

## **1 General**

1.1 All supplies of goods and/or services by Hardstaff Barriers (A division of Hill and Smith Ltd) (with company number 01270322) ('HB' or 'the Company') and the party taking delivery of or otherwise purchasing such goods sold and/or hired ('Goods'), and/or receiving performance of such services provided, whether in relation to the supply and/or hire of goods or otherwise ('Services'), by HB ('the Client') are subject to the following terms and conditions which shall apply to the exclusion of any terms or conditions whatsoever whether express, implied by law or otherwise including but not limited to the terms of specification in whole or in part.

1.2 In these conditions:

- (a) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) any phrase introduced by the terms "other", "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the generality of the words preceding or following those terms; and
- (c) a reference to "Schedule" is to the schedule to these terms and conditions.

1.3 All of these conditions shall apply to the supply and/or hire of Goods and the supply of Services except where application to one or the other is specified.

## **2 Advice**

Any advice or recommendation given by the Company or its employees or agents to the Client or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Client's own risk, and accordingly the Company shall, subject to Clause 18.4, not be liable, whether in contract, tort (including negligence or breach or statutory duty), misrepresentation or otherwise, howsoever arising, for any such advice or recommendation which is not confirmed in writing .

## **3 Basis of Contract**

3.1 No quotation or estimate given by the Company shall constitute an offer or tender but shall be deemed to be an invitation to the Client to make an offer only.

3.2 Subject to Clauses 4.3 and 4.6 any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it, unless stated otherwise by the Company in writing. If the quotation is given in a currency other than pounds sterling the applicable exchange rate for the purposes of Clause 5.2 shall be the published rate at which Barclays Bank sells the relevant currency on the date the quotation is given.

3.3 The Client's order for the supply and/or hire of Goods and/or the supply of Services as may be set out in the Client's purchase order form, or the Client's written acceptance of the Company's quotation, or in such form as the Company may determine from time to time ('Order'), constitutes an offer by the Client to purchase and/or hire the Goods and/or purchase the Services in accordance with these conditions.

3.4 No Order shall be deemed to be accepted by the Company until the Company issues written acceptance of the Order or (if earlier) the Company commences provision of the Services, manufacture of the Goods, their appropriation to the Client's order or dispatch of the Goods to the Client. Any Order shall be accepted entirely at the discretion of the Company, at which point and on which date the contract between the Company and the Client for the sale and/or hire of Goods and/or provision of Services incorporating these conditions ('Contract') shall come into existence.

## **4 Prices**

4.1 The price of purchasing the Goods and/or Services ('Price') and/or the payments for the hire of Goods and/or purchase of Services ('Rental Payments') (together, 'Contract Price') shall be the amount(s) set out in the Company's quotation or estimate or, if no amount(s) is/are quoted, the amount(s) set out in the Company's price list published on the date of delivery, or deemed date of delivery, of the Goods or date of performance, or deemed date of performance, of the Services.

4.2 Unless otherwise specified in the quotation, the Contract Price is exclusive of value added tax,

excise duties and import duties where applicable, and all costs or charges in relation to packaging, labelling, carriage, freight, delivery, loading and unloading, collection and dismantling, and insurance, all of which the Client shall pay in addition when it is due to pay the Contract Price.

- 4.3 Notwithstanding Clause 3.2 the Company reserves the right in its absolute and unfettered discretion to vary the Contract Price from that quoted in the event of any variation in the cost of materials, labour, services, interest rates, transport and statutory charges between the date of Contract and the date of despatch.
- 4.4 Where the Contract involves hire of goods, all invoices shall contain an additional amount of 5% of the Contract Price (being the amount to be paid by the Client to the Company for the hire of goods) for damage waiver unless otherwise agreed in writing ('Damage Waiver').
- 4.5 Contract Prices are based on Monday to Friday working day or night (excluding public and bank holidays in England) as defined in the quotation. Contract Prices for weekend working will incur an increase of 20% (Saturday) & 40% (Sunday) on delivery and installation / dismantling and collection prices. Contract Prices for public and bank holiday working will be agreed by the parties prior to any work being undertaken.
- 4.6 Notwithstanding Clause 3.2, where the Contract Price quoted in the Company's quotation or estimate is based on stated production runs or specific delivery periods, the Company reserves the right to vary the Contract Price, should the Client order different quantities from those stated and/or require delivery over a different period.
- 4.7 The cost of any variation or modification in the design, specification, materials or drawings of the Goods or Services, or any development of them requested by the Client after the date of the Contract shall, if such variations or modifications are accepted by the Company, be borne by the Client.
- 4.8 If performance of the Contract is suspended with the written agreement of the Company then the Client shall pay the pro rata Contract Price for Services already carried out, Goods supplied or ordered and any other additional costs incurred by the Company, including storage and insurance.

- 4.9 Rental Payments for rental rates per barrier per week apply to per week or part week of hire.

## 5 Payment

- 5.1 In respect of Goods, the Company shall invoice the Client on or at any time after completion of delivery or deemed delivery at the frequency set out in the Company's quotation or estimate or, if no frequency is stated, as the Company may determine from time to time. In respect of Services, the Company shall invoice the Client on or at any time after the performance of the Services for or on behalf of the Client.
- 5.2 Unless otherwise agreed in writing between a duly authorised representative of the Company and the Client, the Client shall pay all invoices in full and cleared funds without any deduction, or withholding, in pounds sterling within 30 days of the date of the relevant invoice.
- 5.3 Time for payment shall be of the essence.
- 5.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 5.5 All payments payable to the Company under the Contract shall become due immediately:
- (a) if any sum due from the Client to the Company under the Contract or any other contract is not paid on or before the due date for payment; and/or
  - (b) on termination or expiry of the Contract, in whole or in part, despite any other provision of the Contract.
- 5.6 The Client shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Client.
- 5.7 The Company reserves the right to charge the Client interest upon any overdue payment or part thereof at the rate of 4% per annum above the base rate of Lloyds Bank Plc from time to time in force until the date of actual payment.
- 5.8 All retention monies are to be paid in full upon completion of HB work.

## 6 Delivery and collection

- 6.1 Delivery of the Goods shall, where the Contract designates a delivery point in the UK, be to such delivery point, and otherwise be Free Carrier (FCA), Hardstaff Barriers (a division of Hill and Smith Ltd), Hillside, Gotham Road, Kingston-On-Soar Nottingham, NG11 0DF (Incoterms 2010) unless otherwise agreed in writing by the parties. The provisions of Incoterms 2010 shall apply to the Contract, but if there is any conflict between the provisions of Incoterms 2010 and these conditions, then these conditions shall prevail.
- 6.2 Although the Company will endeavour to meet any date or time quoted or given for delivery or collection of Goods or performance of the Services, such date or time is an approximate estimate only. Time for delivery, collection and/or performance shall not be of the essence.
- 6.3 Subject to the other provisions of these conditions (including Clause 18.4), the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery or collection of the Goods or performance of the Services, nor shall any delay entitle the Client to terminate or rescind the Contract unless such delay exceeds 21 days.
- 6.4 Any liability of the Company for non-delivery or non-collection of Goods or non-performance of the Services shall, subject to Clause 18.4, be limited either (at the Company's sole discretion) to replacing (or as necessary removing) the Goods or re-performing the Services within a reasonable time or issuing a credit note at the pro rata Contract Price against any invoice already raised for such Goods or Services. The Company shall have no liability for any failure to deliver the Goods or Services to the extent that such failure is caused due to circumstances beyond its reasonable control, the Client's failure to provide the Company with adequate delivery or site or other instructions for the Goods or Services or any relevant instruction related to the supply of the Goods or Services.
- 6.5 The Company reserves the right to despatch and invoice any part of an order when available.
- 6.6 Where the Goods are to be delivered by instalments each delivery shall constitute a separate contract and any failure by the Company to deliver or any claim by the Client in respect of any one or more instalments shall not entitle the Client to treat the Contract as a whole as repudiated.
- 6.7 Upon receipt of the Goods the Client, its employee or agent shall sign a delivery note provided by the Company. Such delivery note shall be confirmation by the Client to the Company that the Goods have been visually inspected and found to be satisfactory.
- 6.8 Should the Company agree to the Client's request to postpone or cancel a delivery of the Goods or materials for the Services without at least 1 working days' notice (i.e.: a minimum of 1 full working day not including weekends or bank holidays) then the Client agrees to pay for all losses and costs suffered by HB, whether direct or indirect, howsoever arising.
- 6.9 If the Client fails to take delivery of the Goods or materials for the Services within three business days of the Company notifying the Client that the Goods or materials for the Services are ready for delivery, then, except where such failure is caused by a force majeure event under Clause 20 or the Company's failure to comply with its obligations under the Contract (providing such failure is not due to the Client's failure to provide the Company with adequate delivery or site or other instructions for the Goods or Services or any relevant instruction related to the supply of the Goods or Services):
- (a) delivery of the Goods or materials for the Services shall be deemed to have been completed at 9.00am on the third business day after the day on which the Company notified the Client that the Goods or materials for the Services were ready; and
  - (b) the Company shall store the Goods or materials for the Services until delivery takes place, whereupon the Company may charge the Client for all related costs and expenses (including storage and insurance).
- 6.10 If 10 business days after the day on which the Company notified the Client that the Goods were ready for delivery the Client has not taken delivery of them, the Company may, without prejudice to any other claim arising under the Contract, resell, hire to another client or otherwise dispose of part or all of the Goods.

6.11 Goods, once delivered, cannot be returned unless their return is agreed in advance in writing by the Company or the Contract expressly states otherwise.

6.12 Unless otherwise agreed in writing, the Client is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by the Company, the Client shall make those licences and consents available to the Company prior to the relevant shipment.

6.13 The Company shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

## 7 Quality

7.1 Subject to Clauses 7.3, 7.5 and 7.8, the Company warrants that for 12 months from delivery or deemed delivery of the Goods or performance or deemed performance of the Services such Goods and/or Services (or any part thereof) shall:

- (a) conform in all material respects with their descriptions which are included or expressly referred to in the Contract; and
- (b) be free from material defects in design, material and workmanship.

7.2 Where the Goods and/or Services do not comply with Clause 7.1, the Company shall at its sole discretion:

- (a) repair or make good such non-conformance free of charge to the Client; or
- (b) replace such Goods with goods which are in all respects in accordance with their description or re-perform such Services; or
- (c) issue a credit note to the Client in respect of the whole or part of the Contract Price of such Goods or Services as appropriate having taken back such Goods or materials relating to such Goods or Services,

provided that, subject to Clause 18.4, the liability of the Company under this Clause 7 shall in no event exceed the Contract Price of

such Goods or Services (in aggregate) and performance of any one of the above options shall constitute an entire discharge of the Company's liability under Clause 7.1.

7.3 Clauses 7.1 and 7.2 shall not apply unless:

- (a) the Client gives notice in writing to the Company within 7 days of discovery of such non-conformance;
- (b) the Company is given a reasonable opportunity of examining such Goods or materials relating to the Services;
- (c) the Client (if asked to do so by the Company) returns such Goods or materials relating to the Services to the Company's place of business at the Company's cost; and
- (d) the Client has properly and correctly stored, installed and/or used the Goods.

7.4 If the Company elects to replace the Goods or re-perform the Services pursuant to Clause 7.2, the Company shall deliver the replacement Goods to or re-perform the Services for the Client at the Company's own expense at the address to which the defective Goods were delivered and the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in the Client) re-vest in the Company and the Client shall make any arrangements as may be necessary to deliver up to the Company the defective Goods which are being replaced or materials relating to the previously performed Services.

7.5 The Company shall not be liable for the failure of the Goods or Services to comply with the warranty set out in clause 7.1 in any of the following events:

- (a) the Client makes any further use of the Goods after giving notice in accordance with Clause 7.3(a);
- (b) the defect arises because the Client failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

- (c) the defect arises as a result of the Company following any drawing, design, instructions or specification supplied by the Client;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- (e) if the total Purchase Price or relevant Rental Payments for the Goods and/or Services have not been paid by the due date for payment;
- (f) in respect of any type of defect, damage or wear specifically excluded by the Company by notice in writing; or
- (g) the Goods and/or Services differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.6 Except as provided in this Clause 7, and subject to Clause 18.4, the Company shall have no liability to the Client in respect of the failure of the goods to comply with the warranty set out in Clause 7.1.
- 7.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.8 Insofar as the Goods comprise or contain equipment or components which were not manufactured or produced by the Company, the Client shall be entitled only to such warranty or other benefit as the Company has received from the manufacturer.
- 7.9 These conditions shall apply to any repaired or replacement goods supplied by the Company.
- 8 Risk**
- The risk in the Goods shall pass from the Company to the Client on delivery, or deemed delivery, of such Goods, whether the Client is hiring or purchasing the Goods. Any materials required to perform the Services shall be at the risk of the Client from the time such materials are delivered, or deemed to be delivered, to the premises at which the Services are to be performed.
- 9 Title**
- 9.1 Where the Contract involves hire of Goods and notwithstanding delivery and passing of the risk in the Goods pursuant to Clause 8, full legal, beneficial and equitable title to and ownership of such Goods remains with the Company at all times.
- 9.2 Where the Contract involves sale of Goods and notwithstanding delivery and passing of the risk in the Goods pursuant to Clause 8 full legal, beneficial and equitable property in and title to such Goods shall not pass to the Client and shall remain with the Company until the Company shall have received in cash or cleared funds payment in full of the Price of the Goods and all other money payable by the Client to the Company on any other account or under the Contract or any other contract has been received by the Company in cleared funds.
- 9.3 Until the property and title in the Goods passes to the Client pursuant to the provisions of Clause 9.2 hereof the Client shall hold the Goods on a fiduciary basis as bailee of the Company and in this connection shall set aside the goods separately from other goods in the Client's possession and ensure that the Goods are carefully stored and remain clearly identified as the property of the Company.
- 9.4 If at any time before the property and title in the Goods passes to the Client pursuant to the provisions of Clause 9.2 hereof, the Client sells the Goods or any part thereof the proceeds of such sale shall be received and held by the Client in trust for the Company (and if so requested by the Company in writing, in a separate bank account in the names of the Company and the Client).
- 9.5 The Company shall be at liberty at any time before the property and title in the Goods passes to the Client pursuant to the provisions of Clause 9.2 hereof to require the Goods to be returned to it and if the requirement is not immediately complied with by the Client the Company may re-take possession thereof and may enter any premises or sites of the Client or any other premises or sites where the Goods may be for such purpose. Such return or repossession shall be without prejudice to the rights of the Company to recover all sums owing by the Client to the Company and to the Company's rights to claim damages against the Client for the breach of any obligations on the part of the Client arising under the Contract. Any expenses incurred in such return and re-possession of the Goods or any damage

caused to any land and/or site by the Company in exercise of its powers hereunder shall be borne by the Client.

9.6 Until ownership of Goods passes to the Client the Company or any person nominated by it shall be entitled to enter on to the Client's site where such Goods are located from time to time for the purpose of:

- (a) ensuring that the Client has complied with the provisions of Clause 9.3 hereof; and/or
- (b) inspecting all books, accounts, records, documents and papers of the Client for the purpose of determining sums due to the Company by virtue of the provisions of Clause 9.4 hereof.

9.7 Nothing in this Clause 9 shall entitle the Client to return the Goods and/or materials relating to the Services or to delay payment.

9.8 The rights and remedies conferred upon the Company by this Clause 9 are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of the Company under the Contract.

## 10 Hire of Goods

10.1 If the Contract is for the hire of Goods then, unless the Contract expressly states otherwise, the provisions of this Clause 10 shall apply.

10.2 Where applicable, the deposit amount for the hire of Goods shall be payable on the date of the Contract and as set out in the Company's quotation or estimate ('Deposit').

10.3 The Deposit is a deposit against default by the Client of payment of any Rental Payments or any loss of or damage caused to the Goods. If the Client fails to make any Rental Payments in accordance with the Contract, or causes any loss or damage to the Goods (in whole or in part), the Company shall be entitled to apply the Deposit against such default, loss or damage. The Client shall pay to the Company any sums deducted from the Deposit within 10 days of a demand for the same.

10.4 Subject to Clause 10.3, the Deposit (or balance thereof) shall be refundable within 30 days of the end of the period of hire for the Goods set out in the Company's quotation commencing on the time and date or deemed date of delivery of

the Goods ('Rental Period') plus any further term during which the Goods are in the possession, custody or control of the Client ('Risk Period').

10.5 The Goods shall be at the risk of the Client during the Risk Period. Notwithstanding the foregoing, full legal, beneficial and equitable title to and property in the Goods shall at all times remain vested in the Company and the Client shall have no right, title or interest in or to the Goods (save the right to possession and use of the Goods subject to these conditions).

10.6 For the duration of the Risk Period:

(a) the Company may at any time require the Client to deliver the Goods up to the Company and/or recover the Goods if any of the events specified in Clause 19 below shall occur and/or if any sum owed by the Client to the Company under any Contract is not paid on the due date for payment. For the purpose of exercising its rights under this Clause 10.6(a) the Company, its servants or agents together with all necessary and appropriate transport shall be entitled to free and unrestricted entry to the Client's premises and/or all other locations where the Goods are situated;

(b) the Client shall hold the Goods on a fiduciary basis as bailee of the Company;

(c) where appropriate, the Client shall store the Goods for the Company in a proper manner without charge to the Company and ensure that they are stored separately from any other goods and are clearly identified as belonging to the Company. The Company shall (subject to giving reasonable notice) be entitled to examine the Goods in storage at any time during normal business hours; and

(d) the Company shall be entitled to maintain an action against the Client for the Rental Payments, notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to the Client.

10.7 Nothing in this Clause 10 shall entitle the Client to return the Goods and/or materials during the Rental Period or to delay payment.

- 10.8 The rights and remedies conferred upon the Company by this Clause 10 are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of the Company under the Contract.
- 10.9 For the duration of the Contract the Client shall:
- (a) ensure that the Goods are kept and operated in a suitable environment, used only for the purposes for which they are designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Company from time to time;
  - (b) take such steps (including compliance with all safety and usage instructions provided by the Company from time to time) as may be necessary to ensure that the Goods are at all times safe and without risk to health when they are being set, used, cleaned or maintained by a person at work;
  - (c) maintain at its own expense the Goods in good and substantial repair in order to keep them in as good an operating condition as they were on the date of this Contract including replacement of worn, damaged and lost parts, and shall make good any damage to the Goods;
  - (d) make no alteration to the Goods and shall not remove any existing component(s) from the Goods without the prior written consent of the Company, unless the component(s) is/are replaced immediately by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Goods shall vest in the Company immediately upon installation;
  - (e) keep the Company fully informed of all material matters relating to the Goods;
  - (f) keep the Goods at all times at the site at which they were installed and shall not move or attempt to move any part of the Goods to any other location without the Company's prior written consent;
  - (g) permit the Company or its duly authorised representative to inspect the Goods at all reasonable times and for such purpose to enter upon the site or any premises at which the Goods may be located, and shall grant reasonable access and facilities for such inspection;
  - (h) maintain operating and maintenance records of the Goods and make copies of such records readily available to the Company, together with such additional information as the Company may reasonably require;
  - (i) not, without the prior written consent of the Company, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Goods or allow the creation of any mortgage, charge, lien or other security interest in respect of them;
  - (j) not, without the prior written consent of the Company, attach the Goods to any land or building so as to cause the Goods to become a permanent or immovable fixture on such land or building. If the Goods do become affixed to any land or building then the Goods must be capable of being removed without material injury to such land or building and the Client shall repair and make good any damage caused by the affixation or removal of the Goods from any land or building and indemnify the Company against all losses, costs or expenses incurred as a result of such affixation or removal;
  - (k) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Company in the Goods and, where the Goods have become affixed to any land or building, the Client must take all necessary steps to ensure that the Company may enter such land or building and recover the Goods both during the term of this Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Company of any rights such person may have or acquire in the

- Goods and a right for the Company to enter onto such land or building to remove the Goods;
- (l) not suffer or permit the Goods to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Goods are so confiscated, seized or taken, the Client shall immediately notify the Company and the Client shall at its sole expense procure an immediate release of the Goods and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
  - (m) not use the Goods for any unlawful purpose;
  - (n) ensure that at all times the Goods remain identifiable as being the Company's property and wherever possible shall ensure that a visible sign to that effect is attached to the Goods;
  - (o) deliver up the Goods at the end of the Rental Period or on earlier termination of this Contract at such address as the Company requires, or if necessary allow the Company or its representatives access to any site or any premises where the Goods are located for the purpose of removing the Goods; and
  - (p) not do or permit to be done anything which could invalidate the insurances referred to in Clause 10.11.
- 10.10 The Client acknowledges that the Company shall not be responsible for any loss of or damage to the Goods arising out of or in connection with any negligence, misuse, mishandling of the Goods or otherwise caused by the Client or its officers, employees, agents and contractors, and the Client undertakes to indemnify the Company on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Client to comply with the terms of the Contract.
- 10.11 For the duration of the Risk Period the Client shall, at its own expense, obtain and maintain the following insurances:
- (a) insurance of the Goods to a value not less than their full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing;
  - (b) insurance for such amounts as a prudent owner or operator of the Goods would insure for, or such amount as the Company may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Goods; and
  - (c) insurance against such other or further risks relating to the Goods as may be required by law, together with such other insurance as the Company may from time to time consider reasonably necessary and advise to the Client.
- 10.12 All insurance policies procured by the Client shall be endorsed to provide the Company with at least 1 months' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Company's request name the Company on the policies as a loss payee in relation to any claim relating to the Goods. The Client shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 10.13 The Client shall give immediate written notice to the Company in the event of any loss, accident or damage to the Goods arising out of or in connection with the Client's possession or use of the Goods.
- 10.14 If the Client fails to effect or maintain any of the insurances required under this Contract, the Company shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Client.
- 10.15 The Client shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Company and proof of premium payment to the



- Company to confirm the insurance arrangements.
- 10.16 This Contract shall automatically terminate if the Goods are, in the Company's sole opinion, damaged beyond repair, lost, stolen, seized or confiscated.
- 10.17 Upon termination of this Contract, howsoever caused:
- (a) the Company's consent to the Client's possession of the Goods shall terminate and the Company may, by its authorised representatives, without notice and at the Client's expense, retake possession of the Goods and for this purpose may enter the any premises at which the Goods are located; and
- (b) the Client shall pay to the Company on demand:
- (i) the pro rata Rental Payments for all work done, materials used and Goods delivered up to and including the date of termination and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to Clause 5.7; and
- (ii) any costs and expenses incurred by the Company in recovering the Goods, repairing any damage, impairment or loss to the Goods, and/or in collecting any sums due under this Contract (including any storage, insurance, repair, transport, legal and remarketing costs).
- 10.18 Upon termination of this Contract pursuant Clause 19, any other repudiation of this agreement by the Client which is accepted by the Company or pursuant to Clause 10.16, without prejudice to any other rights or remedies of the Company, the Client shall pay to the Company on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Rental Period.
- 10.19 The sums payable pursuant to Clause 10.18 shall be agreed compensation for the Company's loss and shall be payable in addition to the sums payable pursuant to Clause 10.17(b). Such sums may be partly or wholly recovered from any Deposit and/or Damage Waiver.
- 11 Services**
- 11.1 If the Contract is for, or includes, Services to be performed by the Company, then, unless the Contract expressly states otherwise, the provisions of this Clause 11 shall apply.
- 11.2 Where the Company is to perform Services at a site or premises which are not in the control of the Company, the Client shall procure safe access to the premises and the provision of adequate power, lighting, heating and other such facilities, supplies, materials or equipment for the Company's employees or agents in accordance with the demands of any applicable laws and as the Company shall reasonably require.
- 11.3 The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 11.4 The Company shall provide the Services subject to the terms and conditions contained within the Schedule.
- 11.5 Performance of the Services by the Company is subject to and based on a mutually agreeable programme for the Services.
- 11.6 It will be the responsibility of the Client (unless the Company agrees otherwise in writing), to comply with all its obligations in the Schedule and to ensure:
- (a) adequate and accurate foundations, pad stones, holding down bolts to columns and similar items (being properly cast into the concrete or other material using taper boses or similar means to ensure the bolts are loose for alignment purposes) sufficient to

- support or hold the Company's structures are provided prior to the Company's arrival on site;
- (b) the Company, its employees, agents, consultants and subcontractors, have access to the Client's premises, office accommodation and other facilities (including but not limited to welfare facilities) as reasonably required by the Company to provide the Services;
- (c) provision to the Company of such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (d) its premises are prepared for the supply of the Services;
- (e) it complies with all applicable laws and any relevant anti-bribery and anti-slavery legislation;
- (f) it shall obtain and maintain all necessary licences, permissions, and consents which may be required for the Services before the date on which the Services are to start, including but not limited to permits to break ground;
- (g) it keeps and maintains all materials, equipment, documents and other property of the Company ("Company Materials") at the Client's premises in safe custody at its own risk, it maintains the Company Materials in good condition until returned to the Company, and does not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation;
- (h) it reinstates all anchor holes;
- (i) it clearly marks all overhead obstructions with blue cones (or other system, agreed in writing) by the Client and provide GS6 (avoiding danger from overhead power lines)
- information to the Company prior to any Services commencing on site;
- (j) it identifies all known underground services, apparatus, or artificial obstructions and ensures they are clearly visible at night and be uncovered or removed as deemed necessary to allow the Company to undertake the Services;
- (k) provision of all relevant COSHH data to the Company prior to Services commencing on site;
- (l) it has undertaken all site setting out;
- (m) a minimum 7-hour uninterrupted working window for each shift required to perform the Services;
- (n) provision of all temporary traffic management systems in accordance with chapter 8 of the Traffic Signs Manual (2016) including the necessary safety zones and working space to facilitate the safe installation and removal of Goods and the performance of Services;
- (o) firm and accurate building lines, levels and positions are located and details given to the Company when it is ready to commence erection;
- (p) all necessary scaffolding and other works and all necessary builder's works (including works of cutting away and making good) are provided; and
- (q) the Client will off load and store free of cost to the Company all Goods and materials if the Company has no servants or agents employed at the site at the time of delivery.

- 11.7 The Services will be deemed to be completed and the relevant element of the Contract Price to be due and payable:
- (a) when the Company issues a written notice to the Client confirming such completion; or
  - (b) if the Company is available to perform the Services but is prevented from doing so by reason of:
    - (i) the lack of relevant assistance from the Client (such as lack of availability of test components or parts from the Client or any failure by the Client to comply with its obligations under Clause 12); and/or
    - (ii) the condition of the Client's premises or the site at which the Services are to be provided and/or the facilities at, or the services available therein, at the time agreed for the provision of the Services.
- 12 **Delivery, Installation and dismantling of goods**
- 12.1 Any delays caused by factors under the control of the Client which prevent HB from carrying out works as planned may result in additional charges to cover the costs incurred by HB as a result, including standing time.
- 12.2 For TVCB installation, HB will require a clear, level hard width of road of at least 6.5m to offload barriers and a clear, level hard width of road of at least 4.0m to place barriers with the Company's fork trucks. For THVCB installation, the above widths will increase to at least 8.0m and at least 5.0m respectively.
- 12.3 HB will require a minimum safety zone, as specified in Chapter 8 of 1.2m, on the outside of the line of barriers, to protect the Company's operatives fixing the bolts, together with adequate working space.
- 12.4 All traffic management shall be the Client's responsibility unless clearly agreed in writing by the parties prior to commencement of the relevant Services.
- 12.5 HB requires the exact line to which the barriers are to be placed, along with the start/finish points and any setback required at the start/finish flares, to be clearly marked by the Client on the road surface. Please note HB does not undertake any setting out.
- 12.6 The Contract allows for bolting barriers together but not for fixing the three barriers at the end of the run, to the road surface, or for removing these fixings prior to uplift. Should HB agree to include this in the Company's Services it shall provide written confirmation of the same, provided that making good the road surface following removal will be the responsibility of the Client.
- 12.7 The Contract does not include supply or installation of reflective traffic studs on barriers unless clearly agreed in writing prior to commencement of the Contract.
- 12.8 All lighting for loading/offloading and installation/collection is to be provided by the Client.
- 12.9 HB has encountered instances where the scarf joint nuts have loosened under vibration from traffic, works vehicles and operations. HB therefore recommends the Client periodically checks that the nuts retain the correct torque. For information, HCD calls for a torque of between 60 Nm and 80 Nm. However, the bolt can accept a recommended torque of 185Nm. HB does not carry Third Party Airside Liability insurance for working at airports and therefore HB needs to be covered by the Client's policy (any policy excess to be paid by the Client) and any Services are quoted on that basis.
- 12.10 It is the Client's responsibility to ensure that the order and information contained in any quotation or specification is accurate and correct.

### 13 **Entire agreement**

This Contract constitutes the entire agreement between the parties concerning its subject

matter, and supersedes any previous accord, understanding or agreement, express or implied. Each party confirms that it has not relied upon any warranty, statement, promise or representation not recorded in this Contract inducing it to enter into this Contract. Each party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind the Contract which it might otherwise have had in relation to them.

#### **14 Intellectual property rights**

All intellectual property rights in all works, Goods, Services or supplies provided under this Contract or otherwise shall be owned by HB. Nothing in the Contract shall be deemed to have given the Client a licence or any other right to use any of the intellectual property rights of HB.

#### **15 Confidential information**

15.1 Each party shall treat the Contract and any information it may have obtained or received in relation thereto or arising out of or in connection with the performance of the Contract or its negotiation or relating to the business or affairs of the other as private and confidential and neither party shall publish or disclose the same or any particulars thereof without the prior written consent of the other or as may be permitted under the later provision of this Clause 15.

15.2 The obligations expressed in Clause 15.1 above shall not apply to any information which:

- (a) is or subsequently comes into the public domain otherwise than by breach of this Clause 15;
- (b) is already in the possession of the receiving party without an accompanying obligation of confidentiality;
- (c) is obtained from a third party who is free to divulge the same; or
- (d) is independently and lawfully developed by the recipient or its sub-

contractor outside the scope of the Contract.

15.3 So far as it may be necessary for the performance of the Contract or for the operation and maintenance of the subject matter of the Contract each party may divulge any information to be kept confidential under Clause 15.1 to its employees, agents, professional advisers and sub-contractors on a "need to know" basis but undertake that it will take all steps necessary to ensure compliance by such employees, agents, professional advisers and sub-contractors with the obligations as to confidentiality expressed in this Clause 15, including without limitation incorporating such clauses into its own contracts with such persons, and will be responsible to the other party for any failure by any employee, agent, professional adviser or sub-contractor to comply with such obligations whether such employee, agent, professional adviser or sub-contractor was aware of them or not.

15.4 Both parties shall ensure that they, their employees, agents and sub-Contractors shall observe the requirements of the Data Protection Act 1998 and any amendments or revisions thereto in the provision and use of the subject matter of the Contract and personal data processed under it and shall comply with any request made or direction given to the other which is directly due to the requirements of such Act.

15.5 On the conclusion or termination of the Contract both parties shall cease to use all copies of confidential information obtained from the other except in so far as the law requires the information be retained in which event it shall be kept until such period is over and in any event kept strictly confidential under the provisions of this clause.

15.6 The obligations relating to confidentiality shall continue notwithstanding termination of the Contract until such time as the information is no longer confidential in nature.

#### **16 Health and safety**

The Client agrees to pay due regard to any information supplied by the Company relating to the use for which the Goods or product of the Services are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned,

serviced or maintained by any person, and the Client represents, warrants and undertakes to take such steps as may be specified by such information or otherwise necessary to ensure that as far as is reasonably practicable the Goods will be safe and without risk to health at all times as mentioned above.

## 17 Compliance

17.1 The Client shall comply with all relevant anti-corruption legislation in connection with the Contract and the Company's business and shall immediately notify the Company if it discovers or suspects that any of its officers, directors, employees or representatives are acting or have acted in a way which violates such legislation.

17.2 The Client acknowledges that the Company has a code of responsible business: The Hill & Smith Holdings PLC Code of Business Conduct ('HS Code of Conduct'). The HS Code of Conduct together with the Company's Anti Bribery and Corruption Policy ('HS ABC Policy') are available at [www.hsholdings.co.uk](http://www.hsholdings.co.uk) and the Client shall, at all times, conduct, and procure that its officers, directors, employees and/or representatives conduct, business ethically and in accordance with the relevant provisions of the HS Code of Conduct and the HS ABC Policy. This Clause 17 shall apply whether or not the Client is acting pursuant to the Contract or its relationship with the Company.

17.3 The Client agrees that it must be able to demonstrate its compliance with the requirements referred to in this Clause 17 at the request of and to the satisfaction of the Company, which includes the Company having the right to inspect any site involved in work for the Company. If the Client fails to comply with this Clause 17, the Company shall be entitled, in its sole discretion, to terminate this Contract and any other contracts between the Client and the Company without penalty to the Company, and the Client shall indemnify the Company in full for any losses suffered by the Company as a result of such termination.

## 18 Limitation of liability

18.1 The Client must always rely on its own skill and judgement and recognise good civil engineering practice in relation to the Goods and Services and shall satisfy itself that any Goods and/or Services specified are suitable for the Client's intended purpose.

18.2 Subject to Clauses 6, 7.2 and 7.8, the following provisions set out the entire liability of the Company whether in contract, tort (including negligence or breach or statutory duty), misrepresentation or otherwise, howsoever arising (including any liability for the acts or omissions of its employees, agents and sub-contractors), to the Client in connection with the Contract.

18.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

18.4 Nothing in these conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

18.5 Subject to Clauses 6.4, 7.2, 7.8, 18.4 and 18.7, the Company's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising out of or in connection with the performance or contemplated performance of the Contract shall be limited to 120% of the Contract Price paid or payable to the Company.

18.6 Each party agrees that the Contract Price is set by the Company taking into account the limitation of the Company's liability as set out in these conditions. Each party agrees that the limitation of the Company's liability as set out in these conditions is reasonable

18.7 The Company shall not be liable to the Client for:

- (a) any pure economic loss, loss of profit, loss of business, loss of revenue, loss of anticipated savings or depletion of goodwill, in each case whether direct, indirect or consequential; or

- (b) any claims for indirect, special or consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 19 Termination

19.1 The Company shall have the right to terminate this Contract forthwith on the occurrence of any of the following events:

- (a) non-compliance by the Client with the Company's payment terms set out in Clause 5;
- (b) the issue of a petition to wind up or for an administration order in relation to the Client.
- (c) the appointment of a receiver in relation to any property or asset of the Client.
- (d) the appointment of an administrative receiver over the Client or its undertaking.
- (e) the Client ceasing to trade or becoming insolvent or the passing of a resolution for the voluntary winding up of the Client;
- (f) the issue of a petition for bankruptcy order or if the Client shall make or offer to make any arrangement or composition with its creditors or if a statutory demand is served under the Insolvency Act 1986 or any statutory modification or re-enactment thereof or if a Trustee is appointed in relation to the Client or if any distress or execution shall be levied upon the property or assets of the Client or on the dishonour of any cheque or negotiable instrument drawn by the Client; or
- (g) the Company suspects that there has been a breach, or there has been a breach, of any of the provisions of Clause 17.

19.2 If this Clause 19 applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries of Goods, or performance of Services, under the Contract without any liability to the Client, and if any Goods have

been delivered, or any Services performed, under any Contract between the Company and the Client but not paid for, the pro rata Contract Price shall immediately become due and payable for all work done, materials used and Goods delivered up to and including the date of terminate, notwithstanding any previous agreement or arrangements to the contrary.

## 20 Force Majeure

20.1 For the purpose of the Contract the term Force Majeure shall mean:

- (a) war and other hostilities (whether war be declared or not) invasion, terrorist activity, act of foreign enemies, mobilisation, requisition or embargo
- (b) rebellion, revolution, insurrection, military or usurped power or civil war
- (c) riot, commotion or disorder
- (d) act of God, epidemic, pandemic, earthquake, flood, fire or other natural physical disasters
- (e) a general industrial dispute not limited to the employees of HB or the employees of any of its sub-contractors or sub-suppliers
- (f) compliance with any law or governmental order, rule, regulation or direction
- (g) inability to obtain materials or labour, power or machinery breakdown or failure.

20.2 If either party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations, then he shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event.

20.3 Neither party shall be considered to be in default of its obligations under the Contract (except where such obligations arise under Clause 5) to the extent that it can establish that the performance of such obligations is prevented by any circumstance of Force Majeure which arises after the date of the Contract and which was not foreseeable at the date of the Contract.

- 20.4 If the performance of the obligations of either party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period less than 30 days, then during that period the Contract shall be considered as suspended. Upon the ending of the Force Majeure event the contractual obligations of the parties shall be

reinstated with such reasonable modifications to take account of the consequences of the Force Majeure event as may be agreed between the parties.

20.5 If performance of the obligations of either party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 6 consecutive months then the Contract may be terminated by either party and, subject to Clause 20.6 below, neither party shall be liable to the other as a result of such termination.

20.6 If the Contract is so terminated, then the Client shall pay to HB the pro rata Contract Price for all Goods and Services supplied and materials used by the Company up to the actual date of such termination. Subject to Clause 18.4, the Company shall not be liable for any direct, indirect or consequential or special loss or damage suffered by the Client, howsoever arising, as a result of the Company's inability to perform its obligations under the Contract due to circumstances beyond its reasonable control.

## **21 Assignment and subcontracting**

21.1 The Client shall not assign the Contract or any of its rights or obligations thereunder without first having received the written approval of HB and payment of an administration charge of one hundred and fifty pounds (£150).

21.2 Until written approval is provided by HB and the administration charge received by HB this Contract remains in force with the Client.

21.3 The Company may assign the Contract or any part of it to any person, firm or company.

## **22 Notices**

22.1 Any notice or other communication which either party is required by the Contract to serve on the other party shall be sufficiently served if sent to the other party at its address as specified in the Contract either (a) by hand; (b) by registered or first class post or special or recorded delivery or (a) by electronic mail transmission confirmed by registered, first class post or recorded delivery within 24 hours of transmission.

22.2 Notices are deemed to have been served as follows: delivered by hand; on the day when they are actually received, sent by post, special or recorded delivery; two working days' after

posting, sent by electronic mail; on the day of transmission if transmitted before 16.00 hours on the working day, but otherwise 09.00 hours on the following working day, provided in each case that the required confirmation is sent.

## **23 Waiver**

A waiver of any right or remedy under the Contract or law is only effective if given in writing. Any failure or delay by HB to insist at any time upon the performance of any of the terms, provisions or undertakings of the Client contained in the Contract or to exercise any rights thereunder shall not constitute or be construed as a waiver thereof or a relinquishment of the rights of HB to require the future performance of any such term, provision or undertaking but the obligation of the Client with regard to the same shall continue in full force and effect.

## **24 Severance**

No clause, sub-paragraph or their relevant parts in this Contract may be held to be unenforceable or void except for the judgement of a court of competent jurisdiction. Should any clause, sub-paragraph or part thereof be so held to be unenforceable or void the remaining clauses, sub-paragraphs and their relevant parts shall remain in full force and effect to the extent that they are capable of remaining operative having taken account of the said court's judgement.

## **25 No partnership**

The parties are not in partnership with each other, nor are they agents of each other.

## **26 Third parties**

26.1 Subject to Clause 26.2, a person who is not a party to this Contract may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 ("the Act"), unless otherwise provided in this Contract.

26.2 The Company and any member of its group may enforce the provisions of this Contract subject to and in accordance with Clause 26.3.

26.3 Where any clause of this Contract entitles any person to enforce any term of this Contract under the Act, the parties reserve the right to terminate, rescind, or agree any variation,



waiver or settlement under this Contract without the consent of that person.

Trading address:

Hardstaff Barriers (a division of Hill and Smith Ltd)  
Hillside  
Gotham Road  
Kingston On Soar  
Nottinghamshire NG11 0DF

## 27 Variation

No amendment or variation of any of these terms and conditions shall be valid unless expressly agreed in writing by a duly authorised representative of the Company.

Email:  
Telephone:  
Web:

enquiries@hardstaffbarriers.com  
0115 983 2304  
www.hardstaffbarriers.com

## 28 Governing law and jurisdiction

28.1 The Contract and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England.

28.2 If the Client is a company registered and/or domiciled in the European Union then all disputes or claims arising out of or relating to the Contract shall be subject to the exclusive jurisdiction of the English Courts, to which the parties irrevocably submit.

28.3 If the Client is a company registered and/or domiciled outside of the European Union then all disputes or claims arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such rules. Such arbitration shall take place in the English language in London, England. The seat of the arbitration shall be in London, England.

28.4 The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Conditions or the Contract.

## 29 Language

The Contract is drafted and entered into in the English language. All amendments to the Contract and all other documents provided under or in connection with the Contract shall be in the English language. If the Contract, or any documents provided under or in connection with the Contract, are translated into any other language, the English language version shall prevail.

Reference: Terms and conditions June 2019

## Schedule

### Assumptions & Liabilities

(a) Inclement weather is at the Client's risk. If the planned implementation of traffic management or a planned amendment to traffic management is cancelled by the Client with less than 24 hours' notice, the Company shall be reimbursed the entire cost of its planned resource for its Services that have had to be cancelled, including all profit elements of such Services.

(b) Cancellation of planned Services must be notified to the Company in writing and will be charged as follows; in excess of 24 hours' notice prior to commencement of the Services - no charges will apply. Less than 24 hours' notice prior to the commencement of the Services, the Company shall be reimbursed the entire cost of its planned resource for its Services that have had to be cancelled, including all profit elements of such Services.

(c) The Company shall exercise due care and attention when placing, relocating, and removing temporary safety barrier, including taking measures to avoid damage to surfacing resulting from such Services. This obligation shall apply to new and existing surface courses. The Company is not responsible for damage to the surface course resulting from the imposition of the static load imposed by the temporary safety barrier over a period of time.

(d) The Company has not allowed for protection of the road surface where temporary barriers are installed. The Client acknowledges that temporary barriers should not be installed on new road surfacing without the provision of rubber pads; which are not allowed for in the Price.

(e) Costs for rectifying damage caused by the Client or third parties to the Goods, including the removal of paint, shall be the responsibility of the Client.

(f) If the value of the Services instructed (by reference to the measured rates in the Company's quotation) for a site visit is less than the minimum site visit charge set out in the Company's quotation, then the minimum site visit charge shall apply.

(g) Rental is charged for each item of the Goods on a daily basis, which includes the day of installation and the day of removal.

(h) The minimum rental period is as per the Company's quotation.

(i) The minimum width required for Services to be performed is as per the Safe Systems of Works information provided by the Company.