

SCS JV Conditions of Contract issued along with a Purchase Order (Purchase Order Conditions)

1 Definitions and interpretation

In these Conditions the following definitions apply:

Business Day	means a day other than a Saturday, Sunday or bank or public holiday
Conditions	means these terms and conditions which governs the parties relationship under this agreement.
Data Protection Laws	means all Applicable Law relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Deliverables.
Deliverables	means the Goods or Services or both as the context allows.
Documentation	means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Deliverables.
Force Majeure	means an event or sequence of events beyond any party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under these Conditions and the Purchase Order including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; strike, lockout or boycott or other industrial action except strikes or other industrial disputes involving the Supplier's or its suppliers' workforce; epidemic or pandemic or plague (as classified or advised by the World Health Organization and/or the government of an affected country) including without limitation coronavirus disease (COVID-19) and/or the

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	<p>causative virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), including any mutations of COVID-19 and/or SARS-CoV-2 recognised as the same by the World Health Organization, or any order or recommendation affecting the contract on account of such pandemic or epidemic.</p>
<p>Goods</p>	<p>means the goods and related accessories, spare parts and Documentation and other physical material set out in the Purchase Order to be supplied by the Supplier to the Purchaser in accordance with these conditions;</p>
<p>Intellectual Property Rights</p>	<p>means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:</p> <ul style="list-style-type: none"> (a) whether registered or not (b) including any applications to protect or register such rights (c) including all renewals and extensions of such rights or applications (d) whether vested, contingent or future (e) to which the relevant party is or may be entitled, and (f) in whichever part of the world existing;
<p>Modern Slavery Policy</p>	<p>means the Purchaser's anti-slavery and human trafficking policy in force and notified to the Supplier from time to time.</p>

Personal Data	shall have the meaning given in applicable Data Protection Laws from time to time.
Purchase Order	means the Purchaser's instruction for the Deliverables that these conditions relate to.
Purchaser Site(s)	means the address or addresses for delivery of the Goods and/or the performance of the Services as set out in the Purchase Order.
Services	means the services set out in the Purchase Order and to be performed by the Supplier to the Customer in accordance with the Contract.
Specification	means the description or Documentation provided for the Purchaser that describes in details the Deliverables required attached to the Purchase Order (if applicable).

2 Application, Contradictory terms, and Order of Precedence

- 2.1 These Conditions and the Purchase Order form the entire contract between parties and supersede any previously issued terms or subsequent endorsement of terms by the Supplier. If the Purchase Order is made pursuant to the General Supply Agreement Framework (GSA), the contract shall include the GSA.
- 2.2 The Supplier shall refer any contradiction or variance it identifies between any of the terms in the documents listed in 2.1 to the Purchaser in writing to resolve (and shall be deemed to have taken due diligence in discovering same as would any reasonable supplier) and the Purchaser shall issue an instruction in writing within a reasonable time resolving such contradiction or variance.
- 2.3 Without prejudice to the Supplier's obligation in clause 2.2, if there is a dispute, the order of precedence for the interpretation of the contract shall be as follows:
 - 1. the General Supply Agreement Framework (GSA) – if applicable
 - 2. Purchase Order and any Specifications attached to it
 - 3. these SCS JV Conditions of Contract issued along with a Purchase Order.

3 Price

- 3.1 The price for the Deliverables shall be as set out in the Purchase Order.
- 3.2 All Prices include *packaging, delivery, unloading, unpacking, shipping, carriage, insurance and all other charges or taxes related to the Goods and Services.*

4 Payment

- 4.1 The Supplier shall invoice the Purchaser for:
- (a) the Goods on or after the completion of delivery of the Goods,
 - (b) Services on or after the completion of performance of the Services.
- 4.2 The Purchaser shall pay each validly submitted and undisputed invoice of the Supplier within 30 days of receipt.
- 4.3 Without prejudice to any other remedy, the Purchaser shall be entitled to set-off under the Contract any liability or any sums which is owed it by the Supplier under the Contract or any other contract.
- 4.4 VAT shall be charged by the Supplier and paid by the Customer at the applicable rate at the time the invoice was issued.
- 4.5 The Supplier will be entitled to interest on late payments at the rate of 2% per annum above the base rate for the time being of the Bank of England, which the Supplier agrees is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.6 The use of a factoring agent by the Supplier shall be a breach of this Agreement and payment shall only be made to the Supplier.

5 Cancellation

- 5.1 The Purchaser shall have the right to cancel the Purchase Order for the Deliverables or for any part of the Deliverables which have not yet been, in the case of Goods, delivered to, and in the case of Services, performed for, the Purchaser.
- 5.2 In relation to any Purchase Order part-cancelled under clause 5.1, on receipt of validly issued and properly documented evidence, the Purchaser shall pay for:
- 5.2.1 in respect of any Goods, that part of the price which relates to the Goods which at the time of cancellation have been delivered to the Purchaser; and
 - 5.2.2 in respect of any Goods, the costs of materials which the Supplier has purchased to fulfil the Purchase Order for the Goods which cannot be used for other orders or be returned to the supplier of those materials for a refund; and

5.2.3 in respect of any Services, that part of the Price that relates to the Services which, at the time of cancellation have been paid for or contractually committed by the Supplier and cannot be cancelled.

5.3 To the maximum extent possible, the Supplier shall mitigate all costs relating to the Purchase Order immediately upon receipt of cancellation under this clause 5.

6 Delivery, performance, and time

6.1 The Goods shall be delivered by the Supplier, to the Purchaser Site on the date (s) specified in the Purchase Order.

6.2 The Purchaser may by a written notice to the Supplier, vary the time and place of delivery and in such circumstances shall be responsible for the costs of such variation as agreed with the Supplier.

6.3 The Goods shall be deemed delivered on completion of unloading of the Goods at the Purchaser site by the Supplier.

6.4 The Services shall be performed by the Supplier at the Purchaser site on the date(s) specified in the Purchase Order.

6.5 The Services shall be deemed performed on confirmation of completion of the Acceptance Conditions by the Purchaser in writing.

6.6 The Goods shall not be delivered and the Services shall not be performed in instalments unless otherwise specified in the Purchase Order.

6.7 Each delivery of Goods or performance of the Services shall be accompanied by a delivery note stating:

6.7.1 the date of the Purchaser Order and number; the relevant Supplier details; if Goods, the product numbers and type and quantity of Goods in the delivery;

6.7.2 if Services, the category, type and quantity of Services performed;

6.7.3 any additional information requested by the Purchaser as set out in the Purchase Order

6.8 The Purchaser requires as a condition of the Contract that a Suppliers delivery note be clearly signed by a duly authorised representative of the Purchaser at the point of delivery and the Supplier shall be responsible for obtaining such a signature and of depositing a copy of such signed note. This clause shall be a precondition for payment to the Supplier.

6.9 If the Supplier fails to deliver any of the Goods or perform any of the Services by the date specified in the Purchase Order, the Purchaser shall (without prejudice to its other rights and remedies) be entitled at the Purchaser's sole discretion:

- 6.9.1 to terminate the Agreement in whole or in part;
 - 6.9.2 to purchase the same or similar Deliverables from another supplier;
 - 6.9.3 to refuse to accept the delivery or performance (as the case may be) of any more Deliverables under the Contract;
 - 6.9.4 to recover from the Supplier all costs and losses resulting to the Purchaser from the failure in performance or delivery (as the case may be) to the full extent allowed by law.
 - 6.9.5 to extend the time for delivery in writing and specify a new date for delivery and accept the delivery although made late.
- 6.10 The provisions of clause 6.9 shall not apply to the extent that the delivery is delayed due to a reason attributable to the Purchaser, for which the Supplier has given notice of before the date of delivery, and such notice is not disputed by the Purchaser. In such circumstance the Purchaser shall extend the time or times for delivery by such period or periods as may be appropriate in the circumstance.

7 Acceptance, rejection and inspection

- 7.1 The Purchaser shall not have accepted, or be deemed to have accepted, the Deliverables until the Acceptance Conditions are fulfilled.
- 7.2 The **Acceptance Conditions** are that:
 - 7.2.1 for Goods, the Goods and delivery note have been delivered to or at the Purchaser site;
 - 7.2.2 for Services, the Services have been performed at the Purchaser site specified in the Purchase Order ; and
 - 7.2.3 all pre-delivery and post-delivery acceptance tests and inspections have been completed and where applicable, certificates of same have been submitted to the Purchaser and in the reasonable satisfaction of the Purchaser the tests and or inspection requirements have been met.
 - 7.2.4 the Purchaser has notified the Supplier in writing that the Deliverables have been delivered or performed (as the case may be) in full compliance with the Purchase Order and these Conditions.
- 7.3 The Purchaser may require pre-delivery and/or post-delivery acceptance tests to be performed or to be carried out, if the requirement is for the Supplier to do this, it shall make the results of the tests available to the Purchaser.

- 7.4 The Purchaser may inspect and test the Deliverables during performance or during manufacture or processing prior to despatch, and the Supplier shall provide the Purchaser with access to, and use of all facilities reasonably required.
- 7.5 Any inspection or testing of the Deliverables shall not be deemed to be acceptance of the Deliverables or a waiver of any of the Purchaser's other rights and remedies, including its right to reject.
- 7.6 The Purchaser shall be entitled to reject any Deliverables which are not in full compliance with the Purchase Order and these Conditions. Any acceptance of delivery of defective, late or incomplete Deliverables or any payment made in respect thereof, shall not constitute a waiver of any of the Purchaser's rights and remedies, including its right to reject.
- 7.7 If the Goods are rejected due to the volume of the Goods exceeding the tolerances (if any) specified in the Purchase Order, the Supplier shall promptly and at its own cost arrange for redelivery of the correct volume.
- 7.8 Any rejected Goods may be returned to the Supplier by the Purchaser at the Supplier's cost and risk.

8 Title and risk

- 8.1 Risk in the Goods shall pass to the Purchaser on the later of:
- 8.1.1 delivery of the Goods to the Purchaser; or
 - 8.1.2 the Purchaser's written notification that the Goods meet the Acceptance Conditions
- 8.2 Title to the Goods shall pass to the Purchaser on the sooner of:
- 8.2.1 payment by the Purchaser for the Goods; or
 - 8.2.2 delivery of the Goods to the Purchaser in accordance with the Purchase Order.
- 8.3 The passing of title shall not prejudice any other of the Purchaser's rights and remedies, including its right to reject.
- 8.4 Neither the Supplier, or any other person, shall have a lien on, right of stoppage in transit or other rights in or to any Goods title to which have vested in the Purchaser. The Supplier shall ensure that relevant third parties accept the exclusion of such lien and rights.
- 8.5 The Supplier warrants and represents that it:
- 8.5.1 has full, clear and unencumbered title to the Goods, and the full, clear and unencumbered right to sell and deliver them to the Purchaser; and
 - 8.5.2 shall hold such title and right to enable it to ensure that the Purchaser shall acquire a valid, unqualified title to the Goods and shall enjoy quiet possession of them.

9 Warranty

9.1 The Supplier warrants and represents that it shall:

- 9.1.1 have all consents, licences and authorisations necessary to deliver and perform the Deliverables;
- 9.1.2 observe, and ensure that the Supplier Personnel observe all health and safety rules and regulations and any other security requirements that apply at any of the Purchaser's sites;
- 9.1.3 ensure that the Supplier's personnel use reasonable skill and care in the delivery and performance of the Deliverables;
- 9.1.4 keep the Customer fully informed of all activities concerning the Deliverables and provide the Customer with activity reports on request;
- 9.1.5 conduct such tests, including pre-delivery and post-delivery acceptance tests and inspections, in relation to the Deliverables prior to acceptance as the Purchaser may require acting reasonably;

9.2 The Supplier warrants and represents that, the Deliverables shall:

- 9.2.1 conform to any sample, and to the quality and description of set out in the Purchase Order and any other document sent by the Purchaser specifying the Deliverables;
- 9.2.2 be free from defects in design, material and workmanship;
- 9.2.3 comply with all Applicable Laws, standards and best industry practice;
- 9.2.4 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 9.2.5 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13;
- 9.2.6 be fit for purpose and any purpose held out by the Supplier and set out in the Order and as otherwise required to meet the Purchaser's needs; and
- 9.2.7 any media on which the results of the Services are supplied shall be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sale of Goods Act 1979.

9.3 The Supplier agrees that the approval by the Purchaser of any design or specification provided by the Supplier shall not relieve the Supplier of any of its obligations under this clause.

The Purchaser may reject any Deliverables that do not comply with this clause 9 and the Supplier shall, at the Purchaser's discretion, promptly remedy, repair, replace, correct, re-perform or refund the price of any such Deliverables, provided that the Purchaser serves a written notice on the Supplier within a reasonable time of discovering the issues with such Deliverables (such reasonable time to be assessed from the date the Purchaser identifies issue(s) with the Deliverables).

- 9.4 The provisions of these Conditions shall apply to any Deliverables that are re-delivered or re-performed in accordance with 9.5.
- 9.5 The Purchaser shall be entitled to exercise its rights under this clause 9, notwithstanding that the Deliverables were not rejected following their initial inspection.

10 Design

- 10.1 The Supplier shall be liable to the Purchaser for the design of the Deliverables to the extent that the Supplier has designed or will design the Deliverable including but without prejudice to the generality hereof:
- (a) The design development of the Deliverables
 - (b) The selection of goods and materials in relation to the Deliverables.
 - (c) The satisfaction of any performance specification or requirement expressed by or referred to by the Purchaser or which may be inferred from a description of the Deliverables.
- 10.2 The Supplier warrants to the Purchaser that it has exercised and shall continue to exercise in the design of the Deliverables all the reasonable skill, care and diligence to be expected of a competent professional designer who is experienced in carrying out such work for projects of a similar scope complexity nature and size to the project for which the Deliverables are intended.

11 Intellectual property rights

- 11.1 All Specifications provided by the Purchaser and all Intellectual Property Rights in the Deliverables made or performed in accordance with such Specifications shall vest in and always remain the property of the Purchaser and such Specifications may only be used by the Supplier as necessary to perform the contract.
- 11.2 The Supplier grants to the Purchaser an irrevocable, royalty-free, non-exclusive licence to use and to reproduce all designs, drawings, samples, models, tests or any other information or documentation supplied or produced by the Supplier during the completion of the Purchase Order for any purpose whatsoever connected with the Purchaser's works in this project including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Purchaser's works. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

12 Insurance and indemnity

- 12.1 Except the Supplier has been notified in writing by the Purchaser that the Deliverables or any part of it, is covered under the composite insurance policy for the HS 2 project, the Supplier shall maintain the following insurance policies at the level set out below:
- 12.1.1 Third Party Insurance (including Product Liability) with an indemnity of at least £1 million, in respect of each and every claim arising from the Deliverables and with endorsement to cover principals.
 - 12.1.2 Professional Indemnity Insurance in respect of any professional liability that may arise under the Contract that the Supplier may have, for design or otherwise, with a minimum cover of £2 million in respect of any one claim or series of claims arising out of any one event or originating cause..
 - 12.1.3 The Supplier shall insure the Goods in respect of physical loss or damage until delivery for their full replacement value and such policy shall be endorsed to indemnify the Purchaser as principal.
- 12.2 The Supplier shall indemnify, and keep indemnified, the Purchaser from and against any losses, damages, liability, costs (including legal fees) and expenses which the Purchaser may suffer or incur directly or indirectly as a result of any:
- 12.2.1 alleged or actual infringement by the Supplier of a third party's Intellectual Property Rights or other rights in connection with the supply or performance or manufacture of the Deliverables under the Contract (**IPR Claim**);
 - 12.2.2 claim made against the Purchaser in respect of any losses, damages, liability, costs and expenses sustained by the employees or agents or any customer of the Purchaser or any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Deliverables;
 - 12.2.3 each being a claim
- 12.3 The Purchaser, shall in respect of matters listed in 12.1, use all reasonable endeavours to provide the Supplier with writing setting out details of any claim of which it has notice as soon as reasonably possible. The Purchaser shall:
- 12.3.1 not make any admission of liability or agree to any settlement or compromise of the relevant claim without the prior written consent of the Supplier;
 - 12.3.2 let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from claim;
 - 12.3.3 at Supplier's request and own expense, give the Supplier all reasonable assistance in the circumstances described above.

13 Limitation of liability

13.1 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:

13.1.1 death or personal injury caused by negligence;

13.1.2 fraud or fraudulent misrepresentation;

13.1.3 any other losses which cannot be excluded or limited by Applicable Law;

13.1.4 any losses caused by wilful misconduct.

13.2 The Purchaser shall not be liable for any of the following (whether direct or indirect):

13.2.1 loss of profit;

13.2.2 loss of or corruption to data;

13.2.3 loss of use;

13.2.4 loss of production;

13.2.5 loss of contract;

13.2.6 loss of opportunity;

13.2.7 loss of savings, discount or rebate (whether actual or anticipated);

13.2.8 harm to reputation or loss of goodwill.

14 Equipment Hire (when used as a Equipment (Plant) Hire order) and Supplementary Terms

14.1 Equipment is accepted on hire subject to complying in all respects with the current statutory regulations.

14.2 The hire shall be subject to the SCS JV Terms and Conditions for Hire of Equipment.

14.3 Additionally, if the hire is for an equipment listed below, the provisions of the SCS JV Supplementary Terms shall apply on matters covered under it:

14.3.1 Mobile cranes (wheeled and crawler mounted)

14.3.2 Concrete Pumping

14.3.3 Tower Cranes

14.3.4 Any other equipment indicated by the Purchaser

- 14.4 The Supplier shall ensure that vehicles to be used on the public highway are comprehensively insured, licensed and taxed to comply with relevant statutory regulations. The Supplier shall indemnify the Purchaser against any claim whatsoever arising from a breach thereof.

15 Termination

- 15.1 The Purchaser reserves the right to terminate the Agreement at any time and provided that the termination is not by reason of the Supplier's default, the Supplier shall be entitled to be paid for the Deliverables as set out in Clause 5 - Cancellation.

16 Anti-bribery

- 16.1 For the purposes of this clause the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

- 16.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:

16.2.1 all of that party's personnel;

16.2.2 all others associated with that party; and

16.2.3 all of that party's subcontractors;

involved in performing the Contract so comply.

- 16.3 Without limitation, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

- 16.4 The Supplier shall immediately notify the Purchaser as soon as it becomes aware of a breach of any of the requirements of this clause.

- 16.5 Any breach of this clause by the Supplier shall be deemed a material breach of the Contract for which the Purchaser may exercise its right to terminate.

17 Anti-slavery

- 17.1 The Supplier undertakes, warrants and represents that:

17.1.1 neither the Supplier nor any of its officers, employees, agents or subcontractors has:

- (a) committed an offence under the Modern Slavery Act 2015 (a **MSA Offence**);
or

- (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
 - 17.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;
 - 17.1.3 it has implemented due diligence procedures to ensure compliance with the Modern Slavery Act 2015 and the Modern Slavery Policy in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to the Customer on request at any time throughout the Contract;
 - 17.1.4 it shall notify the Purchaser immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-contractors have breached or potentially breached any of the Supplier's obligations under this clause. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.
- 17.2 Any breach of this clause by the Supplier shall be deemed a material breach of the Contract for which the Purchaser may exercise its right to terminate.
- 18 Confidentiality and announcements**
- 18.1 The Supplier shall keep confidential all Confidential Information of the Purchaser and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 18.1.1 any information which was in the public domain at the date of the Contract;
 - 18.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 18.1.3 any information which is independently developed by the Supplier without using information supplied by Purchaser; or
 - 18.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 18.2 This clause shall remain in force for a period of 12 years from the date of the Contract.
- 18.3 Except approved by the Purchaser, the Supplier shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 18.4 To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use is in compliance with and does not conflict Data Protection Laws.

19 Processing of personal data

- 19.1 The parties agree that the Purchaser is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to the Contract except otherwise stated in writing by the Purchaser to the Supplier. The Supplier shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data and the provision of the goods
- 19.2 The Supplier shall only process the Protected Data in accordance with Data Protection Law, this clause, and the Purchaser's written instructions from time to time.
- 19.2.1 The Supplier shall at all times implement and maintain appropriate technical and organisational measures to protect Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access. Reasonable technical and organisational measures may be set out by the Purchaser from time to time in writing.
- 19.3 The Supplier shall:
- 19.4 not permit any processing of Protected Data by third party without the prior written authorisation by the Purchaser and only then subject such third party adhering to the provisions of this clause which shall form part of its agreement with the Supplier and any other conditions as the Purchaser may require;
- 19.5 ensure that access to Protected Data is limited to the authorised persons who need access to it to supply the goods;
- 19.6 The Supplier shall at its own cost and expense:
- 19.7 promptly provide such information and assistance as the Purchaser may require in relation to the fulfilment of the Purchaser's obligations to respond data subject access requests under applicable regulations; and
- 19.8 provide such information, co-operation and other assistance to the Purchaser as the Purchaser reasonably requires (taking into account the nature of processing and the information available to the Supplier) to ensure compliance with the Purchaser's obligations under Data Protection Laws, including but not limited to security of processing (including with any review of security measures); data protection impact assessments (as such term is defined in Data Protection Laws); information request on data protection from regulatory authorities, information and remedial action in respect of data breaches.
- 19.9 The Supplier shall promptly and in any event within 24 hours:
- 19.9.1 notify the Purchaser if it suspects or becomes aware of any suspected, actual or threatened occurrence of any personal data breach in respect of any Protected Data; and

- 19.9.2 provide all information as the Purchaser requires to report the circumstances referred to in clause to regulatory authorities and to notify affected persons under Data Protection Laws.
- 19.10 The Supplier at its own cost shall take reasonable steps in collaboration with the Purchaser to remedy any data breach and restore any data loss arising from its processing activities.
- 19.11 The Supplier shall record and refer all requests and communications received from data subjects or any regulatory authority to the Purchaser which relate to any Protected Data promptly and in any event within three days of receipt and shall not respond to any without the Purchaser's express written approval and in accordance with applicable law.
- 19.12 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to any country or territory outside the United Kingdom or to any International Organisation without the prior written authorisation of the Purchaser (which may be refused or granted subject to such conditions as the Purchaser deems necessary).
- 19.13 The Supplier shall provide access to the Purchaser on reasonable notice to audit compliance with its obligations under this clause and the Data Protection Laws, and contribute to audits, required by the regulator.
- 19.14 The Supplier shall without delay and in any event within 3 days, at the Purchaser's written request, either securely delete or securely return all the Protected Data to the Purchaser in such form as the Purchaser reasonably requests after the end of this Agreement or once processing by the Supplier of any Protected Data is no longer required for the purpose of the Supplier's performance of its relevant obligations under this Agreement, and securely delete existing copies (except to the extent that storage of any such data is required by applicable law and, if so, the Supplier shall inform the Purchaser of any such requirement).

20 Force majeure

- 20.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- 20.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
- 20.1.2 uses best endeavours to minimise the effects of that event.
- 20.2 If, due to Force Majeure, a party:
- 20.2.1 is or shall be unable to perform a material obligation; or
- 20.2.2 is delayed in or prevented from performing its obligations for a period exceeding 14 days the Purchaser may terminate the Contract.

21 Notices

- 21.1 All notices required by this Contract are to be sent by courier or signed for mail to the address of the Parties stated in the Purchase Order except a notification of a change of address has been served by one Party to the other, and in such cases to the notified address.
- 21.2 All notices shall be deemed received on the date signed for on the courier or postal office receipt of delivery.

22 Variation of Purchase Order

- 22.1 The specification and quantities within the Purchase Order may be subject to alteration at the instance of the Purchaser at its sole discretion. Where it agrees to accept the varied Purchase Order, the Supplier shall give effect to any such variation as soon as it is received by it. Where quantities within the Purchase Order are not materially amended, the rates contained in the Purchase Order shall continue to apply.
- 22.2 Any variation of the Purchase Order shall be issued by the Purchaser's representative in writing as an amendment Purchase Order. Where in the Supplier's opinion the variation would result in a change in price, the Parties shall agree on the price prior to the Supplier incurring any cost on account of the varied Purchase Order.

23 Assignment

- 23.1 The Supplier may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Purchaser's prior written consent.

24 Severance

- 24.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

25 Waiver

- 25.1 No failure, delay or omission by the Customer in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

26 Third party rights

- 26.1 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

27 Dispute resolution and Jurisdiction

28 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

29 The parties shall use all reasonable endeavours to reach a negotiated resolution using in a graduated scale, first the Purchase representative and the Supplier's account manager and then senior managers within both organisations, then senior directors within both organisations.

30 The parties irrevocably agree that if they are unable to settle any dispute through negotiation, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation including non-contractual disputes or claims.

31 Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

32 Project Bank Account

32.1 Where determined by the Purchaser, the Supplier shall become a party to the Trust Deed to benefit from the Project Bank Account.

32.2 Under the terms and conditions of the Contract entered into between High Speed Two (HS2) Limited ("Employer") and Skanska Construction UK Limited, Costain Limited and STRABAG AG (the "Purchaser"), the Purchaser has established a Project Bank Account and Currency Project Bank Account, each under a Trust Deed, to make provision for payment to the Purchaser and Named Suppliers. A Supplier shall become a party to a Trust Deed in order to receive payment of amounts due under this Supply Contract directly from either the Project Bank Account or Currency Project Bank Account in accordance with the terms and conditions set out in this clause

32.3 Definitions:

1) Additional Supplier means, for the purposes of this clause, the Supplier as defined in this Supply Contract.

2) The Authorisation is an electronic BACS payment file by which the Purchaser authorises the project bank to make payments from the Project Bank Account or from the Currency Project Bank Account to the Additional Supplier.

3) Currency Project Bank Account is each account used to make payments from the Purchaser to the Additional Supplier in a currency other than the pound sterling (GBP).

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- 4)Project Bank Account is the account used to make payments from the Purchaser to the Additional Supplier in the pound sterling (GBP).
- 5)Trust Deed is the UK Supplier Trust Deed (as set out in Annex 1 to this Supply Contract) or the Overseas Supplier Trust Deed (as set out in Annex 3 to this Supply Contract).
- 6)Overseas Supplier is an Additional Supplier whose contract/(s) with the Purchaser is/are denominated in a currency other than the pound sterling (GBP).
- 7)Overseas Supplier Trust Deed is an agreement in the form set out in Annex 3 to this Supply Contract which contains provisions for administering the Currency Project Bank Accounts.
- 8)UK Supplier is an Additional Supplier whose contract/(s) with the Purchaser is/are denominated in the pound sterling (GBP).
- 9)UK Supplier Trust Deed is an agreement in the form set out in Annex 1 to this Supply Contract which contains provisions for administering the Project Bank Account.
- 10) Joining Deed is an agreement in the form set out in Annex 2 to this Supply Contract under which the Additional Supplier joins the UK Supplier Trust Deed.
- 32.3 The Additional Supplier submits to the Purchaser an application for payment in accordance with the Order.
- 32.4 The Purchaser prepares the Authorisation, setting out the sums due to the Additional Supplier for amount due under the Supply Contract. The Purchaser notifies the Additional Supplier of the sums due to the Additional Supplier stated in the Authorisation.
- 32.5 HS2 and the Purchaser make payment into the Project Bank Account and the Currency Project Bank Accounts of the amount stated in the Authorisation.
- 32.6 The Additional Supplier receives payment from the Project Bank Account, or the relevant Currency Project Bank Accounts, of the sums set out in the Authorisation as soon as practicable after the Project Bank Account or Currency Project Bank Account receives payment.]
- 32.7 If the currency of this Supply Contract is subdivided between the pound sterling (GBP) and a currency other than the pound sterling (GBP) then the Additional Supplier shall be both a UK Supplier and an Overseas Supplier for the relevant currency subdivision.
- 32.8 A payment which is due from the Additional Supplier to the Purchaser is not made through the Project Bank Account or a Currency Project Bank Account.
- 32.9 Payments made from the Project Bank Account or a Currency Project Bank Account are treated as payments from the Purchaser to the Additional Supplier in accordance with this Supply Contract.

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- 32.10 If the Additional Supplier is a UK Supplier, HS2, the Purchaser and the Additional Supplier sign the Joining Deed before the first assessment date in this Supply Contract. If the Additional Supplier is an Overseas Supplier, the Additional Supplier shall automatically be a beneficiary of the Overseas Supplier Trust Deed in accordance with the terms of that Trust Deed.
- 32.11 If the Purchaser issues a termination certificate, no further payment is made into the Project Bank Account or the Currency Project Bank Accounts.

ANNEX 1: UK SUPPLIER TRUST DEED

Annex 1

UK SUPPLIER TRUST DEED

This agreement is made between **High Speed Two (HS2) Limited** (the "Employer"), **Skanska Construction UK Limited, Costain Limited, and STRABAG AG** (acting together in joint venture as the "Contractor") and Named Suppliers.

Terms in this deed have the meanings given to them in the contract between the Employer and the Contractor for Main Works Civils for the combined S1 and S2 Sectors forming part of the HS2 Project (the works).

Background

The Employer and the Contractor have entered into a contract for the works.

The Named Suppliers have entered into contracts with the Contractor or a Subcontractor in connection with the works.

The Contractor has established a Project Bank Account to make provision for payment to the Contractor and the Named Suppliers.

Agreement

The parties to this deed agree that

- sums due to the Contractor and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account by the Contractor for distribution to the Contractor and Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,
- further Named Suppliers may be added as parties to this deed with the agreement of the Employer and Contractor. The agreement of the Employer and Contractor is treated as agreement by the Named Suppliers who are parties to this deed,
- this deed is subject to the law of the contract for the works,
- the benefits under this deed may not be assigned.

The Project Bank is Lloyds Bank Plc

Executed as a deed on ...01 June 2020..... by

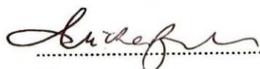


..... Authorised by **High Speed Two (HS2) Limited**

Director

Mark Thurston

..... Printed Name of the Director



..... Authorised by **High Speed Two (HS2) Limited**

Director

..... MICHAEL BRASLEY

..... Printed Name of the Director

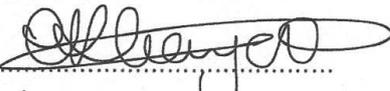
Document Title: Purchase Order Conditions

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Executed as a deed by the Contractor:-

Skanska Construction UK Limited

by  (Signature of Director)
.....
..... KELLY GARGOTNA (Printed name)

by  (Signature of Director/Secretary)
.....
..... THOMAS FAULKNER (Printed name)

and

Costain Limited

by  (Pursuant to a Power of Attorney dated 19 December 2019)
.....
..... CLIVE MARKS (Printed name)

Witnessed:

by  (Signature)
.....
..... JONATHAN MARKS (Printed name)

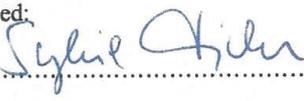
Address 31 PARISH GATE DRIVE, SIDCUP, KENT DA15 8TJ
.....

and

STRABAG AG

by  (Signature of Director)
.....
..... GERAUD ZANGL (Printed name)

Witnessed:

by  (Signature)
.....
..... SYLVIA TICHOVÁ (Printed name)

Address O'BRIEN-GASSE 20/8, 1210 VIENNA, AUSTRIA
.....

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Annex 2

PROJECT BANK ACCOUNT JOINING DEED

Joining Deed

This agreement is made between High Speed Two (HS2) Limited (the “*Employer*”), and Skanska Construction UK Limited, Costain Limited, and STRABAG AG (acting together in joint venture as the “*Contractor*”) and (the “*Additional Supplier*”).

Terms in this deed have the meanings given to them in the contract between the *Employer* and the *Contractor* for Main Works Civils for the combined S1 and S2 Sectors forming part of the HS2 Project (the “*works*”).

Background

The *Employer* and the *Contractor* have entered into a contract for the *works*.

The Named Suppliers have entered into contracts with the *Contractor* in connection with the *works*.

The *Contractor* has established a Project Bank Account to make provision for payment to the *Contractor* and the Named Suppliers.

The *Employer*, the *Contractor* and the Named Suppliers have entered into a deed as set out in Annex 1 (the “UK Supplier Trust Deed”), and have agreed that the *Additional Supplier* may join that deed.

Agreement

The Parties to this deed agree that

- the *Additional Supplier* becomes a party to the UK Supplier Trust Deed from the date set out below,
- this deed is subject to the law of the contract for the *works*, and
- the benefits under this deed may not be assigned.

Executed as a deed on by

..... Authorised by High Speed Two (HS2) Limited
Director

..... Printed Name of the Director

..... Authorised by High Speed Two (HS2) Limited
Director



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..... (Printed name)

Address

.....

Executed as a deed by the Additional Supplier

by (Signature of Director/Pursuant to a Power of Attorney dated)

..... (Printed name of the Director/Attorney)

by (Signature of Director/Secretary/Witness)

..... (Printed name)

Witness Address:

.....

*** Please note that if signing under Power of Attorney a copy of valid current POA needs to be submitted when returning the signed Joining Deed ***



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..... Printed Name of the Director

Executed as a deed by the *Contractor*:-

Skanska Construction UK Limited

by (Signature of Director)

..... (Printed name)

by (Signature of Director/Secretary)

..... (Printed name)

and

Costain Limited

by (Pursuant to a Power of Attorney dated

..... (Printed name)

Witnessed:

by (Signature)

..... (Printed name)

Address

.....

and

STRABAG AG

by (Signature of Director)

..... (Printed name)

Witnessed:

by (Signature)

ANNEX 3

OVERSEAS SUPPLIER TRUST DEED

This agreement is made between **High Speed Two (HS2) Limited** (the "Employer"), **Skanska Construction UK Limited, Costain Limited, and STRABAG AG** (acting together in joint venture as the "Contractor") and for the benefit of the Overseas Suppliers.

Terms in this deed have the meanings given to them in the contract between the *Employer* and the *Contractor* for Main Works Civils for the combined S1 and S2 Sectors forming part of the HS2 Project (the *works*).

Background

The *Employer* and the *Contractor* have entered into a contract for the *works*.

The Overseas Suppliers have entered or will enter into contracts with the *Contractor* or a Subcontractor in connection with the *works*.

The *Contractor* has established or will establish one or more Currency Project Bank Accounts to make provision for payment to the *Contractor* and the Overseas Suppliers.

Agreement

The parties to this deed agree that

- sums due to the *Contractor* and Overseas Suppliers and set out in the Authorisation are held in trust in the Currency Project Bank Account by the *Contractor* for distribution to the *Contractor* and Overseas Suppliers in accordance with the banking arrangements applicable to the Currency Project Bank Account,
- this deed is subject to the law of the contract for the *works*,
- the benefits under this deed may not be assigned.

The Project Bank is Lloyds Bank Plc

Executed as a deed on 01 June 2020 by



..... Authorised by **High Speed Two (HS2) Limited**
Director

Mark Thurston

..... Printed Name of the Director



..... Authorised by **High Speed Two (HS2) Limited**
Director

MICHAEL BRASLEY

..... Printed Name of the Director