

QUARTZELEC LTD. GENERAL CONDITIONS OF CONTRACT FOR MECHANICAL AND ELECTRICAL WORKS

1. The following conditions apply to all orders and all contracts with Quartzelec Ltd (hereinafter referred to as "Quartzelec ") a corporation whose registered Office is at Leicester Road, Rugby, Warwickshire. CV21 1BD (Registration No. 2364716), and override any other terms or conditions stipulated or requested by the person or firm to whom the quotation is addressed who is hereinafter called "the **Customer**".
2. The quotation attached to these conditions (the "**Quotation**") shall unless otherwise agreed in writing remain open for acceptance for 30 days from the date of the Quotation and shall then lapse.
3. On acceptance of the Quotation by the Customer, the Quotation and these terms and conditions shall constitute the contract (the "**Contract**") between the parties and shall supersede any previous agreements, negotiations, terms or conditions entered into or discussed by the parties or stipulated or requested by the Customer.
4. Subject to clause 3 above, the Works as described in the Quotation ("the **Works**") shall be provided by Quartzelec on and in accordance with these terms and conditions and the Customer agrees to be bound by such terms and conditions.
5. Subject to clause 46 this Contract shall be governed by the laws of Scotland or England and Wales and shall be subject to the exclusive jurisdiction of the Scottish or English Courts.

Control of High Voltage Work

6. For the purposes of this Contract, High Voltage means voltages in excess of 1000 V a.c. rms and 1500 V d.c. ("**High Voltage**") and Low Voltage shall mean the converse ("**Low Voltage**") where relevant to carrying out of the Works.
- 6.1 (a) Prior to the commencement of the Works, in order that Quartzelec may decide who controls the Works, the Customer shall satisfy Quartzelec that any High Voltage switchgear to be operated by Quartzelec, has been constructed, protected, worked and maintained in a satisfactory manner. To assist Quartzelec in their decision, the Customer shall provide:
 - i) Details of the method of operation and control;
 - ii) An operations diagram of the High Voltage circuits and points of Low Voltage backfeed of the Customer's system;
 - iii) Details of the controlled work to be carried out and of the equipment on which controlled work is to be carried out;
 - iv) Information regarding the position of equipment if appropriate.(b) The Customer shall ensure that this information is complete and accurate to the best of his knowledge and will inform Quartzelec of any alterations that occur whilst the Works are in progress.
- 6.2 Subject to the above Quartzelec will specify whether it wishes to take complete control of the equipment. If this is the case, Quartzelec will appoint, subject to the Customer's confirmation, the competent person under the Electricity at Work Regulations 1989 (the "**Competent Person**"). The person so appointed will operate the Customer's High Voltage switchgear and will issue the necessary safety documents in accordance with Quartzelec's Safety Rules.
- 6.3 If Quartzelec agrees that the Customer may retain control of his equipment, the Customer will appoint one of his employees as the Competent Person who will operate the Customer's High Voltage switchgear. Quartzelec will specify whether safety documents to Quartzelec's personnel will be issued by the Customer's competent person and endorsed by Quartzelec or alternatively issued by Quartzelec.
- 6.4 Responsibility for the carrying out of testing, commissioning and re-commissioning will remain with the party responsible for control and operation. Where the Customer retains such responsibility Quartzelec shall be given the opportunity to witness any tests carried out by the Customer on High Voltage equipment prior to commissioning or re-commissioning.

Commencement and Completion

- 7.1 The Works will be commenced and completed within a reasonable time of acceptance of this Quotation or if there is a period agreed for the execution of the Works within the period so agreed. Quartzelec may delay commencement of the Works beyond any agreed commencement date in the event all the conditions to enable Quartzelec to commence the Works are not met and in the event that there is such a delay to commencement, the execution of the Works shall be extended by such period as is commensurate to such delay.
- 7.2 Quartzelec shall not be liable for any delays in the completion of the Works due to causes beyond its reasonable control including any action or inaction or inadequate or lack of instruction given by the Customer.
- 7.3 Upon completion, Quartzelec shall verify, in the presence of the Customer, the conformity of the materials with the contractual technical specifications.
- 7.4 This Completion shall take place at the Quartzelec 's request and a Completion Certificate shall be signed by both Parties. This Completion Certificate shall constitute the beginning of the warranty obligations of Quartzelec.
- 7.5 Completion shall be deemed to have been completed as soon as the Customer puts into use all or part of the materials. In the event that the Completion cannot take place for a reason not attributable to Quartzelec, the Completion shall be deemed to be completed three (3) months after the delivery of the materials at the latest.
 - (a) Minor defects not affecting the materials shall not delay the signature of the Completion Certificate for the materials concerned, provided that the Seller undertakes to remedy such defects as quickly as possible.
 - (b) In the event that the Customer fails to attend the eventual completion tests on the agreed date, Quartzelec shall carry out such tests. If the contractual specifications are met, Quartzelec shall draw up an Completion Certificate which shall have the same effect as an Completion Certificate signed by both Parties.
 - (c) If within ten (10) days after the end of the completion tests, the Customer fails to sign any Completion Certificate or does not inform Quartzelec of any rejection of the Works, Completion shall be deemed to have taken place on the basis of the Certificate signed by Quartzelec. The Final Completion shall automatically take place at the end of the warranty period of the materials as specified in clause 34.

QUARTZELEC LTD. GENERAL CONDITIONS OF CONTRACT FOR MECHANICAL AND ELECTRICAL WORKS

8. If for reasons attributable to the Quartzelec, Quartzelec fails to meet the contractual date for the Acceptance, the Customer shall be entitled to the payment of liquidated damages by Quartzelec, calculated on the contractual value (taxes, fees and levies being excluded) of the materials or services concerned at a rate of 0.5 % per week of delay. Such liquidated damages shall not exceed five percent (5 %) of the total Contract price.
Liquidated damages shall not be imposed on Quartzelec for late completion of the Works due to any circumstances attributable to the Customer or to Force Majeure.
If due to any circumstances attributable to it, Quartzelec fails to meet the technical performances on the contractual date, Quartzelec shall be given a reasonable extension of time to take all steps which it considers necessary to meet these performances, including where necessary, the modification or replacement of any material or any part of them.
These liquidated damages as specified in the present clause 8, shall represent the total loss suffered by the Customer and shall be in full satisfaction of Quartzelec's responsibility for such delay.

Variations

9. With Quartzelec's consent the Customer may, without invalidating the Contract, instruct a variation to the Works and any such instruction shall be valued and paid for on the basis of Quartzelec's rates and administration charges current at the date of execution of the varied work; Provided always that Quartzelec shall not be obliged to carry out any such variation if it considers (in its own discretion) such variation to be dangerous to its personnel or to current or prospective occupiers of the premises or to be contrary to British Standards, Building Regulations or any other regulations governing the Works and current at the date of execution of the varied work.
10. If Quartzelec is delayed, disrupted or prevented in the execution of the Works owing to any acts or omissions of the Customer, Customer's servants, agents or sub-contractors then Quartzelec shall be entitled to recover from the Customer any additional costs arising from such delay or disruption

Contract Price

11. The price payable by the Customer in respect of the execution of the Works (the "**Contract Price**") is stated in the Quotation and shall be payable in installments in accordance with the other provisions of this Contract.
12. At intervals of not less than four weeks calculated from the date of commencement of the Works, or at such other times as the parties shall agree, Quartzelec shall submit interim applications for payment stating the value of Works executed and materials on site or purchased for the Works and any other amounts due under this Contract.
13. Payment shall be due within 14 days after the date of such interim application (the "**Due Date**") and the final date for payment relating to the relevant interim application (the "**Final Date for Payment**") is 14 days after the Due Date.
14. After completion of the Works, Quartzelec shall submit a final application for payment indicating the total value of the Works executed including any variations agreed and any other amounts due under this Contract and the Customer shall pay to Quartzelec the amount so indicated within 14 days of receipt of the application less any previous payments.
15. If the Customer fails to make payment on the Due Date or the Customer is unable to pay its debts within the meaning of the Insolvency Act 1986 S123 or is the subject of a bankruptcy notice or petition or a bankruptcy order is made against the Customer or the Customer being a company has a receiver, liquidator or administrator appointed or a winding up order is made or a resolution for winding up is passed, or a voluntary arrangement is made with his creditors, or a petition is presented for a winding up order or an administration order, or any distress execution is levied or threatened over any of its assets, Quartzelec shall be entitled, without prejudice to any other remedies available to it, forthwith to suspend the Works and to remove all unused materials from the Customer's premises and (in its complete discretion) to cancel its engagement under this Contract forthwith but without prejudice to any rights which have accrued up to the date of such termination and to any rights which have accrued as a result of such cancellation.
16. The Contract Price is based upon, where the CDM Regulations apply, the Customer :
- (a) appointing a Planning Supervisor and ensuring that the Planning Supervisor carries out all the duties of a Planning Supervisor under the CDM Regulations;
 - (b) appointing a Principal Contractor not being Quartzelec and ensuring that the Principal Contractor carries out all the Duties of a Principal Contractor under the CDM Regulations. In the event that the Customer appoints Quartzelec as the Principal Contractor then Clause 45 will apply to the Quotation. In order to comply with the duties of Principal Contractor additional costs will be incurred. These costs will be shown as a separate identifiable charge to the Customer, entitled "**Duties of Principal Contractor**" and shall be included, as and when incurred, in the next following interim application to be submitted in respect of the Contract Price.
17. Unless otherwise expressly stated in writing the Contract Price does not include:-
- (a) cutting out and making good of the building fabric in connection with the Works, civil, building and trenching and reinstatement work in connection with the Works
 - (b) any structural reinforcement required to support and accommodate the Works and plant.
18. Where the Contract Price includes a provisional sum for labour or materials such provisional sum shall be expended according to the direction of the Customer or Customer's agent. Where a provisional sum is expended it shall be valued and paid for on the basis of actual cost of the work executed plus a reasonable percentage addition for Quartzelec's overheads and profit and, where the actual cost plus the percentage addition totals more or less than the provisional sum included in the Contract Price, the Contract Price shall be adjusted accordingly to reflect such increase or decrease.
19. The Contract Price is based on material and labour costs prevailing at the date of the Quotation. In the event that there arises any alteration in costs of material or labour subsequent to the date of the Quotation Quartzelec shall be entitled to request the Customer to revise the Contract Price accordingly. In such case, both Customer and Quartzelec shall revise the Contract Price in good faith and amend the Contract accordingly.

QUARTZELEC LTD. GENERAL CONDITIONS OF CONTRACT FOR MECHANICAL AND ELECTRICAL WORKS

Customer's obligations

20. The Customer shall be responsible for
- (a) obtaining all statutory consents, permissions and approvals necessary for the execution of the Works.
 - (b) providing on time any approval or instruction, any material including but not limited to components and designs, civil works if any, performed with due care and diligence, access to the site or any other thing which may be required in relation to the performance of the Works by Quartzelec.

Sub-Contracting

21. Quartzelec reserves the right to sub-contract any or all of the Works concerning the electrical, mechanical, civil and building works.

Payment

22. The Contract Price is based on continuity of work in a logical sequence without obstruction or restriction during normal hours. If for any reason beyond Quartzelec's control this continuity is broken or the site working hours are restricted in any way, or if overtime working is required, Quartzelec shall be entitled to recover the additional expenses incurred. Quartzelec's normal working hours are 08.00 to 16.30 hours Monday to Thursday and 08.00 to 14.00 hours on Friday inclusive.
23. If the Customer fails to make payment on the Due Date then Quartzelec reserves the right to levy interest on all delayed payments at the rate of 2% above the 3 month Interbank rate as published in the Financial Times.
24. The Contract Price does not include Value Added Tax which will be payable in addition thereto at the appropriate current rate.
25. Unless otherwise agreed in writing, the Quotation does not cover the Customer's requirements (if any) for an increase in existing electricity supply capacity or a new electricity supply.
26. The Contract Price is based upon normal working practices in safe and environmentally friendly working areas. If working areas are excessively hot, dirty, wet or constitute a threat to health or safety and such conditions were not expressly brought to Quartzelec's attention prior to submission of the Quotation and if as a result special working practices are required, Quartzelec shall be entitled to an increase the Contract Price to reflect the extra costs incurred by Quartzelec.

Materials

27. The term "material" and "materials" includes any goods which are either the subject matter of the Contract or which are to be incorporated into or are intended for the Works or necessary for its performance. Quartzelec will endeavour to use materials specified in the Quotation but in the event such materials are not available Quartzelec reserves the right to use similar materials.

Quality Assurance and Testing

- 28.1 Quartzelec 's standard quality control procedures shall apply to the Contract and Quartzelec 's standard works tests shall be performed.
- 28.2 The Customer shall be given 7 days' notice of those tests specified in the contract which it is entitled to attend. If the Customer fails to attend such tests Quartzelec may sign the test results on behalf of the Customer who shall then be deemed to have accepted such test results.

Facilities and Services

29. The Customer shall provide, free of charge to Quartzelec, such facilities and services as Quartzelec in its sole discretion shall require, including, by way of example only and without limitation:-
- (a) suitable access to all parts of the Works;
 - (b) health and safety on Site and for ensuring that all necessary measures are taken in this respect, at its own cost. The Customer shall be responsible for providing all medical and practical assistance on Site in the event of accident or sickness affecting Quartzelec 's employees.
 - (c) safe receipt and unloading of materials; adequate and secure dry storage facilities for materials and equipment;
 - (d) all necessary fixed scaffolding, ladders and crawling boards, together with hoisting and/or crane facilities, where Work is required at a height above 7.6 metres;
 - (e) a workman's cabin of minimum 20m² floor area, equipped with canteen facilities, changing room, clothes storage and washing facilities with hot water;
 - (f) access to suitable toilet facilities;
 - (g) access to an adequate supply of electric power at 110V a.c. to all parts of the Works;
 - (h) temporary lighting to Quartzelec's requirements;
 - (i) removal of rubbish from working areas;
 - (j) the use of a telephone.

Materials, Risk and Retention of Title

30. (a) The Customer shall sign to acknowledge receipt of materials delivered to site.
- (b) The materials supplied by or on behalf of Quartzelec (whether fixed or unfixed) shall remain Quartzelec's property until the Customer has paid to Quartzelec in full all sums payable or which may become payable by the Customer. Until that time, the Customer shall hold the materials as bailee and shall store them in such a way that they can be identified as Quartzelec's property and shall keep them separate from the Customers own property and property of any other person.

QUARTZELEC LTD. GENERAL CONDITIONS OF CONTRACT FOR MECHANICAL AND ELECTRICAL WORKS

(c) Although the materials shall remain Quartzelec's property until all sums due to Quartzelec under the Contract have been paid, they shall be at the Customer's risk from the time of delivery. The Customer shall insure the materials against loss or damage accordingly and in the event of any such loss or damage occurring shall hold the proceeds of such insurance on trust for Quartzelec.

(d) The Customer's right to possession of the materials shall cease if :

- (1) the Customer has not paid all sums due to Quartzelec in full by the Due Date and/or the Final Date for Payment referred to above; or
- (2) the Customer is declared bankrupt or enters into a voluntary agreement; or
- (3) a liquidator or administrator is appointed, or petition for a winding up order or administration order is presented; or
- (4) a receiver is appointed over any part of the Customer's assets or any distress or execution is threatened or levied over any of its assets.

(e) On cessation of the Customer's right to possession of the materials in accordance with this clause, the Customer shall, at his own expense, make the materials available to Quartzelec and allow Quartzelec to repossess them.

(f) The Customer hereby grants to Quartzelec, its employees and agents, an irrevocable licence to enter any premises where the materials are stored in order to inspect or repossess them.

Indemnity and Insurance

31. (a) Each of the Parties shall be liable for and shall indemnify the other against:-
- (1) any liability, loss, claim or proceedings arising under any statute or common law in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Works, unless due to any act or neglect of the indemnified Party or of any person for whom the indemnified Party is responsible;
 - (2) any expense, liability, loss, claim or proceedings in respect of any injury or damage to any property arising out of or in the course of or caused by the carrying out of the Works, unless due to any act or neglect of the indemnified Party or of any person for whom the indemnified Party is responsible.
- (b) The Customer hereby certifies to Quartzelec that it has affected such Employer's Liability Insurance and Public Liability Policy as are necessary to cover the liabilities of the Customer and that such policies are with a reputable insurer up to a limit of at least £5,000,000 and shall be kept in force during and until completion of the Works.
- (c) The Customer shall insure the premises and materials (whether fixed or unfixd) to cover any damage thereto from any cause whatsoever.
- (d) Quartzelec reserves the right to inspect any insurance policy taken out pursuant to this clause together with the receipt for the last premium.

Limitation of Liability

32. (a) Except for liquidated damages as set out in Clause 8, Quartzelec shall not in any circumstances be liable for any loss of use, production, profit, business, contracts, revenues or anticipated savings, any increase in operating costs or any other financial or economic loss or any indirect or consequential loss or damage whatsoever whether suffered by the Customer or by any third party.
32. (b) The exclusions and limitations of liability set out in the above sub-clause and the following sub-clauses of this Clause 32 shall apply to all claims of any kind whether as a result of breach of contract or warranty, negligence or otherwise on the part of Quartzelec, its employees, agents, subcontractors or suppliers.
32. (c) Quartzelec shall compensate the Customer for, on the one hand, any legal liability for personal injury to or death of any person or damage to third parties' property and, on the other hand, for damage to the Customer's property (other than the materials) to the extent that such personal injury or death or damage is caused by the negligence of Quartzelec or of its employees or agents. In the case of damage to property such compensation shall unless otherwise specified in the contract be limited to £5,000,000 in respect of any one occurrence or series of occurrences originating from one incident.
32. (d) Subject to clause 32(c) above, the total liability of Quartzelec on all claims of any kind for any loss or damage resulting from its performance or lack of performance under the contract shall not in any event exceed an amount equal to one half of the contract price.
32. (e) The Customer shall indemnify Quartzelec against any and all claims in respect of or consequent to pollution or release of substances capable of causing harm to living organisms or interference with ecological systems arising from the materials or services except in respect of personal injury or death, whether or not resulting from the negligence of any person.
32. (f) For the purposes of this Limitation of Liability Clause Quartzelec contracts also on behalf of its employees, agents, subcontractors and suppliers who shall have no greater liability in relation to the contract than Quartzelec.
32. (g) If the Customer is not the sole end user and ultimate owner of the materials or services, then the Customer shall ensure by its contract with the end user or ultimate owner that Quartzelec is given the benefit of the above stated exclusions and limitations of liability by all such users or owners and shall indemnify Quartzelec against claims of any kind by them to the extent that Quartzelec would not be liable therefor to the Customer under the contract if the claim had been made by the Customer.

Transfer of Undertakings Regulations

33. (a) The Customer shall indemnify and keep indemnified Quartzelec against each and every claim, liability, costs, expense or demand whatsoever arising under or in relation to:
- (i) any contracts of employment (including, without prejudice to the generality of the foregoing, the termination thereof) with; or
 - (ii) any duty or liability of the Customer or any contractor in relation to any matter whatsoever in respect of any person who is presently an employee of the Customer or any contractor or prior contractor to the Customer and whose contract of employment has effect or is alleged to have effect as if originally made with Quartzelec by reason of the operation of the Transfer of Undertaking (Protection of Employment) Regulations 1981 as amended or the EC Council Directive 77/187 as amended as a consequence of the Parties entering into this Contract and/or its termination.

QUARTZELEC LTD. GENERAL CONDITIONS OF CONTRACT FOR MECHANICAL AND ELECTRICAL WORKS

33. (b) Quartzelec shall indemnify and keep indemnified the Customer against each and every claim, liability, costs, expense or demand whatsoever arising under or in relation to:
- (i) any contracts of employment (including, without prejudice to the generality of the foregoing, the termination thereof) with; or
 - (ii) any duty or liability of Quartzelec or any contractor in relation to any matter whatsoever in respect of any person who is presently an employee of Quartzelec or any contractor or prior contractor to Quartzelec and whose contract of employment has effect or is alleged to have effect as if originally made with the Customer by reason of the operation of the Transfer of Undertaking (Protection of Employment) Regulations 1981 as amended or the EC Council Directive 77/187 as amended as a consequence of the Parties entering into this Contract and/or its termination.

Warranty

34. (a) Any defective materials provided by Quartzelec or defective workmanship on the part of Quartzelec shall, if notified in writing to Quartzelec during the Defects Liability Period (as defined in sub-clause (c) below), be rectified by Quartzelec as soon as practicable after their notification by the Customer provided, subject to sub-clause (d) below, that Quartzelec is satisfied that such defects arise out of defective materials or defective workmanship.
- (b) Quartzelec undertakes that the materials and services supplied shall, under proper use, be free from defects in material and workmanship and conform to the specification in the contract. "Proper use" means installation, commissioning, operation and maintenance in accordance with the Quartzelec 's advice and good engineering practice.
- (c) Quartzelec 's obligation under this undertaking shall be limited to making good by repair or replacement at the Quartzelec 's option any defect in the materials or services or non-conformity to the specification in the Contract ("defect") which appears before the expiry of the Defects Liability Period
- (d) The undertaking and obligations of Quartzelec under this Clause are in place of and exclude all other warranties and conditions, whether oral, written, statutory, express or implied. IMPLIED WARRANTIES OR CONDITIONS OF FITNESS AND MERCHANTABILITY SHALL NOT APPLY.
- (e) Quartzelec shall not be liable to make good any defects in the Works which arise from any operation by the Customer, his servants or agents before the date of completion, nor shall Quartzelec be liable for any loss or damage or expenses or costs arising directly or indirectly as a consequence of such operation.
- (f) Unless otherwise agreed, the Defects Liability Period shall, in the case of the Works, run for 12 months from the date of application for final payment in accordance with clause 14. . In respect of items which have been made good under Sub-Clause 34 (b) hereabove, Quartzelec 's obligation shall in any event expire 24 months after first delivery of the original item.
- (g) Notwithstanding any other provision of this Contract whether expressed or implied, (with the exception of clause 32) Quartzelec shall have no liability to the Customer in respect of any losses, damages or expenses suffered or incurred by the Customer and shall not be liable to remedy any defects (referred to in clause 34(a) above) to the extent that such losses, damages or expenses or defects were caused or contributed to by the Customer's failure to correctly maintain or operate the Works in accordance with the recommended codes of practice or other instructions provided to the Customer by Quartzelec.

Standards

35. (a) The electrical installation shall comply as appropriate with:-
- (1) BS7671:1992 Requirements for Electrical Installation.
 - (2) The Electricity at Works Regulations: 1989.
 - (2) All work on Private High Voltage Equipment will be carried out in accordance with Quartzelec's current Codes of Practice appropriate to the nature of the equipment.
- (b) The Mechanical Services shall be designed and installed in accordance with all relevant standards including the following: -
- (1) Chartered Institute of Building Services Engineers Guides, volumes A to H.
 - (2) HVCA Ductwork Manufacture and Installation Standard DW144.

Copyright

36. (a) The Customer may use drawings and information supplied by Quartzelec only for the purposes of completing, maintaining, adjusting and repairing the Works. No licence is granted to the Customer to copy or use drawings or information so supplied in order to make or have made spare parts for the Works. Drawings or information supplied by Quartzelec shall not without Quartzelec's consent be used, copied or communicated to a third party by the Customer.
- (b) Drawings and information supplied by the Customer to Quartzelec for the purposes of preparing the Quotation and Contract shall remain the property of the Customer. The Customer's drawings and information shall not without the consent of the Customer be used, copied or communicated to a third party by Quartzelec otherwise than is strictly necessary for the purposes of the Contract.

Publicity

37. Quartzelec reserves the right to erect site boards on the Customer's property during the course of the Works to advertise Quartzelec's presence.
38. Quartzelec shall seek the Customer's permission which shall not be unreasonably denied to take promotional photographs of the Works
39. Quartzelec shall seek the Customers permission which shall not be unreasonably denied to write and issue press releases for promotional purposes.

QUARTZELEC LTD. GENERAL CONDITIONS OF CONTRACT FOR MECHANICAL AND ELECTRICAL WORKS

Force Majeure

40. If performance of any obligation under the contract (other than an obligation of the Customer to make payment) is prevented, restricted or delayed by any act of God, act or omission of government, war, hostilities, industrial dispute at either Party's premises or elsewhere, failure or delay in source of supply of materials or equipment, fire, explosion, accident or breakdown of essential machinery or equipment or by any cause (whether similar or not to any of the above events) beyond the reasonable control of the party whose performance is affected, then that Party shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly.
41. If performance is delayed for more than 4 months by any cause referred to in the above sub-clause and the Parties have not agreed upon a revised basis for continuing the work at the end of the delay, then either party may after that period and while the cause of the nonperformance still exists terminate the Contract by not less than 30 days' notice in writing to the other Party, in which event the provisions of the Clause 28 above shall apply.

Cancellation

42. In the event of any cancellation under the Contract, the Customer shall pay to Quartzelec within fourteen days from date of cancellation of the Contract any outstanding sums due under the Contract including an amount in respect of any services and/or materials provided or purchased up to the date of cancellation in respect of which Quartzelec had not yet submitted an invoice.

Waiver

43. No waiver by a Party of the other Party's breach of any term of this Contract shall be deemed to be a waiver of any subsequent breach.

Set Off

44. Neither party shall exercise set off against the other.

Appointment as Principal Contractor

45. (a) This clause shall apply only where the CDM Regulations apply and Quartzelec has been appointed by the Customer as the Principal Contractor pursuant to Regulation 6(i) of the CDM Regulations.
- (b) Appointment of Quartzelec as Principal Contractor will incur additional costs for Quartzelec and these costs will be passed on to the Customer as a separate charge entitled "Duties of Principal Contractor" (see clause 16(b)).
- (c) The following definitions shall apply:-
- (1) CDM Regulations shall mean the Construction (Design and Management) Regulations or any amendment thereto as of the date of signature of the Contract.
- (2) Health and Safety Plan shall mean the plan provided to Quartzelec and developed by Quartzelec to comply with Regulation 15(4) of the CDM Regulations and received in accordance with Regulation 10 of the CDM Regulations by the Customer before any construction work under the Contract has started, and any further development of that plan by Quartzelec during the progress of the works.
- (3) The Planning Supervisor shall be that individual identified in the Contract or any subsequent successor appointed by the Customer in accordance with Regulation 6 of the CDM Regulations.
- (4) Principal Contractor means Quartzelec Contracting whose address is given at the foot of this agreement or any successor appointed by the Customer in accordance with Regulation 6 of the CDM Regulations.
- (d) If the Customer replaces the Planning Supervisor or replaces Quartzelec as the Principal Contractor the Customer shall notify Quartzelec immediately in writing of the name and address of the new Planning Supervisor or Principal Contractor as the case may be.
- (e) The Customer shall ensure:
- (1) that the Planning Supervisor carries out all the duties of a Planning Supervisor under the CDM Regulations;
- (2) where Quartzelec is replaced by another contractor as the Principal Contractor that the Principal Contractor carries out all the duties of the Principal Contractor under the CDM Regulations.
- (f) Quartzelec shall comply with all the duties of a Principal Contractor set out in the CDM Regulations. Any amendment made by Quartzelec to the Health and Safety Plan shall be notified to the Customer in writing who will then notify the Planning Supervisor and any relevant Designer.
- (g) Within a reasonable time of the completion of the Works Quartzelec shall provide, and shall ensure that any sub-contractor through Quartzelec provides, such information to the Planning Supervisor as the Planning Supervisor reasonably requires for the preparation of the Health and Safety File pursuant to Regulation 14(d), (e) and (f).

Adjudication

46. The adjudication provisions of Part II of the Housing Grants, Construction and Regeneration Act 1996 shall apply to this Contract

Third Party Rights

47. Nothing in this Agreement shall or shall purport to confer on any third party a right to enforce any term of this Contract for the purposes of the Contracts (Rights of Third Parties) Act 1999.