining Airside Security Passes and two (2) weeks for Landside Security Passes.

35 Termination

- 35.1 Any breach by the Contractor of this Contract which is not remedied within 30 days of a notice requiring it to do so shall entitle the Employer at its option to treat the breach as a repudiatory breach.
- 35.2 The Employer may terminate this Contract at will for any reason whatsoever and in circumstances where there is no fault on the part of the Contractor by giving 7 days written notice of termination.
- 35.3 Save in the case of termination due to the Contractor being in breach of the Contract or subject to an Insolvency Event, following termination the Employer shall pay the Contractor for any works delivered or design services performed at the date of termination and for any reasonable demobilisation costs.
- 35.4 If the Contractor:
- (a) enters into administration within the meaning of Schedule B1 to the Insolvency Act 1986 (the "Act"); or
 - (b) appoints an administrative receiver or a receiver or manager of its property under Chapter I of Part III of the Act or;
 - (c) passes a resolution for voluntary winding-up without a declaration of solvency under section 89 of the Act;
 - (d) or has a winding-up order made against it under Part IV or V of the Act;
 - (e) or enters into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or

- (f) as a partnership:
 - (i) has a winding-up order made against it under any other provision of the Act as applied by an order under section 420 of the Act; or
 - (ii) has a sequestration awarded against one of the estates of the partnership or grants a trust deed for its creditors, or
 - (iii) each partner is subject of an individual arrangement or any other event or proceeding referred to in this clause, or
- (g) as an individual:
 - (i) has a bankruptcy order made against him under Part IX of the Act, or
 - (ii) is the subject of the sequestration of his estate or grants a trust deed for his creditors,

or if any act is done or event occurs which (under applicable legislation) has a similar effect to any of these acts or events the Employer may determine this Contract immediately by serving a notice. The determination shall take effect when the notice is given. Each of the aforementioned events shall be referred to as an "Insolvency Event."

- 35.5 In the event of the occurrence of an Insolvency Event under clause 35.4 or the termination of the employment of the Contractor pursuant to clause 35.1, the Employer shall, subject to clause 35.6 not be obliged to make any further payments to the Contractor which are due but have not yet been paid until after Completion of the *works* by others.
- 35.6 Upon the occurrence of an Insolvency Event the Employer shall, if the Insolvency Event occurred prior to the forthcoming Pay Less Notice date; serve a Pay Less Notice notifying of deduction of sums in accordance with clause 14.6.
- 35.7 There shall be due to the Employer from the Contractor the additional costs of completing the *works* including any expenses and loss and/or damage incurred by The Employer as a result of the termination of the employment under clause 35.1 or occurrence of the Insolvency Event. Such additional costs shall be deducted from any sums due to the Contractor as a debt.
- 35.8 If the Employer commits a material breach which is not rectified within 30 days of receipt of a notice requiring it to do so, then the Contractor may by a further notice forthwith terminate its employment under this Contract and the Employer shall pay the Contractor all sums due under the Contract for *works* provided up to the date of termination and any reasonable and foreseeable damages caused by the termination of its employment.

36 Limitation

- 36.1 Each Party's total liability to the other Party for all matters arising under or in connection with this Contract, other than:
 - a) the Excluded Matters (as defined below); and
 - b) any loss, damage, cost, expense or liability suffered or incurred which is covered by any policy of insurance that is required to be maintained under this Contract
 shall be limited to the greater of £2,000,000 (two million pounds) or 2 x the total of the Price.

Excluded Matters are amounts payable in this Contract for:

- the Price;
 - any delay damages;
 - an infringement by the Contractor of any Rights; and
 - any other matters for which liability cannot be limited by law.
- 36.2 Each Party's liability to the other Party for any loss, cost, expense or liability suffered or incurred (other than in respect of the Excluded Matters) which is covered by a policy of insurance that is required to be maintained in under this Contract shall be limited:
 - (a) in the case of insurance provided by the Contractor, to the required amount of the insurance; or
 - (b) in the case of insurance provided by the Employer, to the amount of insurance proceeds paid out under the policy in respect of such loss or damage
- 36.3 If the reason for the loss, cost, expense or liability not being indemnified or recovered (in part or in full) is due to an act or omission on the part of the Party seeking to rely on this limitation of liability clause which invalidates or limits the policy of insurance such loss, cost, expense or liability is limited to the required amount (or actual amount of insurance being maintained in the case of insurance provided by the Employer if greater) of the otherwise invalidated insurance.
- 36.4 For the avoidance of doubt the limitation under this clause is not intended to include insurance policy excesses.

37 Criminal Finance Act

- 37.1 The Contractor shall carry out a risk assessment of all of its subcontractors and suppliers that it is required to carry out under the Criminal Finance Act 2017. The Contractor shall notify the Employer if any risk assessment results in the party being assessed as medium to high risk and the Contractor shall obtain the Employer's consent to employing such a subcontractor or supplier in advance of doing so. The Contractor shall indemnify the Employer against any damages suffered or claims or proceedings brought against the Employer caused by a failure to comply with this clause.

38 Priority of Documents

- 38.1 In the event of conflict between the various documents making up an individual Contract, the following priority shall be applied to the documents:

- (a) The Special Conditions listed in the Purchase Order as amendments to these terms.
- (b) These terms and conditions
- (c) The Framework Agreement
- (d) The terms of the Purchase Order
- (e) The contents of the Scope attached to the Purchase Order

If the conflict is not resolved by the above then the order of priority shall be as determined and instructed by the Employer (acting reasonably) following the process for dealing with discrepancies set out in clause 5 above.

39 Acceptance

- 39.1 An individual Contract comes into existence on the date of the Purchase Order or if earlier the date the Contractor commenced the *works*.
- 39.2 Subject to paragraph 41.1 below, the Contract constitutes the entire agreement between the Employer and the Contractor with regard to *works* to the exclusion of all other terms and conditions, including any terms and conditions which the Contractor may purport to apply upon receipt of a Purchase Order or under any acknowledgement or condition of acceptance or with any delivery note.
- 39.3 Signature of any delivery tickets by the Project Managers accepting delivery does not imply acceptance of the Contractor's terms and conditions.

40 Assignment

- 40.1 The Contractor shall not assign or transfer any of its rights or obligations under the Purchase Order, nor shall the Contractor subcontract the provision of the *works* without the Employer's authorisation in writing.

41 Severance

- 41.1 If a court or other authority finds that the whole or any part of any provision of the Contract 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.

42 Disputes

- 42.1 If a dispute arises in relation to the Contract or any CPO issued under it the following dispute resolution escalation process shall apply:
 - (a) the dispute will first be referred to the individuals nominated in the CPO for dispute resolution level 2 who will try to resolve the dispute.
 - (b) if the dispute cannot be resolved by the level 2 nominees within 10 Calendar Days of the referral it may be referred by either party to the dispute resolution level 1 nominees identified in the CPO.
 - (c) if the dispute cannot be resolved by the level 1 nominees within 10 Calendar Days of the referral, either Party may choose to deal with in accordance with clause 42.2 **Error! Reference source not found.** below.

If any nominee is not available at the time a dispute arises then the nominating party may nominate an alternative and advise the other party in writing of the details of that alternative.

- 42.2 The parties shall have the right to refer any dispute to adjudication at any time in which event Part 1 of the Schedule to the Scheme for Construction Contracts (England) Regulations 2011 shall apply.
- 42.3 This Contract shall be governed by and construed in accordance with the laws of England and Wales and the English courts shall have exclusive jurisdiction.
- 42.4 The Adjudicator to be appointed in respect of the adjudication is to be a senior Queen's Counsel appointed from the TECBAR list of Adjudicators.

43 Data Protection

- 43.1 Data Privacy Laws mean the EU Regulation (EU) 2016/679 and its nearest equivalent in the laws of the United Kingdom following its exit from the European Union and any other applicable legislation at any time relating to or applicable to the Services or any lawful requirement or demand of any court, governmental body or regulatory authority having authority over the Employer or the Contractor. Words and phrases which have defined meanings in the Data Privacy Laws have the same meanings when used in this clause 43.
- 43.2 The Contractor will comply with in respect of which compliance is obligatory to its activities under or in connection with this Contract.
- 43.3 Where, under or in connection with this Contract, the Contractor or its sub-contractor (as "data processor") processes personal data (Processed Personal Data) on behalf of the Employer (as "data controller"):
 - 43.3.1 the Contractor will (and/or will ensure that the data processor will), in connection with that processing, promptly execute any document (or any amendment to any such document) reasonably proposed in writing by the Employer to record the subject matter and duration of that processing, its nature and purpose, the type of Processed Personal Data and the categories of data subjects for the purposes of article 28(3) of the EU Regulation (EU) 2016/679 or any equivalent provision of any other applicable Privacy Law, and any such document, once executed by the Employer and the Contractor, will be deemed to form part of this Contract (but for information only and without imposing any further obligation or conferring any additional right on either party or any data controller or data processor);
 - 43.3.2 the Contractor will (and/or will ensure that the data processor will):
 - (a) only process the Processed Personal Data; and
 - (b) in particular, only transfer any Processed Personal Data the transfer of which is subject to the applicable Privacy Laws of the European Economic Area or the United Kingdom, respectively, to a country or

territory outside that geographical area, including any disclosure of Processed Personal Data within a country or territory outside that geographical area, or require the Employer to do so as part of its receipt of the *works*,

on the documented instructions of the data controller; and

- (c) at all times have in place technical and organisational measures to protect the Processed Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access which are appropriate to the risks of varying likelihood and severity for the rights and freedoms of individuals that are presented by the processing, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing (Appropriate), including in particular:
 - (i) any specific security measures required by this Contract; and
 - (ii) as and where Appropriate, measures for the pseudonymisation and encryption of Processed Personal Data; the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; the ability to restore the availability of and access to Processed Personal Data in a timely manner in the event of a physical or technical incident; and a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;

43.3.3 give to the Employer such co-operation, assistance and information as it may reasonably request and the Contractor (or its sub-contractor, as the case may be) may reasonably be able to provide, to enable the data controller to comply with its obligations under applicable Privacy Laws and co-operate with the competent authorities in relation to the Processed Personal Data, including, where relevant given the nature of the processing, assisting the Employer:

- (a) by taking appropriate technical and organisational measures, insofar as is possible, to respond to requests from data subjects to exercise their applicable rights under the Data Privacy Laws (but the Contractor will not (and will ensure that its sub-contractor does not) respond to any such data subject request except on the written instructions or with the written consent of the Employer); and
- (b) by ensuring compliance with the Employer's security, data breach notification, impact assessment and data protection or data privacy authority consultation obligations under the Data Privacy Laws, taking into account the information available to the Contractor and/or its sub-contractor;

43.3.4 ensure that all of its employees authorised to have access to (or otherwise to process) the Processed Personal Data have committed themselves to confidentiality on appropriate terms or are under an appropriate statutory obligation of confidentiality;

43.3.5 permit and contribute to all reasonable audits, including inspections, conducted by the Employer (or an auditor appointed by it), as reasonably necessary to demonstrate the Contractor's compliance with this clause 43; and

43.3.6 delete all the Processed Personal Data in its possession or under its control as soon as is practicable after the end of the provision of the relevant *works*.

43.4 The Employer hereby instructs the Contractor to take such steps in the processing of Processed Personal Data on behalf of the data controller as are reasonably necessary to the performance of the Contractor's obligations under this Contract and not otherwise prohibited by this Contract.

43.5 The Contractor will not (and will procure that none of its subcontractors will) make, or require the data controller to make, a transfer of Processed Personal Data outside of the European Economic Area or the United Kingdom (as the case may be) unless the transfer complies with the other requirements of this Contract and either a derogation under the applicable Data Privacy Laws applies or the Contractor implements measures permitting such transfer under the applicable Data Privacy Laws reasonably satisfactory to the Employer.

43.6 The Contractor will ensure that each (if any) sub-contractor processing Processed Personal Data is bound by a written contract binding on it with regard to the data controller and imposing on it obligations which are (at least) equivalent to those imposed on the Contractor by this clause 43. The Contractor will, promptly following a written request from the Employer, provide the Employer with a copy of each contract requested (whether specifically or by category). The Contractor may redact any copy contract to be provided to the Employer under this clause 43.6 so as to remove any commercial terms or other information not relevant to, and the removal of which will not prejudice, the Employer's assessment of the Contractor's compliance with this clause 43.

43.7 Each party agrees that:

43.7.1 the other party acts as a controller in its own right in processing personal data in connection with this Contract; and

43.7.2 it will comply with its obligations under Data Privacy Laws in processing personal data in connection with this Contract.

43.7.3 The Contractor shall procure that its personnel understand that the Employer will act as Data Controller in its own right by holding and processing data relating to them for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Privacy Laws).

43.7.4 The Contractor acknowledges and agrees (and shall procure that its personnel acknowledges and agrees) to the Employer making such information available to those who provide products or services to the Employer such as advisers, regulatory authorities, governmental or quasi-governmental organisations and potential purchasers of the Employer or any part of its business

- 43.7.5 The Contractor shall comply with the provisions of this clause 43, and shall procure that its personnel shall comply, with the Employer's data protection policy and relevant obligations under the Data Privacy Laws and associated codes of practice when processing personal data relating to any employee, worker, customer, supplier, contractor, or agent of the Employer.

44 General

- 44.1 The limitation period under the Contract shall be 12 years from Completion of the works.
- 44.2 If the Contractor is required to use GDEP in the Construction Purchase Order, the Employer will during this Contract change the Gatwick Document Exchange Portal to a Gatwick Meridian Portal (GMP). If the Contractor is required to communicate using the Gatwick Document Exchange Portal under this Contract then the Employer will train the Contractor's personnel on communications using GMP.
- 44.3 A communication shall be sent through the Gatwick Meridian Portal (GMP). Where a communication is sent through GMP, it is served upon its successful submission in the GMP. If the GMP is unavailable due to technical difficulties for more than 6 hours, then a communication shall be by service to the email GALPDMC@gatwickairport.com. A payment certificate or pay less notice may be communicated by email as per clause 14.9. Such a communication of a payment certificate or pay less notice has effect when sent by email to the email address in the Contract Data."
- 44.4 Throughout the Contract:
- a) the word "GDEP" is replaced with the word "GMP".
 - b) References to "EDMS" or "Electronic Document Management System" are replaced by "ECM" or "Enterprise Content Management system"