

## STANDARD TERMS AND CONDITIONS

### 1. DEFINITIONS

The following words and phrases, used in these Conditions, shall have the meanings given below:

Simclad	Simclad Limited
Purchaser	the person, company or organisation with which Simclad is in contract for the execution of the Works and all those for which the Purchaser is responsible or over which it has control
Works	the works expressly described in the Quotation including any variations to those works made or confirmed in writing in any Order Confirmation in accordance with these Conditions.
Period	the period for the execution of the Works described in the Quotation or Order Confirmation including any changes to that period made or confirmed in writing in accordance with these Conditions.
Defects Liability Period	the period following completion of the Works described in the Quotation in which Simclad will repair the Works at no cost to the Purchaser with the exception that damage or fault caused by misuse or physical abuse will be repaired only at the Purchaser's cost.
Order Confirmation	a written confirmation issued by Simclad to the Purchaser detailing any changes agreed between these parties from the Quotation, where such have occurred, or confirming acceptance of any Order placed by the Purchaser on these Standard Terms and Conditions or confirming terms that have been orally agreed between the parties
Quotation	a written quotation provided by Simclad to the Purchaser describing the works to be undertaken, the materials to be supplied, the Period and the Contract Price
Contract Price	the price to be paid to Simclad by the Purchaser and stated in Simclad's Quotation and/or Order Confirmation or as calculated at the fees, rates or prices stated therein.
HGCRA	The Housing Grants Construction & Regeneration Act 1996

### 2. FORMATION OF CONTRACT

No contract shall come into effect until the Purchaser has accepted the Quotation on these Standard Terms and Conditions or Simclad has accepted the Purchaser's Order by the issue of an Order Confirmation, or, in the absence of a Quotation or a Purchaser's Order and following agreement between the parties, Simclad has issued an Order Confirmation and its receipt and agreement thereto has been acknowledged in writing by the Purchaser.

### 3. INFORMATION

The Purchaser shall supply Simclad with all information, drawings, specifications and other documents Simclad may reasonably require to enable Simclad to fulfil its obligations under its Quotation, and/or Confirmation Order, and these Conditions.

### 4. PERIOD

- The Period shall commence from the commencement date stated on the Quotation or Order Confirmation. The Period shall not commence until after receipt of the information to be provided by the Purchaser under clause 3, and
- As regards the Period, Simclad shall be granted by the Purchaser such extension of time as is reasonable for any delay caused by others, or outside the control of Simclad, including but not restricted to force majeure, adverse weather conditions, civil commotion, strikes or other industrial disputes, failure of suppliers to deliver, fuel shortages and any act of default of the Purchaser or others employed by the Purchaser that affects the Works.
- In the event that the Works cannot be commenced or completed within the Period, or goods and materials ordered by Simclad from suppliers cannot be delivered on the dates stated in Simclad's Quotation or Order Confirmation then the Purchaser shall be liable to Simclad for any consequential costs incurred such as, but not restricted to, storage, protection, transport, standing time. The amount of such incurred costs will be added to the Contract Price and paid to Simclad by the Purchaser.

### 5. FREE ISSUE MATERIALS

If the Purchaser requires Simclad to incorporate materials, fittings or instruments to be supplied free by the Purchaser, then such free issue items shall be:

- provided at the locations and times and in the quantities reasonably required by Simclad,
- deemed to be in good condition only if confirmed as such, in writing, by Simclad, following receipt and after having had a reasonable opportunity for inspection; thereafter they will be the responsibility of Simclad as regards loss or damages (subject to clause 6 below) and
- deemed to be fit for the intended purposes; and in the

event that they are not, then the Purchaser will be liable for all costs associated with replacement including Simclad's costs.

### 6. RISK OF LOSS OR DAMAGE

The risk of loss or damage to materials and goods shall pass to the Purchaser immediately following whole or partial installation.

### 7. TRANSFER OF TITLE

Title in any materials and goods supplied by Simclad shall not pass to the Purchaser, notwithstanding that they may have been wholly or partially installed as part of the Works, unless and until the Purchaser has discharged all outstanding indebtedness to Simclad whatsoever.

### 8. INSURANCE AND LIABILITY

Simclad shall indemnify the Purchaser against any liability for injury or damage to any property when caused by its negligence or that of its agents or servants, subject to the following restrictions:

- Simclad's liability for damage shall not exceed £5,000,000 for any one event, or £5,000,000 for the aggregate of all events related to, or arising from the same Works.
- Simclad shall not be liable for indirect or consequential loss arising from such injury or damage

### 9. FLUCTUATIONS

Unless otherwise stated all fees, rates or prices quoted by Simclad are based on prices and costs ruling at the date of the Quotation or Confirmation Order, whichever is the later. In the event of any of the said prices and costs increasing before completion of the Works then Simclad shall be entitled to adjust the fees, rates or prices to be paid by the Purchaser by a reasonable amount in respect of such increase, such adjustment to include an addition for profit and overhead.

### 10. PURCHASER'S FACILITIES AND ATTENDANCE

- Unless otherwise stated the Purchaser shall be responsible for unloading, distribution, storage and hoisting of all goods and materials at the site of the Works delivered by Simclad.
- The Purchaser shall provide at the site of the Works, free to Simclad, the following:
  - water, lighting, power, use of standing scaffold and scaffold required exclusively for the Works, accommodation, toilets and welfare facilities as are required by any legislation, Health & Safety requirements, or as reasonably required by Simclad.
  - all cleaning, removal of rubbish and protection of the Works.
  - free and uninterrupted access to the site of the Works at all reasonable times as required by Simclad.
- An indemnity to Simclad against all claims, loss, damage, costs or expenses incurred by Simclad arising out of any negligence or other act by the Purchaser affecting Simclad's statutory or common laws duties owed to its employers, agents or servants in respect of Health & Safety at Work or any other matter.

### 11. WORKING HOURS

Unless otherwise specifically noted in a Quotation or Order Confirmation all prices offered by Simclad, and all program periods, are based on working hours being between 8.00am and 5.00pm Mondays to Fridays only (excluding Bank or statutory holidays). In the event that Simclad works outside those hours, by reason of agreement to a request in writing, or as a necessary consequence of any act or default by the Purchaser, or of any person, firm or organisation not employed by Simclad, then the additional costs thereby incurred by Simclad shall be added to the Contract Price and paid to Simclad by the Purchaser.

### 12. VARIATIONS

The Purchaser may without invalidating the contract order an addition to, or omission from, or otherwise change, the Works, or may order a change in the sequence, or period of the Works. Any such variation shall be valued by Simclad on a fair and reasonable basis and the amount thereof shall be added to the Contract Price and paid to Simclad by the Purchaser. Wherever possible the value of variations shall be agreed in writing between Simclad and the Purchaser prior to the execution of the variation by Simclad otherwise Simclad's price shall apply until varied by an Adjudicator appointed in accordance with HGCRA. Simclad shall have the right to refuse to accept a variation if it significantly alters the character, or the period for performance, of the Works.

### 13. LOSS AND/OR EXPENSE

If Simclad incurs any loss and/or expense in the execution of the Works or any part thereof due to any act, omission, delay or disturbance caused by the Purchaser the amount of such loss and/or expense shall be added to the Contract Price and paid to Simclad by the Purchaser. As in 12 above, wherever possible the amount of such loss and/or expense shall be agreed in writing between Simclad and the Purchaser but if not agreed within 1 month of Simclad's submission of the amount claimed then Simclad's calculated amount shall apply unless varied by an Adjudicator appointed in accordance with HGCRA.

### 14. PAYMENT

The time for payment of amounts within the periods stated here or in Simclad's quotation or Confirmation Order is of the essence. Unless otherwise stated in Simclad's quotation or Confirmation Order:

- the full value of all goods, materials, labour installation,

testing, etc expended on the Works by Simclad will be invoiced each month to the Purchaser, and

- the Purchaser shall pay to Simclad, not later than 30 days after the date of an invoice, the full value of that invoice, and
- if the Purchaser fails to pay Simclad's invoice in accordance with i) herein then Simclad will be entitled to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998, interest shall be a debt due to Simclad from the Purchaser and shall be added to the Contract Price, and
- a) if the Purchaser fails to make payment in accordance with these Conditions and such failure shall continue for two working days after a notice in writing from Simclad then without prejudice to any other rights or remedies, Simclad may at its absolute discretion immediately suspend the execution of any outstanding work until the Purchaser has made good its default in payment to Simclad, and
- b) Simclad may return to site and remove any items supplied by it which are affixed with bolts or similar connections (and the Purchaser is deemed to have given rights of access to the site to Simclad for this purpose), and
- c) any additional costs which Simclad may incur as a result of such suspension or action shall be added to the Contract Price and paid to Simclad by the Purchaser, and Simclad shall be granted an extension of time for the full period of consequent delay.
- v) no bonds, retentions or discounts shall apply to the contract between Simclad and the Purchaser

### 15. SUB-CONTRACTING OF THE WORK

Simclad shall have the right to sub-let the whole or any part of the Works without reference to the Purchaser; but no such sub-letting shall, however, reduce or otherwise vary the obligations between Simclad and the Purchaser.

### 16. VALUED ADDED TAX

All prices, rates, fees and costs quoted by Simclad are exclusive of Value Added Tax (VAT); which shall be payable in addition.

### 17. HIRE OF LABOUR

Where the services provided by Simclad comprise the supply of labour to the Purchaser, whether at the Purchaser's premises or at any other place of work, all necessary instructions, allocation of work, procurement of goods and materials, programming and supervision to effect the Works will be the sole responsibility of the Purchaser unless expressly stated otherwise in Simclad's quotation or Confirmation Order.

### 18. TESTING AND COMMISSIONING

Where testing and/or commissioning forms part of the Works and there is an express requirement that such tasks and/or commissioning are to be witnessed by the Purchaser, Simclad will give not less than 2 working days notice in writing of its intention to carry out such work and the Purchaser shall arrange to witness that work. If the Purchaser fails to witness any test and/or commissioning after receiving a notice, as above, then Simclad may carry out such testing and/or commissioning at the intended time and all such work shall be deemed to have been done in compliance with the Contract. If the Purchaser fails to attend, following notice, then Simclad may, at its absolute discretion, defer the execution of the testing and/or commissioning until the Purchaser does attend; in such an event Simclad shall be granted an extension of time for the full period of the delay and the related and abortive costs arising therefore shall be added to the Contract Price and paid to Simclad by the Purchaser.

### 19. TERMINATION

If the Purchaser shall be in breach of any of these Conditions and such breach shall continue for two working dates after Simclad has given written notice thereof to the Purchaser, then without prejudice to any other rights and remedies which Simclad may possess Simclad may suspend or terminate the Works forthwith. Upon such termination as aforesaid the Purchaser will be liable to Simclad for any loss or damage suffered by Simclad in connection therewith, including the overhead and profit contribution due to Simclad within the price of any incomplete part of the Works.

### 20. GUARANTEE AND DEFECTS LIABILITY

Without prejudice to the Purchaser's statutory rights Simclad will pass to the Purchaser the benefit of any guarantee Simclad has received in respect of materials and goods supplied by Simclad. Simclad further undertakes to repair or replace (that choice being at the absolute discretion of Simclad) free of charge any defective materials or work where the defect occurs within the 12 months period following completion of the Works; or if the works are completed in sections the completion of the relevant section; except for this undertaking Simclad shall have no liability for any loss whether direct, indirect or consequential. Where beneficial use of the Works, or part thereof, is taken by the Purchaser, the first date of that use will be the start of the Defects Liability Period.

### 21. ADJUDICATION

Disputes between Simclad and the Purchaser concerning the whole or part of the Works fall within the scope of the adjudication provisions of the HGCRA

### 23. PROPER LAW

These Conditions shall be governed by and construed in accordance with the laws of England and Wales.