



## **RPL CONSTRUCTION LTD**

### **Conditions of Contract**

#### **1. Definitions and Interpretation**

1.1 In the Contract the following words and expressions shall have the meanings hereby assigned unless the context otherwise requires:

- (a). "Appendix" means the Appendix to the Contract;
- (b). "Contract" means these Conditions of Contract together with the Appendix, the Works Data, the Form of Tender, the written acceptance of it, the Form of agreement and such Supplementary Clauses as may be incorporated therein;
- (c). "RPL Construction Designed Works" means the part or parts of the Permanent Works to be designed, constructed and completed by or on behalf of the RPL Construction Ltd;
- (d). "RPL Construction Equipment" means all appliances or things of whatsoever nature required in or about the construction and completion of the Works but does not include materials or other things intended to form or forming part of the Permanent Works;
- (e). "RPL Construction Proposals" means the RPL Construction proposals for the design and carrying out of the Works as set out in the Form of Tender;
- (f). "Cost" means all expenditure reasonably and properly incurred or to be incurred in providing the Works whether on or off Site including overhead finance and other charges properly allocated thereto but does not include any allowance for profit;
- (g). "Direct Contractor" means a contractor, other than the Contractor, who is employed by the Employer to carry out work ancillary to but not forming part of the Works;
- (h). "Employer" means "Authority" "Client" "Company" "Customer" "Person" named as such in the Appendix and includes the Employer's personal representatives, successors and permitted assignees;
- (i). "Employer Designed Works" means the parts of the Permanent Works designed by or on behalf of the Employer;
- (j). "Employer's Requirements" means the document identified as such and included in the Work Data;



(k). "Permanent Works" means the permanent works to be constructed and completed in accordance with the Contract;

(l). "Section" means a part of the Works identified in the Appendix; a part of the Works is a part which is not separately identified;

(m). "Site" means the lands and other places; on, under, in or through which the Works are to be constructed and any other lands or places provided by the Employer for the purposes of the Contract together with such other places as may be designated in the Contract or subsequently agreed by the Employer as forming part of the Site;

(n). "Site Information" means the document so described containing information relating to the Site;

(o). "Temporary Works" means all temporary works of every kind required in or about the construction and completion of the Works;

(p). "Total Cost" means the sum to be ascertained and paid in accordance with the provisions of the Contract for the construction and completion of the Works;

(q). "Works" means the Permanent Works and the Temporary Works and includes the RPL Construction's design Work;

(r). "Works Data" includes, without limitation, the Employer's Requirements and the Contractor's Proposals.

## **2. Agreement etc. to be read as a whole:**

2.1 The Agreement and these Conditions are to be read as a whole. Nothing contained in the Contract Drawings, the Contract Specification or the Work Schedules, nor anything in any Framework Agreement, shall override or modify the Agreement or these Conditions.

## **3. Quotations:**

3.1 All quotations are made and orders accepted by RPL Construction subject to these conditions of contract.

3.2 All quotations by RPL Construction are by way of invitation only and the RPL Construction shall not be bound until it has dispatched a written acceptance of order to the Employer.

3.3 RPL Construction reserves the right to withdraw any quotation without prior notice.



#### **4. Enquiry Information:**

- 4.1 This quotation is based on the information provided with the enquiry. On receipt of working drawings, we reserve the right to alter our quotation if the detailed information varies from the original enquiry.

#### **5. Order in Writing:**

- 5.1 Variations shall be ordered in writing. The Employer may instruct RPL Construction work to be carried out on day works, where there is no other appropriate means of valuing the work. Day work will only be used as a basis for valuing works where expressly instructed by the Employer.

#### **6. Architect/Contract Administrator's/ Employers instructions:**

- 6.1 The Architect/Contract Administrator/Employer may issue instructions and RPL Construction shall forthwith comply with them. If instructions are given orally, they shall not have effect until the Architect/Contract administrator/Employer confirms in writing.

#### **7. Consents and Approvals:**

##### **Architect/Contract Administrator's duties:**

- 7.1 The Employer's Architect/Contract Administrator or any other person concerned to carry out such role on behalf of the Employer, shall issue any further information and instructions necessary to RPL Construction for the proper carrying out of the Works and all certificates required by these Conditions if applicable.

#### **8. Reckoning periods of days:**

- 8.1 Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday, that day shall be excluded.

#### **9. Visits:**

- 9.1 This quotation is based on completing the works included in a single visit, or a number of visits agreed prior to works commencing. Extra visits will be charged at £500.00.



### **10. Working Hours:**

- 10.1 This quotation is based on the work being carried out during normal business working hours, Monday to Friday 8am to 5pm), although these hours may not necessarily be the same as for the Employer or RPL Construction. Should weekend, holiday or other extraordinary hours be required, RPL Construction will be reimbursed for the additional cost(s) by the Employer.

### **11. Sub-Contracting:**

- 11.1 RPL Construction shall without the Architect/Contract Administrator consent sub-contract the whole or any part of the Works. In no case shall any such consent or any sub-contracting in any way affect RPL Construction obligations under any other provision of any sub-contract.

### **12. Continuity:**

- 12.1 It is a requirement that RPL Construction be given sufficient areas of work for daily continuity of work. Should RPL Construction be required to stand idle due to delays not caused by RPL Construction, these standing times will be reimbursed in the valuation period to which they have referred.

### **13. RPL Construction's Offer:**

- 13.1 If RPL Construction submits to the Employer an offer to vary the Works the following shall apply:

The Employer may require RPL Construction to submit with his offer:

- (a). the estimated cost for the varied work and for any other effects of the offered variation; and
- (b). any consequential delay and the financial consequences insofar as not included in
- (c). If the Employer accepts RPL Construction's offer (whether as submitted or with agreed modifications) he shall issue a variation order and RPL Construction shall thereafter be entitled to be paid and to be granted an extension of time in accordance with the RPL Construction's offer, as submitted or modified.

### **14. Variations of these Conditions of Contract:**

- 14.1 No variation of these conditions of contract shall be valid unless confirmed by evidence in writing under the signature of a director at RPL Construction.



**Variation to Works:**

- 14.2 The Employer may order any variation to any part of the Works that he considers necessary for the satisfactory completion of the Works. Variations may include changes to any specified sequence, method or timing of construction. Variations may be ordered at any time up to the end of the Defects Correction Period.

**Extra Work and Variations:**

- 14.3 Where additions to the contract sum occur the Employer must inform RPL Construction in writing to which RPL Construction will estimate on request of the work the additional cost. Where verbal instructions are received on site without estimate from RPL Construction, costs will be charged at our standard day work rate and retail costs of materials unless otherwise agreed in writing.

**15. Communications and Notices:**

- 15.1 Communications, except where the Contract provides otherwise, may be in any form, including electronic form, provided that a permanent record exists. Unless otherwise agreed by the parties, communications shall be in the Contract Language.
- 15.2 Each notice, instruction or other communication referred to in the Agreement or these Conditions shall be in writing.
- 15.3 Unless otherwise stated in these Conditions, any notice or other communication under this Contract may be given to or served on the receipt by any effective means at the address specified in the Agreement or such other address as he shall notify to the other Party. If no such address is then current, the notice or other communication shall be treated as effectively given or served if addressed and sent by pre-paid post to the recipient's last known principal business address or (where a body corporate) its registered or principal office.

**16. Planning Consent**

- 16.1 The Employer will obtain all requisite building, planning and other statutory byelaw consents and the licences required in respect of the works and will indemnify RPL Construction to keep it indemnified in respect of any failure to do so.

**17. Drawing, Design and/or Specifications:**

- 17.1 Where applicable the Employer is responsible for the accuracy of drawings, design and/or specifications submitted to RPL Construction by or on behalf of the Employer and the Employer will indemnify RPL Construction and keep it indemnified against any costs, claims, liabilities or damage caused by any errors, omissions or inaccuracies in such drawings designs and/or specifications.



### **18. Correction of Inconsistencies:**

- 18.1 Any inconsistency in or between the Contract Drawings, the Contract Specification and the Work Schedules supplied by the Employer shall be corrected by the Employer, and any such correction which results in an addition, omission or other change; RPL Construction shall be allowed to treat as a variation and entitled to further payment(s) for an amount which fits.

### **19. Materials onsite and offsite:**

- 19.1 Materials and equipment which are delivered to the Employer's site for use on a contract will remain the property of RPL Construction until applied or fixed to the Employer's premises according to the contract or in the case of materials and equipment which remain unfixed to the Employer's premises until RPL Construction has received payment in full. Therefore, until such fixing or payment the Employer is responsible for the safe keeping of such materials and equipment and will indemnify RPL Construction and keep it indemnified against any loss or damage to such materials and equipment howsoever arising.

### **20. RPL Constructions Equipment and Materials**

#### **Non-removal of Materials and Equipment:**

- 20.1 RPL Construction Equipment, Temporary Works or goods or materials owned by the RPL Construction and brought to the Site for the purposes of the Contract shall not be removed without the written consent of the RPL Construction.

#### **Responsibility of Material(s):**

- 20.2 RPL Construction will not be liable for any material(s) that is brought on site by RPL Construction or by the Employer and fixed to the property which later causes a defect. Any claim regarding such, will need to be brought directly against the manufacturer or supplier.

#### **Listed Goods and Materials:**

- 20.3 With a view to securing payment RPL Construction may transfer to the Employer the property in goods and materials listed in the Appendix, or as subsequently agreed between RPL Construction and the Employer before they are delivered to the Site as long as payment has been made by the Employer to RPL Construction.



**Removal of RPL Construction's Equipment:**

- 20.4 Upon termination of his employment RPL Construction shall with all reasonable dispatch remove from the Site all RPL Construction's Equipment.

**21. Provision of Documents:**

- 21.1 Upon award of the Contract RPL Construction shall be provided with hard or soft copies of the Contract Documents as specified in the Appendix.

**22. Site Information:**

- 22.1 The Employer warrants that he has provided RPL Construction with the Site Information and all such data in the Employer possession or control relating to the Site which is relevant to the Works or their design.

**23. Inspecting of Site**

- 23.1 The Employer shall be deemed to have inspected the Site and its Surroundings and to have obtained such information in connection therewith as is reasonably available; and to have satisfied himself, so far as is practicable, as to the form and nature of the Site including the sub-soil and hydrological conditions; and to have obtained for himself all necessary information as to risks, contingencies and other circumstances which should be available to RPL Construction.

**24. Nominated and Direct Contractors**

**Objection of a Nominated Contractor:**

- 24.1 RPL Construction shall not be bound to employ a Nominated Sub Contractor against whom RPL Construction raises reasonable objection by written notice given to the Employer as soon as practicable.

**Removal of Nominated Sub Contractors:**

- 24.2 RPL Construction shall remove from the Works or their design any nominated sub-contractor who misconducts himself or fails to conform to mandatory requirements for health and safety or whose conduct is prejudicial to health and safety.

**Payment due to the Nominated Contractor:**

- 24.3 The Employer shall pay the Nominated Sub-Contractor the amounts which are due in accordance with the Nominated Sub-Contract.



**Direct Contractor:**

- 24.4 If RPL Construction in consequence of his objection pursuant to condition 24.1 above does not enter into a Nominated sub-contract, the Employer may employ the proposed Nominated Sub-Contractor as a Direct Contractor to carry out the same work. In such case the Employer shall be responsible to RPL Construction for the performance of the Direct Contractor and payments due to the Direct Contractor.

**25. Performance and Completion**

**Contractor to Proceed:**

- 25.1 RPL Construction shall commence the Works on or soon as practicable after the Commencement Date, which shall be the date for commencement of the Works notified by the Employer or otherwise as agreed between the parties in writing.

**Possession and Access:**

- 25.2 Subject to any special agreement as to possession and access, the Employer shall give RPL Construction possession of the Site and such access to it as is necessary for the construction of the Works.

**26. Rate of Progress for the Works and Acceleration:**

- 26.1 If for any reason which does not entitle RPL Construction to an extension of time, the rate of progress of the Works or any Section is in the opinion of the Employer too slow to ensure completion by the time or extended time for completion; RPL Construction shall if so required by the Employer specify and take steps necessary to achieve timely completion. In such as case:
- (a). RPL Construction shall be entitled to change any accepted programme and to adopt any new or changed method of working;
  - (b). The Employer shall be entitled to require RPL Construction to give priority to any Section or part of the Works;
  - (c). The Contractor shall be entitled to additional payment in respect of such measures in (a) and (b) above.



**Acceleration:**

- 26.2 RPL Construction may agree to accelerate the Works or any Section upon such terms as may be agreed with the Employer but will be entitled to additional payment or extension of time.

**27. Completion:**

**Time for Completion:**

- 27.1 The whole of the Works and any Section required to be completed within a particular time as stated in the Appendix shall be completed within the times so stated, unless in case of an Employers default this is not able to be reached.

**Programme and Time for Completion**

- 27.2 Within 14 days after the award of the Contract RPL Construction may submit to the Employer a programme for the Works with a critical path network and accompanied by a general description of the arrangements and methods of construction which RPL Construction proposes to adopt. The Employer shall, within a further 14 days either accept the programme or require amendments necessary to meet the requirements of the Contract, in which case RPL Construction shall submit an amended programme within such as the Employer may direct. In default of the response within 14 days the Employer shall be deemed to have accepted the programme.

**Completion Date:**

- 27.3 Any commencement or completion dates given by RPL Construction at any time are given in good faith but time is not of the essence of the contract and RPL Construction shall not be liable for any loss, damage or expense suffered by RPL Construction or any other party arising directly or indirectly from RPL Construction's failure to comply with such dates.

**Substantial Completion:**

- 27.4 For the purposes of this Contract completion means substantial completion such that all the work required by the Contract has been carried out save for any omission or defect which does not prevent use of the Works for their intended purpose. RPL Construction shall give written notice to the Employer of the date which the Works or any Section is substantially complete and upon such completion the Employer shall issue a Certificate of Substantial Completion.



**Completion of Works:**

- 27.5 If for any reason RPL Construction is unable to complete the works, RPL Construction's liability will not exceed the value of the uncompleted part of the works.

**Extension of time:**

- 27.6 If it becomes apparent that the Works will not be completed by the Date for Completion as stated in the Contract Particulars; RPL Construction shall there upon notify the Architect/Contract Administrator (if applicable) or Employer. Where that delay occurs for reasons beyond the control of RPL Construction, including compliance with Architect/Contract Administrator's instructions that are not occasioned by a default of RPL Construction; the Architect/Contract Administrator shall give such extension of time for completion as may be required by RPL Construction and notify all parties concerned.

**28. Re-measure upon completion**

- 28.1 The works are subject to re-measure on completion if applicable.

**29. Defects:**

- 29.1 If any defects, shrinkages or other faults in the Works appear within the Rectification Period due to materials, goods or workmanship not in accordance with this Contract; the Architect/Contract Administrator shall not later than 14 days after the expiry of the Rectification Period notify RPL Construction who shall make good such defects, shrinkages or other faults entirely at his own costs, unless the Architect/Contract Administrator with the Employer's consent instructs otherwise. If he instructs otherwise, an appropriate deduction may be made from the Contract Sum.

**Defects Correction Certificate:**

- 29.2 At the end of the Defects Correction Period or if more than one the last of such periods, and when all outstanding work and all work of repair and making good defects or other faults has been completed; the Employer shall issue a Defects Correction Certificate stating the date on which RPL Construction shall have completed his obligations under the Contract to the Employers satisfaction.
- 29.3 RPL Construction shall, during the Defects Correction Period stated in the Appendix, be given sufficient access to the Works to rectify any notified defects and to complete any outstanding Works. Subject to any other agreement of the parties, the Defects Correction Period runs from the date on which the Works or any Section or part are or are deemed substantially completed.



- 29.4 When in his opinion RPL Construction obligation regarding the above has been discharged, the Architect/Contract Administrator shall forthwith issue a certificate specifying the date they were discharged. If RPL Construction do not hear within 28 days of such, then their obligations are automatically discharged.

**30. Liquidated Damages:**

- 30.1 If RPL Construction fails to achieve completion of the whole of the Works due to the acts or omissions of the Employer, its agents, servants or direct contractor; the employer shall pay RPL Construction Liquidated Damages, as stated in the Appendix, for every day during which the Works remain uncompleted.

**31. Force Majeure:**

- 31.1 Force Majeure means any circumstances outside the control of either party, or not attributable to the default of either party which arises during the currency of the Contract, which renders it impossible or illegal for either party to fulfil his contractual obligations.
- 31.2 If any given completion dates given by RPL Construction (including but not limited to inclement weather, accidents loss or damage of any kind, strikes, lockouts, cessation of labour affecting any trade engage upon the works or the inability of RPL Construction to secure labour and/or materials) a fair and reasonable extension of time for completing the works shall be granted to RPL Construction and the Employer shall be responsible for any increased costs resulting from the same under condition 19 above.

**32. Risks**

**Assessment of Risks**

- 32.1 The Employer shall be responsible for the interpretation of all information obtained relevant to the Site or to risks, contingencies and other circumstances which may affect his tender, whether such information is obtained by RPL Construction or supplied by the Employer.

**Expected Risks RPL Construction are not responsible for:**

- 32.2 RPL Construction is not liable for loss or damage to the works to the extent it is due to any of the Expected Risks which are the following:
- (a). the use or occupation by the Employer, his agents, servants, direct or other contractors (not being employed by RPL Construction) of any part of the Permanent Works;



- (b). any fault, defect, error or omission in the design of the Works other than a design provided by RPL Construction pursuant to his obligations under the Contract;
- (c). riot, war, invasion, act of foreign enemies or hostilities (whether war be declared or not);
- (d). civil war, rebellion, revolution, insurrection or military or usurped power;
- (e). Ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel radioactive toxic explosive or other hazardous properties of any explosive, nuclear assembly or nuclear component; and
- (f). pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

**Employers Risks which RPL Construction are not responsible for:**

32.3 The Employers Risks are:

- (a). physical conditions (other than weather conditions or conditions due to weather conditions) or artificial obstructions which conditions or obstructions could not reasonably have been foreseen by RPL Construction;
- (b). failure by the Employer to deliver necessary instructions or details or any necessary approval, acceptance or consent within such times as they are reasonably necessary;
- (c). failure by the Employer to give timely possession of the Site or part of it;
- (d). unless resulting from the Employers default, the issue by the Employers instruction (including a variation) which causes delay and/or disruption to the Works;
- (e). the Employer Designed Works or any instructions being found not to be in conformity with any applicable law, Regulation or Bye-law;
- (f). any error in the setting out of the Works or their construction which is due to incorrect information supplied in writing by the Employer or other person exercising delegated authority;
- (g). suspension of the Works or any Section for a reason not falling within (b) above;
- (h). delay or additional Cost by a Direct Contractor;



(i). delay or additional Cost arising from a default or failure by the Employer in relation to Employer Furnished Materials;

(j). delay or additional Cost resulting from encountering remains or articles or geological or archaeological importance on the Site.

**RPL's Construction's Entitlement for Employer's Risk set out in Condition 32.3 above:**

32.4 Where any Employer's Risk occurs RPL Construction shall be entitled to payment, of additional Cost incurred directly and unavoidably as a result of the occurrence of such risks and to allowance of additional time for completion of the Works or any Section.

**Shared Risks by RPL Construction and the Employer:**

32.5 The Shared Risks are:

(a). exceptionally adverse weather conditions or conditions due to exceptionally adverse weather conditions;

(b). suspension of the Works or any section if provided for in the Contract or necessary by reason of weather conditions or necessary for the proper construction of the works and not arising from any error on the part of RPL Construction or the Employer;

(c). an event of Force Majeure;

(d).an Excepted Risk for RPL Construction or the Employer;

(e). other special circumstances of any kind whatsoever which may occur.

**33. Rectification of Loss**

33.1 In the event of any loss or damage to the Works or any Section or part of them or to any materials, plant or equipment for incorporation therein and RPL Construction is liable, such liability will fall on the Employer.

**34. Allowance of Time for RPL Construction:**

34.1 Where any Shared Risk occurs, RPL Construction shall be entitled to allowance of additional time for completion of the Works or any Section subject to condition 32.5 above but not to financial compensation unless otherwise provided in the Contract.



### **35. Responsibility of the Employer:**

- 35.1 The Employer on his behalf shall in the performance of the Contract, collaborate in a spirit of trust and mutual support in the interests of the timely, economic and successful completion of the Works. In particular, the Employer shall give notice to RPL Construction as soon as they become aware of any matter which is likely to affect the design of the Works or to cause delay or additional Cost, irrespective of whether the matter is contended to give to any relief under the Contract.

### **36. Payments**

#### **Interim Payments:**

- 36.1 Where the contract price exceeds £5,000 RPL Construction reserves the right to request interim payments on account to the value of work and/or materials employed or delivered.

#### **Interim & Final Payment:**

- 36.2 Unless otherwise agreed in writing payment is due in full on completion. Should payment not be received on or before the last day of the calendar month following the date of invoice RPL Construction will charge interest at the rate of 15% per annum under the Late Payments and Commercial Debts Act 1996 if a company or authority or 8% plus with the relevant rate set by the Bank of England at the material time per annum if a residential customer.

### **37. Interest on Overdue Payments to RPL Construction:**

37.1 In the event of failure by an authority or company to certify or to make payment to RPL Construction the authority or company shall pay to RPL Construction interest at the rate of 15% per annum under the Late Payments and Commercial Debts Act 1996 on which any payment is overdue or which should have been certified and paid.

37.2 In the event of a failure by an residential customer to certify or to make payment to RPL Construction the residential customer shall pay to RPL Construction interest at the rate of 8% plus with the relevant rate set by the Bank of England at the material time per annum on any payment is overdue or which should be certified and paid.



**38. Failure to pay amount due and Termination of Performance:**

38.1 If the Employer fails to pay a sum, or part of it, due to RPL Construction under Conditions 36.2, 37.1 and 37.2 above by its final date for payment, the Employer shall, in addition to any unpaid amount that should properly have been paid; pay RPL Construction interest on that amount at the Interest Rate which is set out in 36.2, 37.1 and 37.2 above for the period from the final date for payment until payment is made.

38.2 Any such unpaid amount and any interest under this condition shall be recoverable by RPL Construction as a debt.

38.3 Acceptance of a payment of interest shall not in any circumstances be construed as a waiver, either of the recipient's right to proper payment of the principal amount due or of RPL Construction's right to suspend performance by giving 7 days notice to the Employer to do such. If no payment is received by RPL Construction within 7 days, RPL Construction will suspend performance without further notice until payment is received. Where RPL Construction exercises his right of suspension, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.

**39. RPL Construction Payment Notice:**

39.1 RPL Construction shall submit to the Employer every calendar month after the Commencement Date of the Works and thereafter every calendar payment notices specifying the sum which RPL Construction considers to be due at the following payment due date and the basis on which the sum is calculated. The payment due date is 14 days after the date for RPL Construction's payment notice submitted to the Employer. The payment notice shall include the following amounts:

(a). The assessed value of the work carried out up to the valuation date stated in the RPL Construction's payment notice;

(b). The value of any work disallowed by the Employer if any;

(c). RPL Construction's assessment of the fee payable at the payment due date and the basis on which it is calculated;

(d). A list of any goods or materials delivered to the Site but not yet incorporated in the Permanent Works and their value;

(e). A list of any of those goods or materials identified in the Appendix, which have not yet been delivered to the Site, but of which the property has been vested in the Employer and their value;



(f). The estimated amount to which RPL Construction considers himself entitled in connection with all other matters for which provision is made under the Contract.

**40. Employer's Payment Less Notice:**

40.1 Within 7 days after the submission of RPL Construction's Payment Notice to the Employer, the Employer shall certify the sum that the Employer considers to be due at the payment due date and specify the basis to which that sum is calculated, including:

- (a). The amount which the Employer considers due to the RPL Construction;
- (b). Such amounts (if any) as the Employer considers is due (may exceed the percentage of the value stated in the Appendix which RPL Construction will be due);
- (c). Any deductions of sums due from RPL Construction under the Contract;
- (d). The Employer to estimate the payment that RPL Construction is entitled to receive on the due date;
- (e). Where for any payment under condition 39 above the Employer intends to pay less than the sum claimed by RPL Construction or otherwise due; the Employer shall notify RPL Construction in writing not less than five days before the due date for payment specifying the sum that the Employer considers to be due on the date the notice is served and the basis on which that sum is calculated.

**41. Employer's failure to submit a Pay Less Notice:**

41.1 If the Employer fails to submit a pay less notice as required by condition 40 above, RPL Construction will be entitled to the full payment under that payment notice as stated in condition 39 above.

**42. Paid when Paid:**

42.1 Under no circumstances does RPL Construction carry out work under "Paid when Paid" contract.

**43. Date Start of Payment Notice and Method of Communication:**

43.1 **The Payment Notice:**

- (a). date will begin from what is stated in the notice by RPL Construction;
- (b). can be sent by RPL Construction by Email, Fax or Post to the Employer.



#### **44.Retention**

- 44.1 The Employer shall indicate clearly in the Appendix whether or not retention will be deducted. If so he shall be entitled to deduct retention as stated in the Appendix on amounts due to RPL Construction;
- 44.2 RPL Construction will be entitled to half the amount so deducted shall be released to them on the issue of a certificate of Substantial Completion in respect of the Works or any Section or part of the Works, calculated pro rata to the value of the completed Works. The remaining amount of any retention shall be released after the end of the Defects Correction Period for the Works or the Section or part.

#### **45.Additional Payment And Final Account**

##### **Notice of Claims:**

- 45.1 If RPL Construction intends to claim any additional payment or any allowance or extension of time for completion of the Works or any Section under these Conditions, he must give notice to the Employer within 28 days of becoming aware of the facts giving rise to the claim.

##### **Failure for the Employer to Respond to the Notice:**

- 45.2 If the Employer fails to respond to the RPL Construction notice for additional payment or extension of time, RPL Construction may go ahead with the Works and will be entitled to claim additional payment or time.

##### **Delay or Disruption:**

- 45.3 The Employer shall issue an instruction which causes delay or disruption to the Works, provided that the instruction was not issued as a result of RPL Construction's default; the Employer shall after the consultation with RPL Construction determine the amount of any additional cost incurred by RPL Construction, including any loss of profit where incurred and shall take such delay into account in determining any extension of time to which RPL Construction is entitled.

##### **Statement of Final Account:**

- 45.4 Within 6 months after the date of the issue of the Certificate of Substantial Completion RPL Construction shall submit to the Employer a payment notice of the final account and any supporting documentation showing in detail the value in accordance with the Contract of the Works carried out together with all further sums RPL Construction considers to be due to or from the Employer.

##### **Agreement of Final Account:**



- 45.5 Within 3 months after the issue of the payment notice of the final account and of all information reasonably required for its verification; the Employer shall agree the final account or if he disagrees he shall provide the RPL Construction with full details of the amount with which he disagrees and provide full supporting documents to substantiate his valuation.

**Final Certificate:**

- 45.6 Within 3 months after the agreement of the final account or receipt of the details and supporting documents from RPL Construction or the last Defects Correction Certificate (whichever occurs last) the Employer shall issue his final certificate. The Final Certificate shall state the sum that the Employer considers to be due to RPL Construction or from RPL Construction to the Employer after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled under the Contract; and subject to any adjustments resulting from any instructions issued during the Defects Correction Period and from any failure to make good defects. The Final Certificate shall state the basis on which the balance has been calculated.

**Final Date for Payment**

- 45.7 Not later than 5 days after the issue of the Final Certificate the Employer shall give RPL Construction a written notice specifying the amount of the payment proposed to be made, to what the payment relates and the basis on which the amount was calculated. The Final Date for payment is 28 days after the date of issue of the Final Certificate.

**46. Inflation:**

- 46.1 All prices are based on the cost to RPL Construction; goods and materials, labour, transport and other costs ruling at the date when such prices were quoted. In the event of any such costs to RPL Construction being increased directly or indirectly prior to completion of the works, RPL Construction reserves the right to charge all such increases as an addition to the contract price.

**47. VAT:**

- 47.1 Unless otherwise stated all prices are exclusive of Value Added Tax of 20% and in relation to any payment to RPL Construction under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.



**48. Employers Default:**

- 48.1 The following events shall be regarded as an Employers Default, namely: becoming bankrupt or insolvent, going into liquidation, having a receiving or administration order made against him, compounding with creditors, carrying on business under a receiver, trustee or manager for the benefit of creditors or any order act or event which under the applicable laws has effect substantially similar to these orders acts or events.

**49. Termination of Employment:**

- 49.1 Upon the occurrence of an Employer Default, RPL Construction will after giving 7 days' notice in writing to the Employer specifying the event relied on terminate his employment under the Contract without thereby avoiding the Contract or releasing the Employer from any of his obligations or liabilities under the Contract.
- 49.2 Should further performance of the Contract be prevented by Force Majeure for a continuous period of not less than 42 days, either party may, after giving the other a further 28 days' notice of its intention to do so, terminate the RPL Construction's employment under the Contract.

**Entitlement on Termination:**

- 49.3 Upon termination of RPL Constructions employment pursuant to condition 31.1 above, the parties shall continue to be bound by the Contract and the RPL Construction shall be entitled to be paid the following amounts:
- (a). the Contract Value of all work carried out prior to the date of abandonment, after deducting the value of any defects in or omissions from such works, in so far as such amounts have not already been paid on account;
  - (b). preliminary items so far as the work or service they relate to have been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;
  - (c). the cost of materials or goods reasonably ordered for the Works which have been delivered to RPL Construction or of which RPL Construction is legally liable to accept delivery (such materials or goods becoming the property of the Employer upon such payment being made to RPL Construction);
  - (d). any expenditure reasonably incurred by RPL Construction in the expectation of completing the whole of the Works insofar as not recovered by any other payments;
  - (e). the reasonable cost incurred in removal from the Site;
  - (g). any retention sums which may otherwise be withheld under the Contract.



**Payment after Termination:**

49.4 Upon RPL Construction terminating his employment under condition 49 above:

RPL Construction shall have the right and shall with all reasonable despatch, remove from the Site all RPL Construction's' Equipment;

Employer shall pay to RPL Construction the amount of any loss or damage to RPL Construction arising from or as a consequence of such termination.

**50. Liability:**

50.1 RPL Construction liability in respect of works carried out and/or materials supplied under any condition, warranties terms or other terms whether expressed or implied by statute or otherwise shall be subject to the following:

(a) Where a written guarantee or warranty is given by RPL Construction, RPL Construction liability shall be limited to the terms of such guarantee or warranty and:

(b) RPL Construction shall be given immediate notice of any defect being discovered and no remedial works shall be carried out by a person, firm or company And

(c) RPL Construction liability, if any, under such guarantee of warranty shall be limited to the contract price.

(d) RPL Construction's liability shall in any event be limited to the contract price.

(e) Nothing herein shall exclude or restrict any liability of RPL Construction for death or personal injury resulting from the negligence of RPL Construction or its employees or agents or for any breach of any express or implied warranty as to title.

**Liability for Nominated Sub Contractors:**

50.2 RPL Construction shall not be liable under the Contract for all work sub contracted by the Employer and for all acts, omissions, defaults or neglects of any sub-contractor, his agents, servants or works nominated by the Employer.

**51. Accident or Injury to Employer's Agents, Representatives or Servants:**

51.1 RPL Construction shall not be liable for or in respect of any damages or compensation payable at law in respect of or in consequence of any accident or injury to any operative or other person in employment of the Employer or any nominated sub-contractor or direct contractor



## **52. Employers Responsibility to Land:**

52.1 The Employers responsibilities are as follows:

(a). damage to crops being on the Site (save in so far as possession has not been given to RPL Construction);

(b). the use or occupation of land provided by the Employer for the purposes of the Contract (including consequent losses of crops) or interference whether temporary or permanent with any right of way, light, air or water or other easement or quasi-easement which are the unavoidable result of the construction of the Works in accordance with the Contract;

(c).the right of the Employer to construct the Works or any part of the Works on, over, under, in or through any land;

(d). damage which is the unavoidable result of the construction of the Works in accordance with the Contract including any design for which RPL Construction is not responsible under the Contract; and

(e). death of or injury to persons or loss of or damage to property resulting from any act, neglect or breach of statutory duty done or committed by the Employer, his agents, servants or other (not being employed by RPL Construction) for or in respect of any claims, demands or proceedings costs charges and expenses in respect thereof or in relation thereto.

## **53. Insurances and Indemnities:**

53.1 The Employer shall without limiting his or RPL Construction obligations and responsibilities insure in the joint names of RPL Construction and the Employer the Works together with materials, plant and equipment for incorporation, therein to the full replacement costs plus an additional 10% to cover any additional costs that may arise incidental to the rectification of any loss or damage including professional fees, cost of demolition and removal of debris.

### **Third Party Insurance:**

53.2 The Employer shall without limiting his or RPL Construction obligations and responsibilities under this Clause insure in the joint names of RPL Construction and Employer against liabilities for death of or injury to any person (other than any operative or other person in the employment of RPL Construction or any of his sub-contractors) or loss of or damage to any property (other than the Works) arising out of the performance of the Contract.



**Amount of Insurance:**

- 53.3 The insurance policy shall be for at least the amount stated in the Appendix and shall include a cross liability clause such that the insurance shall apply to RPL Construction and to the Employer as separately insured.

**Indemnity by Employer:**

- 53.4 The Employer shall be subject to condition 52 above indemnify RPL Construction against all claims, demands, proceedings and damage costs, charges and expenses in respect of the matters.

**Professional Indemnity:**

- 53.5 The Employer shall take out and maintain professional indemnity insurance if required by and in accordance with the Appendix.

**54. Cancellation of Order:**

- 54.1 Cancellation of an Employer's order will be accepted only at the RPL Construction's discretion and RPL Construction reserves the right in such event to charge for all costs incurred prior to and/or resulting from such cancellation in addition to such other remedies as it may have.

**55. Resolution of Disputes between RPL Construction and Employer:**

**Mandatory Conciliation or Mediation:**

- 55.1 The Employer or RPL Construction may at any time by notice in writing seek the agreement of the other party for any dispute between them to be referred to conciliation or mediation before adjudication, arbitration or litigation proceedings are commenced. Any settlement resulting from conciliation or mediation shall be binding when incorporated in a written agreement signed by both parties.

**Adjudication:**

- 55.2 Any disputes arising out of or in connection with this agreement shall be referred to adjudication in accordance with the Adjudication Rules of the Royal Institute of Chartered Surveyors and in the absence of any agreement between the parties as to the identity of the adjudicator; an adjudicator shall be nominated by the President of RICS.



The decision of any Adjudicator shall be binding and enforceable until final determination of the dispute by referral to Arbitration in accordance with the Rules of the Chartered Institute of Arbitrators or Litigation in England and Wales. Any Arbitration shall be conducted in accordance with the Construction Industry Model Arbitration Rules (CIMAR).

**Arbitration:**

- 55.3 If the parties do not reach an agreement in respect of clause 55.1 above the Employer and RPL Construction by notice in writing require any dispute between them to be referred to arbitration which shall be carried out in accordance with the arbitration procedure set out in the Appendix. The award of the arbitral tribunal shall be final and binding on the parties.

**Interest in Adjudication, Arbitration or Litigation**

- 55.4 If in an adjudication, arbitration or in litigation proceedings pursuant to the Contract the adjudicator, arbitrator or Judge holds that any sum or additional sum should have been certified by a particular date; this shall be regarded as a failure to certify such sum or additional sum which shall be deemed to be due for payment 28 days after the date by which the adjudicator, arbitrator or Judge holds that the Employer should have certified the sum and interest as provided in condition 37.1 and 37.2 above shall accrue on that sum payable to RPL Construction.

**Legal Costs in pursuing Adjudication, Arbitration, Conciliation, Litigation and Mediation:**

- 55.5 If the parties decide to pursue one another in the above methods the Employer shall be liable to RPL Construction's legal costs.

**56. Governing Law, Jurisdiction, Language, Communications and Notices:**

**Governing Law:**

- 56.1 The Contract and these conditions shall be governed by and interpreted in accordance with the laws of England and Wales.

**Jurisdiction:**

- 56.2 The courts of England and Wales have jurisdiction over the Contract and over the enforcement of any decision of an adjudicator, arbitrator or judge.



**Language:**

- 56.3 The Contract Language shall be English unless otherwise agreed or stated.

**57. Fees or charges legally demandable:**

- 57.1 The Employer shall pay any fees or any charges (including any rates or taxes) legally demandable under any of the Statutory Requirements. Such fees and charges shall be reimbursable to RPL Construction if they have made payment.

**58. CDM Regulations:**

- 58.1 Each party undertakes to the other that in relation to the Works and site he will duly comply with applicable CDM Regulations.

**59. Construction Industry Scheme (CIS):**

- 59.1 If the Employer is or at any time up to the payment of the final certificate becomes a 'contractor' for the purposes of CIS, his obligation to make any payment under this Contract is subject to the provisions of the CIS.

**60. Corruption and regulation 73(1)(b) of the PC Regulations:**

- 60.1 RPL Construction shall be entitled by notice to Employer to terminate the Employer's employment, under this or any other contract with the Employer if, in relation to this or any other such contract, the Employer or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010, or, where the Employer is a Local or Public Authority, shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972, or, where this Contract is one to which regulation 73(1) of the PC Regulations applies, the circumstances set out in regulation 73(1)(b) of the PC Regulations apply.

**61. Contracts (Rights of Third Parties) Act 1999:**

- 61.1 A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to force any terms of this agreement.

**62. Fees, Royalties and Patent Rights:**

- 62.1 The Employer shall pay all fees or charges (including any rates or taxes) legally demandable under any of the Statutory Requirements and indemnify RPL Construction against any liability resulting from any failure to do so.



**63. Royalties and Patent Rights –Employers Indemnity:**

63.1 All royalties or other sums payable in respect of the supply and use in carrying out the Works of any patented article, processes or inventions or in respect of the supply and use of the Works of drawings or models of buildings that are the subject of copyright, other than drawings or models provided by the Employer, shall not be deemed to have been included in the Contract Sum, and the Employer shall indemnify RPL Construction from and against all claims and proceedings which may be brought or made against RPL Construction, and all damages, costs and expense to which he may be put, by reason of the Employer infringing or being held to have infringed any patent rights in relation to any such articles, processes and inventions or infringing or being held to have infringed copyright.

**64. Patent rights – Instructions:**

64.1 Where in compliance with the Employer's instructions RPL Construction shall supply and/or use in carrying out the Works, any patented articles, processes or inventions, RPL Construction shall not be liable in respect of any infringement or alleged infringement of any patent rights in relation to any such articles, processes or inventions and all royalties, damages or other sums which RPL Construction will be liable to pay the persons entitled to such rights shall be added to the Contract Sum.

**65. Copyright and use:**

65.1 Subject to any rights in any designs, drawings and other documents supplied to RPL Construction for the purposes of this Contract by or on behalf of the Employer, the copyright in RPL Construction's Design Documents shall remain vested in RPL Construction.

Subject to all sums due and payable under this Contract to RPL Construction having been paid, the Employer shall have an irrevocable royalty free, non-exclusive licence to copy, RPL Construction's Design Documents and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. Such licence shall enable the Employer to copy and use RPL Constructions Design Documents for the extension of the Works but shall not include a licence to reproduce the designs contained in them for any extension of the Works.

RPL Construction shall not be liable for any use by the Employer of any of RPL Constructions Design Documents for any purpose other than that for which they were prepared.



**66. Entire Contract Clause:**

- 66.1 These Conditions of Contract and the documents and instruments referred to herein constitute the entire contract between the parties to these conditions of contract and supersede all other understandings, written or oral, with respect to the subject matter of these conditions of contract.