

## I. CONDITIONS OF ORDER

### 1. DEFINITIONS

In this Agreement the following expressions have the following meanings and the Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

"Affiliate" means: in relation to Balfour Beatty, a Balfour Beatty Affiliate (other than Balfour Beatty); and in relation to the Supplier, a Supplier Affiliate;

"Agreement" means the Clauses together with the Purchase Order;

"Balfour Beatty" has the meaning given to it on the Purchase Order;

"Balfour Beatty Affiliate" means Balfour Beatty plc or any person which is from time to time controlled by Balfour Beatty plc and for this purpose a person is controlled or operated by Balfour Beatty plc if Balfour Beatty plc, either directly or through one or more intermediaries, beneficially owns shares (or their equivalent) carrying the majority of votes at a general meeting of shareholders (or its equivalent) of the person;

"Balfour Beatty Data" means all Data (including Balfour Beatty Personal Data), information, text, visual or graphic representations and other materials in any medium or format whether electronic, tangible or otherwise) howsoever created or stored and which are provided to or accessed by the Supplier or its subcontractors by or at the direction of Balfour Beatty; or which the Supplier or its subcontractors create, collect, process, store, generate, or transmit in connection with this Agreement;

"Balfour Beatty Group" means all of the Balfour Beatty Affiliates;

"Balfour Beatty Materials" means any material owned by Balfour Beatty and used by the Supplier pursuant to this Agreement (howsoever created or stored), internal guidelines, technical documentation and operating manuals, correspondence, application forms, literature and policy statements;

"Balfour Beatty Personal Data" means Personal Data in respect of which a Balfour Beatty Affiliate is the Data Controller;

"Balfour Beatty Policies" means the policies, procedures, standards and regulations in place from time to time within Balfour Beatty and at each of the Balfour Beatty premises including in relation to security, health and safety, information technology, conduct and otherwise;

"Business Day" means a day (other than a Saturday or Sunday) on which banks in London and Edinburgh are normally open for general business;

"Charges" means the charges payable by Balfour Beatty in consideration for the provision of the Goods and/or Services as set out on the Purchase Order;

"Clauses" means the standard terms and conditions set out in this document;

"Confidential Information" means all information obtained from the other party which by its nature should be treated as confidential information or is marked as such which may come into its possession or into the possession of its employees, agents or subcontractors as a result of or in connection with this Agreement and any and all information which may be derived from such information;

"Data", "Data Controller" and "Personal Data" have the meaning as set out in the DPA;

"Data Protection Legislation" has the meaning given in Clause 12.3;

"Disclosing Party" has the meaning set out in Clause 13.1;

"DPA" means the Data Protection Act 1998;

"Effective Date" means the order date as set out on the Purchase Order;

"Goods" means those goods to be supplied to Balfour Beatty by the Supplier pursuant to this Agreement including the goods as set out in the Purchase Order;

"Good Industry Practice" means, in relation to any undertaking and any circumstances, the exercise of the degree of skill, care, prudence and foresight which would be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances;

"Intellectual Property Rights" means patents, trade marks, services marks, copyrights, topography rights, database rights, design rights, trade secrets and rights of confidence and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world, whether or not any of them are registered and including applications for registration of any of them;

"Losses" means all losses, liabilities, costs (including legal costs), charges, expenses, actions, procedures, claims, demands and damages (including the amount of damages awarded by a court of competent jurisdiction or paid pursuant to a settlement);

"Purchase Order" means the order form attached to the front of this Agreement and any subsequent orders in written form and accepted by Balfour Beatty;

"Recipient" has the meaning set out in Clause 13.1;

"Services" means those services to be provided to Balfour Beatty by the Supplier pursuant to this Agreement including the services set out on the Purchase Order;

"Supplier" means the supplier specified on the Purchase Order;

"Supplier Affiliate" means any person which is from time to time directly controlled by the Supplier and for this purpose a person is directly controlled by the Supplier if the Supplier beneficially owns shares (or their equivalent) carrying the majority of votes at a general meeting of shareholders (or their equivalent) of the person;

"Supplier Materials" means any material owned by the Supplier and used by Balfour Beatty pursuant to this Agreement (howsoever created or stored) including internal guidelines, technical documentation and operating manuals, correspondence, application forms, literature and policy statements; and

"Term" has the meaning as set out in the Purchase Order or as deemed by Clause 3.1.1 Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.

1.2 Reference to "parties" means the parties to this Agreement and references to "a party" mean one of the parties to this Agreement.

1.3 In the event and only to the extent of any conflict between the Clauses and the Purchase Order, the Clauses shall prevail.

1.4 References to the words "include(s)" or "including" shall be construed without limitation to the generality of the preceding words.

1.5 The rights and remedies of Balfour Beatty described in this Agreement shall be in addition and without prejudice to its other rights and remedies under this Agreement and at law.

### 2. BASIS OF PURCHASE

2.1 The Agreement represents the entire agreement between the Supplier and Balfour Beatty as to the terms upon which the Goods and/or Services shall be supplied and delivered. No variation to the Purchase Order or to these Clauses shall be binding unless agreed in writing between the duly authorised representatives of Balfour Beatty and the Supplier.

### 3. TERM

3.1 This Agreement shall take effect on the Effective Date for the Term, unless and until terminated earlier in accordance with the terms of this Agreement.

3.2 If a Purchase Order does not specify a Term, the Term shall be deemed to expire when the Supplier has complied with all of its obligations under this Agreement.

### 4. THE GOODS AND SERVICES

4.1 The Supplier shall provide the Goods and/or Services to, and shall perform its other obligations under this Agreement for the benefit of Balfour Beatty.

4.2 In performing its obligations (including the provision of the Goods and/or Services) under this Agreement, the Supplier shall notify Balfour Beatty as soon as it is aware of any potential or actual delays or obstacles to the performance of any of the Supplier's obligations.

4.3 Balfour Beatty shall not be in breach of this Agreement, nor shall it be liable to the Supplier, for failure to perform its obligations under this Agreement if, and to the extent that, such failure directly or indirectly results from the Supplier failing to perform any of its obligations under this Agreement or is caused by any negligent, tortious or unlawful act or omission of the Supplier, its agents or subcontractors.

4.4 Balfour Beatty reserves the right to reject incomplete deliveries and to return excess quantities at the Supplier's expense.

4.5 The Goods shall be at risk of the Supplier until delivery to Balfour Beatty at the place of delivery specified in the Purchase Order, or as otherwise specified by Balfour Beatty.

4.6 Ownership of the Goods shall pass to Balfour Beatty on completion of delivery (including off-loading) in accordance with the Purchase Order, except that if the Goods are paid for before delivery ownership shall pass to Balfour Beatty once payment has been made.

4.7 Goods found to be defective or of inferior quality will be rejected and returned for rectification or replacement at the expense of the Supplier. Any additional expenditure reasonably incurred by Balfour Beatty in obtaining other Goods in replacement shall be paid by the Supplier to Balfour Beatty. All Goods shall be new, unless Balfour Beatty has otherwise agreed in writing.

### 5. CHARGES AND PAYMENT

5.1 Balfour Beatty shall pay the Charges relating to the Goods and/or Services in accordance with this Clause 5 and the Purchase Order.

5.2 Unless otherwise stated in the Purchase Order, payment of invoices shall be made within 30 days of receipt of a valid invoice for the Goods and/or Services provided in accordance with the Purchase Order.

5.3 Balfour Beatty reserves the right to set off any amount at any time owing to it by the Supplier against any amount payable by it to the Supplier under the Agreement.

5.4 Except where otherwise stated, the Charges are exclusive of value added tax.

### 6. VARIATION TO CHARGES

6.1 Charges shall be fixed unless otherwise agreed in writing by the parties.

6.2 The price stated on the Purchase Order shall be inclusive of all delivery costs unless otherwise stated in writing.

### 7. DELIVERY REQUIREMENTS

7.1 The delivery of the Goods and/or Services shall be commenced, carried out and completed in accordance with the requirements stated in the Purchase Order. Where such requirements are not so stated, delivery/supply shall be in accordance with any programme agreed between Balfour Beatty and the Supplier or, in the absence of such programme, in accordance with the reasonable directions of Balfour Beatty. Time is of the essence in relation to the date and rate of supply of the Goods and/or Services.

### 8. RETURNABLE ITEMS

8.1 Any items upon which the Supplier charges a deposit shall be collected by the Supplier at the Supplier's cost, within 14 days of written notification by Balfour Beatty that such items are ready for collection. Should the Supplier fail to collect such items or credit Balfour Beatty with such deposit Balfour Beatty may set off in accordance with clause 5.3 any deposit previously paid and dispose of the items as Balfour Beatty may see fit.

### 9. COMPLIANCE WITH LAW AND REGULATION

9.1 The Supplier shall comply with the Balfour Beatty Policies that are notified to it by Balfour Beatty from time to time.

9.2 The Supplier shall comply with all applicable laws and regulations in performing its respective obligations under this Agreement, and the Supplier shall ensure that at all times the Goods and/or Services comply with all applicable laws and regulations.

### 10. INTELLECTUAL PROPERTY

10.1 All Intellectual Property Rights belonging to Balfour Beatty prior to the Effective Date will remain vested in Balfour Beatty. For the avoidance of doubt any Intellectual Property Rights belonging to a Balfour Beatty Affiliate shall remain vested in that Balfour Beatty Affiliate and Balfour Beatty shall be entitled to enforce any rights under this clause 10 on behalf of and for the benefit of the Balfour Beatty Group.

10.2 All Intellectual Property Rights in any reproductions, enhancements, replacements, amendments and/or modifications to all or any part of the Balfour Beatty Materials will vest in Balfour Beatty on their creation.

10.3 All Intellectual Property Rights belonging to the Supplier prior to the Effective Date will remain vested in the Supplier.

10.4 The Supplier hereby grants to Balfour Beatty a non-exclusive, non-transferable, royalty-free licence to use and reproduce the Supplier Materials in order to receive the Services.

10.5 The Supplier warrants and represents that there are no rights in addition to those granted under this Agreement that are required for Balfour Beatty to have quiet enjoyment of the Goods.

10.6 The Supplier shall procure for Balfour Beatty a non-exclusive, non-transferable, royalty-free licence to use, reproduce, enhance, replace, amend or modify any Intellectual Property Rights which are created by any subcontractor of the Supplier in the performance of its obligations under the respective sub-contract.

10.7 All Intellectual Property Rights arising as a result of or as part of the provision of the Services (including any Intellectual Property Rights embodied in the deliverables delivered as part of the Services) will vest in Balfour Beatty upon their creation. The Supplier hereby assigns to Balfour Beatty all existing and future Intellectual Property Rights in the deliverables and all materials embodying such rights to the fullest extent permitted by law.

### 11. INDEMNITIES

11.1 The Supplier will indemnify and keep fully and effectively indemnified Balfour Beatty on demand from and against any and all claims made against Balfour Beatty as a result of or in connection with:

11.1.1 a claim alleging that the use of the Goods and/or Services permitted under this Agreement infringes the Intellectual Property Rights of a third party; or

11.1.2 defective workmanship, quality or materials in or in relation to the Goods; or

11.1.3 any liability, loss, damage, injury, cost or expense to the extent caused by, relating to or arising from the Goods or Services or as a consequence of a direct or indirect breach, negligent performance or failure or delay in performance of the Agreement by the Supplier or the Supplier's personnel, and such indemnities will include all losses of any nature incurred by Balfour Beatty directly or indirectly to the extent arising as a consequence of or in connection with such claim. The indemnities in this clause shall remain in full force and effect notwithstanding the termination or expiry of this Agreement.

### 12. DATA SECURITY AND DATA PROTECTION

12.1 The Supplier shall ensure that any system on which the Supplier holds Balfour Beatty Data, is secure and ensures complete data integrity in accordance with Good Industry Practice.

12.2 The Supplier shall indemnify Balfour Beatty on demand and shall keep Balfour Beatty indemnified from and against any and all Losses arising out of or in connection with the Supplier's breach of its obligations under this Clause 12.

12.3 Each party shall at all times comply with its respective obligations under all applicable data protection and privacy legislation ("Data Protection Legislation") in relation to all Balfour Beatty Personal Data that are processed by it in connection with this Agreement, including by maintaining all necessary registrations or notifications in respect of such processing.

12.4 The Supplier shall not process any Balfour Beatty Data that is processed by or in connection with this Agreement for any purposes other than those expressly authorised by Balfour Beatty (and in any event only in the United Kingdom and only to the extent required for the performance of its obligations under this Agreement) and shall comply with all instructions given by Balfour Beatty from time to time in relation to such processing.

12.5 The Supplier warrants that it has appropriate technical and organisational processes and procedures in place to safeguard against any unauthorised or unlawful processing against accidental loss or destruction of or damage to the Personal Data.

### 13. CONFIDENTIALITY

13.1 All Confidential Information given by one party (the "Disclosing Party") to the other party (the "Recipient") or otherwise obtained, developed or created by the Recipient relating to the Disclosing Party will be treated by the Recipient, as confidential and will not, other than as necessary for the performance of this Agreement be used or disclosed without the prior written consent of the Disclosing Party.

13.2 The contents of this Agreement shall be treated by the parties as Confidential Information.

13.3 The provisions of this Clause 13 and the Supplier's rights to protect its Confidential Information will not limit or restrict Balfour Beatty's right to use and permit the use of any information contained in any operational or procedural documentation relating to the Goods or Services both before and after termination of this Agreement.

### 14. REPRESENTATIONS AND WARRANTIES

14.1 Each party warrants and represents that, as at the date of this Agreement:

14.1.1 it has full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of that party;

14.1.2 there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement; and

14.1.3 once duly executed this Agreement will constitute its legal, valid and binding obligations.

14.2 The Supplier warrants, undertakes and represents on an ongoing basis that:

14.2.1 its obligations under this Agreement will be performed promptly and diligently and with due skill and care, and in accordance with Good Industry Practice;

14.2.2 the Supplier Materials are owned by or validly licensed to the Supplier and that the Supplier is entitled to grant all of the rights in respect of Intellectual Property Rights granted hereunder;

14.2.3 the Goods will be of satisfactory quality and fit for any intended uses expressly or impliedly made known to the Supplier, and will be free from all defects in materials, workmanship and installation and are not subject to any liens or any other encumbrances. Where standard or quality is not specified, the Goods shall be of merchantable quality complying with relevant British Standard Specifications and Eurocodes;

14.2.4 it will not, by any act or omission, breach any licence granted by Balfour Beatty to the Supplier or cause Balfour Beatty to be in breach of any licence or other agreement with any third party;

14.2.5 the performance of its obligations under this Agreement will not infringe any Intellectual Property Rights of any third party; and

14.2.6 all information provided by or at the direction of the Supplier to Balfour Beatty is true, accurate and complete.

### 15. REMEDIES

15.1 If any Goods and/or Services are not supplied in accordance with, or the Supplier fails to comply with, any terms of the Agreement, Balfour Beatty may exercise any one or more of the following rights or remedies, whether or not any part of the Goods and/or Services have been accepted by Balfour Beatty:

15.1.1 rescind the Agreement; or

15.1.2 reject the Goods and/or Services (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods and/or Services returned shall be paid immediately by the Supplier; or

15.1.3 require the Supplier, at the Supplier's expense, either (at Balfour Beatty's option) to remedy any defect in the Goods or Services and carry out such other work as is necessary to ensure that the Goods are in all respects in accordance with the Purchase Order or to supply replacement goods or services; or

15.1.4 in any case, to claim such damages as it may have sustained in connection with the Supplier's breach of the Agreement not otherwise covered by this Clause 15.

### 16. LIMITATIONS OF LIABILITY

16.1 Neither party limits its liability:

16.1.1 for fraud;

16.1.2 where there has been unauthorised access to Balfour Beatty Systems;

16.1.3 for death or personal injury caused by its negligence or that of its employees, agents or subcontractors (as applicable);

16.1.4 under Clause 11 or Clause 12.2; and

16.1.5 or any regulatory fines or penalty, or damages, expenses or other losses arising from a breach by a party of any law, statute, or regulation.

16.2 Subject to Clause 16.1, the total aggregate liability of Balfour Beatty and its Affiliates under or in relation to this Agreement for all claims and Losses whether arising under tort (including negligence) breach of contract, or otherwise shall not exceed the total charges paid or payable by Balfour Beatty to the Supplier for Goods or Services under this Agreement.

16.3 Subject to Clause 16.1, neither party (nor its Affiliates) shall be liable to the other party (or its Affiliates) for any loss of profit, any loss of business, any loss of opportunity, any loss of revenue or any indirect or consequential loss or damage, in each case whether arising under tort (including negligence), breach of contract or otherwise.

#### **17. INSURANCE**

17.1 The Supplier shall, throughout the term of the Agreement and for a period of 2 years after the end of the Agreement, maintain in place insurance arrangements covering its assets, risks and liabilities that are, in the reasonable opinion of Balfour Beatty:

17.1.1 appropriate in their amount of cover, scope and conditions to the nature and scale of the Supplier's activities and the commitments it has undertaken; and

17.1.2 in the protection they offer the insured, comparable to, or more beneficial than, the insurance arrangements maintained by competitors offering similar services to customers of a comparable nature and size, and shall provide from time to time provide such evidence of those insurance arrangements as Balfour Beatty shall reasonably require.

#### **18. TERMINATION**

18.1 Each of Balfour Beatty and the Supplier shall be entitled to terminate this Agreement immediately by written notice to the other party if that other party

18.1.1 is unable to pay its debts or becomes insolvent;

18.1.2 is the subject of an order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction);

18.1.3 has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets; or

18.1.4 enters into or proposes any composition or arrangement with its creditors generally.

18.2 The Supplier may terminate this Agreement only:

18.2.1 in accordance with Clause 18.1; or

18.2.2 by written notice to Balfour Beatty if Balfour Beatty is in material breach of this Agreement and either such breach is not capable of remedy or, if the breach is capable of remedy, Balfour Beatty has failed to remedy the breach within 20 Business Days of receiving written notice requiring it to do so.

18.3 Balfour Beatty may terminate this Agreement immediately by written notice to the Supplier:

18.3.1 if the Supplier is in material breach of this Agreement (which shall include a single event or a series of persistent minor events which together have a material adverse impact on the Services or the rights and benefits of Balfour Beatty under this Agreement) and either such breach is not capable of remedy or, if the breach is capable of remedy, the Supplier has failed to remedy the breach within 20 Business Days of receiving written notice requiring it to do so; and

18.3.2 by giving written notice to the Supplier at any time before delivery of Goods, in which case Balfour Beatty shall pay the Supplier the price for the cancelled Goods, less any cost savings accruing to the Supplier by reason of the cancellation; and

18.3.3 if there is a breach of the Balfour Beatty Policies; and

18.3.4 for convenience, at any time by giving the Supplier not less than 20 Business Days' notice.

18.4 The Supplier undertakes, within 10 days of receipt of a written request from Balfour Beatty, to return all Balfour Beatty Materials, Balfour Beatty Data and other property in its possession or under its control that belongs to or has been provided by Balfour Beatty and in relation to Balfour Beatty Confidential Information in its custody or control, at Balfour Beatty's option, to return such Balfour Beatty Confidential Information or destroy such Balfour Beatty Confidential Information and/or irrevocably delete the same if stored on electronic or magnetic media and certify to Balfour Beatty that this has been done.

18.5 Balfour Beatty may, without prejudice to its other rights and remedies at law or under this Agreement, terminate this Agreement for convenience at any time by giving the Supplier 20 Business Days prior written notice of such termination.

#### **19. ASSIGNMENT, SUBCONTRACTING AND RE-STRUCTURING**

19.1 **CLAUSE 19.1 APPLIES WHERE GOVERNING LAW IS LAW OF ENGLAND & WALES**

Balfour Beatty may assign all of its rights under this Agreement without the Supplier's consent to any person.

The Supplier may not assign, novate, subcontract or otherwise dispose of this Agreement or any part of it without the prior consent in writing of Balfour Beatty.

19.2 **CLAUSE 19.2 APPLIES WHERE GOVERNING LAW IS SCOTS LAW**

Balfour Beatty may assign all of its rights under this Agreement without the Supplier's consent to any person, such assignment to take effect on issue of written notice to the Supplier from Balfour Beatty.

The Supplier may not assign, novate, subcontract or otherwise dispose of this Agreement or any part of it without the prior consent in writing of Balfour Beatty.

#### **20. ENTIRE AGREEMENT**

Subject to Clause 16.1.1, this Agreement together with all documents specifically referred to herein as governing the relationship between the parties constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements in relation thereto.

#### **21. INDEPENDENT CONTRACTOR**

Nothing in this Agreement and no action taken by the parties under it will be deemed to constitute a partnership, joint venture or other co-operative entity between the parties, nor constitute either party the agent of the other party for any purpose.

#### **22. WAIVER**

No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

#### **23. VARIATION**

No variation of this Agreement will be valid unless recorded in writing and signed by or on behalf of each of the parties to this Agreement.

#### **24. SEVERABILITY**

If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain unaffected and in force.

#### **25. FURTHER ASSURANCE**

Each party shall, at the request and cost of the other party, sign all documents and do all other acts, which may be necessary to give full effect to this Agreement.

#### **26. COSTS**

Except as otherwise agreed or specifically provided in this Agreement each party will pay the legal and other costs and expenses incurred by it in connection with the negotiation, preparation and entering into of this Agreement.

#### **27. THIRD PARTY RIGHTS**

27.1 **CLAUSE 27.1 APPLIES WHERE GOVERNING LAW IS LAW OF ENGLAND & WALES**

Subject to Clause 4.1, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person other than Balfour Beatty and the Supplier

27.2. **CLAUSE 27.2 APPLIES WHERE GOVERNING LAW IS SCOTS LAW**

Subject to Clause 4.1, no term of this Agreement is enforceable by a person other than Balfour Beatty and the Supplier.

#### **28. SURVIVORSHIP**

Clauses 1, 5, 11, 14, 15, 16, 17, 18, 19, 22, 23, 25, 27, 28 and 29 shall survive termination or expiry of this Agreement.

#### **29. GOVERNING LAW AND JURISDICTION**

29.1 **CLAUSE 29.1 APPLIES WHERE GOVERNING LAW IS LAW OF ENGLAND & WALES**

This Agreement (and any non-contractual obligations arising in connection with it) shall be governed by and interpreted in accordance with English law.

The courts of England shall have exclusive jurisdiction to settle any disputes (including disputes in relation to non-contractual obligations) arising out of or in connection with this Agreement and the parties hereby submit to the exclusive jurisdiction of the English courts.

29.2 **CLAUSE 29.2 APPLIES WHERE GOVERNING LAW IS SCOTS LAW**

This Agreement (and any non-contractual obligations arising in connection with it) shall be governed by and interpreted in accordance with Scots law.

The Scottish courts shall have exclusive jurisdiction to settle any disputes (including disputes in relation to non-contractual obligations) arising out of or in connection with this Agreement and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.