

Terms and Conditions for Construction Works

1. Definitions and interpretation

1.1 The following definitions shall apply in these Conditions:

"**Agreement**" the contract between the Customer and Lynx for the completion of the Works in accordance with these Conditions.

"**CDM Regulations**" means the Construction (Design and Management) Regulations 2015.

"**Commencement Date**" means the date of commencement of the Works at the Site, as notified to the Customer by Lynx.

"**Completion**" means, unless otherwise stated in the Proposal, when the Works are commissioned and complete save for any minor items or defects the existence, completion or rectification of which would not prevent the use of the Works as a whole.

"**Completion Certificate**" means the written notice to be issued (or deemed to be issued) by the Customer to Lynx pursuant to clause 7 stating the date on which Completion of the Works was achieved.

"**Completion Date**" means the last day of the period of time stated in the Proposal (if any) calculated from the Commencement Date subject to any extension of time that Lynx is entitled to pursuant to clause 9.3.

"**Conditions**" these terms and conditions.

"**Consents**" means the Customer's Consents and Lynx's Consents.

"**Contract Price**" is the price or cost detailed within the Proposal, as adjusted from time to time in accordance with clause 9 of this Agreement.

"**Customer**" means the entity engaging Lynx to complete the Works.

"**Customer's Consents**" means all consents, licences, authorisations, permissions, accreditations, surveys and approvals stated in the Proposal that the Customer is responsible for obtaining and any other consents, licences, authorisations, permissions, accreditations, surveys and approvals necessary in connection with the Works other than Lynx Consents.

"**Date of Completion**" means the date stated in the Completion Certificate as the date or the deemed date (as applicable) on which Completion of the Works was achieved.

"**Defects Notification Period**" means, unless otherwise stated in the Proposal, the period of 24 months from the Date of Completion.

"**Insolvency Event**" means in relation to either party:

- (a) the passing of a resolution for winding-up or a court of competent jurisdiction makes an order for the winding-up or the dissolution of a party;
- (b) any steps are taken for the making of an administration order or the appointment of an administrator under the out-of-court procedure under the Enterprise Act 2002 or notice is given of an intention to appoint an administrator in relation to a party or any steps are taken for the appointment of a receiver or administrative receiver, or an encumbrancer takes possession of or sells any of a party's assets;
- (c) the making of an arrangement or composition with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally;
- (d) if the party ceases to carry on business at any time for 30 consecutive days; or
- (e) if the party is unable to pay its debts (within the meaning of that term under section 123, Insolvency Act 1986).

"**Lynx**" means a company within the Lynx group of companies, including but not limited to, Lynx Sustainable Solutions Limited, Lynx Projects Limited, Lynx LED Limited, Lynx Electrical Solutions Limited and Lynx Building Solutions Limited.

"**Lynx's Consents**" means the consents, licences, authorisations, permissions, accreditations, surveys and approvals stated in the Proposal that Lynx is responsible for obtaining.

"**Lynx's Documents**" means the documents, designs, drawings, plans, data, specifications and reports developed or produced by Lynx as part of or in relation to the Works.

"**Lynx's Personnel**" means all personnel who Lynx utilises for the purposes of the Works including all staff, labour and other employees of Lynx and any sub-contractor or supplier.

"**Materials**" means items, goods, components, materials and equipment of all kinds intended to form a permanent part of the Works.

"**Manufacturer Warranted Goods**" means those components forming part of the Works which are supplied together with the benefit of Manufacturers' Warranties.

"**Manufacturers' Warranties**" has the meaning set out in clause 3.4.

"**Order**" means the Customer's order for the completion of the Works as set out in the signed order form attached to the Proposal, the Customer's purchase order or in the Customer's written acceptance of the Proposal.

"**Proposal**" means the proposal by Lynx to the Customer in relation to the Works.

"**Site**" means the site and property at which the Works are to be carried out as stated in the Proposal.

"**Statutory Requirements**" any law, statute, regulation or order issued by any governmental or regulatory body or authority which relates to the Works.

"**Statutory Scheme**" means the Scheme for Construction Contracts Statutory Instrument 1998 No 649 or any such enactment or amendment to such legislation as is in force from time to time.

"**Works**" means the Works as more particularly described in the Proposal.

- 1.2 If the Customer appoints an agent, project manager or representative on its behalf in connection with the Works Lynx shall be entitled to assume that such person(s) shall have full authority to receive and issue applications, consents, approvals, instructions, certificates, notices, requests and otherwise to act for the Customer under the Agreement.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to accept the Proposal from Lynx in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted by Lynx commencing the Works, at which point and on which date the Agreement shall come into existence.
- 2.3 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, including but not limited to, those contained within the Customer's purchase order, or acknowledgement of the Order, or which are implied by law, trade custom, practice or course of dealing.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

3. Contractor's general obligations

- 3.1 Lynx shall carry out and complete the Works:
 - (a) in a good and workmanlike manner;
 - (b) in accordance with Statutory Requirements;
 - (c) subject to the Customer providing copies of the Customer's Consents prior to the date of this Agreement;
 - (d) in relation to the design and specification of the Works, exercising the skill, care and diligence to be expected of a properly qualified and competent designer experienced in designing and specifying Works of a similar scope, nature and complexity to the Works; and
 - (e) substantially in accordance with the Proposal, provided always that Lynx shall be entitled, at its discretion, to make reasonable variations to the Proposal.
- 3.2 Subject to clause 3.3, Materials shall be of satisfactory quality and a standard appropriate to the Works.
- 3.3 Unless otherwise stated in the Proposal, in relation to the Manufacturer Warranted Goods:
 - (a) Lynx shall be responsible for the installation of the Manufacturer Warranted Goods but shall have no liability in relation to such goods except as set out in clause 3.3(b)
 - (b) To the extent that there is any defect or other fault in the Manufacturer Warranted Goods and such failure causes the Customer to suffer any loss or damage, the Customer's right to recover such losses, costs or damages from Lynx is subject to and conditional upon the extent to which Lynx may recover the equivalent losses, costs or damages pursuant to the supply terms between Lynx and the manufacturer of such goods.

- 3.4 Lynx shall supply the Customer with copies of any manufacturer warranties which are available in relation to the Manufacturer Warranted Goods (the "Manufacturers' Warranties"). Lynx hereby assigns to the Customer any benefit of the Manufacturers' Warranties with automatic effect from the date of expiry of the Defects Notification Period (or if sooner, upon termination) to the extent that the Customer is not already a beneficiary of such warranties.
- 3.5 Unless otherwise stated in the Proposal, Lynx shall act as 'contractor' and 'designer' for the purposes of the CDM Regulations and the Customer shall appoint others as 'principal contractor' and 'principal designer' and 'designer' under the CDM Regulations in relation to the Works and the Customer shall notify Lynx of the name and contact details for the person(s) it appoints.
- 3.6 Lynx shall obtain Lynx's Consents in relation to the Works.
- 3.7 Lynx shall provide to the Customer a copy of the as-built drawings and operation and maintenance manual in relation to the Works within 60 days of Completion.
- 3.8 Subject to the receipt of £5,000 per collateral warranty, Lynx shall enter into up to three collateral warranties in favour of third parties that have an interest in the Works on terms reasonably acceptable to Lynx.
- 4. Customer's obligations**
- 4.1 The Customer shall provide Lynx with all information required by Lynx in relation to the Site (including, without limitations, its condition, structure and electrical infrastructure) and information regarding matters affecting the Site reasonably necessary in relation to the Works within any reasonable time requested by Lynx and in any event prior to the Commencement Date (including, without limitation, all information necessary to enable Lynx to perform its obligations in connection with and discharge its duties under the CDM Regulations).
- 4.2 The Customer shall be responsible for the accuracy of all information provided to Lynx. Lynx shall be entitled to rely upon any information provided by or on behalf of the Customer.
- 4.3 Subject to clause 3.6, the Customer shall be responsible for obtaining (prior to the Commencement Date) and maintaining (at all relevant times) at its own cost all Consents.
- 4.4 The Customer shall not omit any part of the Works without the prior written consent of Lynx, not to be unreasonably withheld or delayed. Lynx may omit any part of the Works without the consent of the Customer.
- 4.5 The Customer is responsible under the Waste Electrical and Electronic Equipment Regulations 2006 (the "WEEE Regulations") for the costs of collection, treatment, recovery, recycling and environmentally sound disposal of any Materials supplied under this Agreement that has become waste electrical and electronic equipment ("WEEE"). The Customer will indemnify Lynx against any claims or legal proceedings that are brought or threatened against Lynx by a third party which would not have been caused or made had the Customer fulfilled its express or implied obligations under this clause or in connection with the WEEE Regulations.
- 5. Access**
- 5.1 The Customer shall provide to Lynx and Lynx's Personnel full and unencumbered access to the Site to enable Lynx to comply with its obligations under this Agreement.
- 5.2 Lynx shall comply with any reasonable site rules and regulations in relation to the Site that are provided to it prior to the date of this Agreement.
- 6. Time for Completion**
- 6.1 Lynx shall commence the Works on the Commencement Date and shall use reasonable endeavours to achieve Completion of the Works by the Completion Date.
- 6.2 Unless otherwise stated in the Proposal, Lynx shall not be liable for any loss or damage in connection with any delay of the Works, liquidated or unliquidated.
- 7. Completion**
- 7.1 Lynx shall notify the Customer in writing when in Lynx's reasonable opinion the Works at the Site have achieved Completion.
- 7.2 The Customer shall carry out an inspection of the Works within two (2) days of the date of service of Lynx's notice pursuant to clause 7.1.
- 7.3 If the Customer (acting reasonably):
- (a) is satisfied that Completion has been achieved in respect of the Works, the Customer will issue a Completion Certificate to Lynx in respect of such Works within five (5) days of the Date of Completion; or
- (b) is not satisfied that the Works have achieved Completion, it shall, within five (5) days of the date of any inspection, by notice to Lynx, state in what way it considers that the relevant Works have failed to achieve Completion, in which event, Lynx shall then promptly undertake all necessary rectification work at its own expense and, once completed, give notice to the Customer in accordance with clause 7.1 that the Works are, once again, available for inspection in accordance with clause 7.2 and the procedure under this clause 7 shall be repeated as many times as may be necessary until the Works achieve Completion.
- 7.4 If the Customer fails to issue a Completion Certificate to Lynx in accordance with clause 7.3(a) or fails to issue a notice to Lynx in accordance with clause 7.3(b) then Completion shall be deemed to have occurred and the Completion Certificate shall be deemed to have been issued immediately upon the expiry of the relevant five (5) day period.
- 8. Defects**
- 8.1 Lynx shall:
- (a) complete any work which is outstanding at the date of the Completion Certificate within a reasonable time of the date of such certificate; and
- (b) undertake any work to remedy any defects which arise during the Defects Notification Period in the Works due to any failure of Lynx to comply with its obligations under this Agreement.
- 8.2 During the Defects Notification Period, the Customer shall notify Lynx in writing as soon as reasonably practicable after becoming aware of a defect of the type referred to in clause 8.1(b) and Lynx shall remedy such defect within a reasonable time.
- 8.3 During the Defects Notification Period, the Customer shall provide access to the Site in accordance with clause 5 for Lynx and Lynx's Personnel to allow Lynx to perform its obligations pursuant to this clause 8.
- 9. Contract Price**
- 9.1 The Customer shall pay Lynx the Contract Price for the Works in accordance with clause 10. The Contract Price is exclusive of VAT.
- 9.2 In the event that Lynx incurs additional loss and/or expense by reason of:
- (a) any instruction from the Customer to the Contractor which constitutes and addition or variation to the Works and/or the Site;
- (b) any information provided by the Customer being inaccurate, incomplete or deficient in any way or if Lynx discovers conditions at the Site which differ from those stated in this information in any way.
- (c) any changes to existing or new site rules or regulations at the Site;
- (d) a failure by the Customer to provide to Lynx and Lynx's Personnel access to the Site in accordance with clause 5;
- (e) any delay, impediment, prevention or default by the Customer or its staff, employees, contractors and suppliers;
- (f) any adverse weather conditions;
- (g) the carrying out of any work by a statutory undertaker (including distribution network operator) in connection with the Works, or the failure to carry out such work;
- (h) suspension for non-payment by Lynx of its obligations under this Agreement in accordance with its statutory rights; or
- (i) force majeure,
- Lynx shall be entitled to apply to the Customer for loss and/or expense suffered or incurred by Lynx and the amount of such loss and/or expense shall be added to the Contract Price. Lynx shall provide reasonable supporting information with any such application.
- 9.3 Lynx shall be entitled to, and the Customer shall grant, a reasonable extension to the Completion Date for any delay caused to the Works by any events referred to in clause 9.2.
- 10. Payment**
- 10.1 Unless otherwise stated in the Proposal, on Completion of the Works, Lynx shall submit an application for payment in the form of a VAT invoice to the Customer and the Customer shall pay to Lynx the Contract Price.
- 10.2 A payment shall become due on the date of Lynx's VAT invoice issued pursuant to clause 10.1. The final date for payment shall be 14 days from the due date (or such other period as is detailed within the Proposal).
- 10.3 If the Customer fails to pay the amount or any part of it by the final date for payment, Lynx shall be entitled to receive interest on the amount unpaid for the period of delay at the rate of 8% above the base rate of the Bank of England.

11. Risk and property

- 11.1 Risk of damage to or loss of the Works at the Site shall pass to the Customer on the Date of Completion of the Works.
- 11.2 Notwithstanding any other provision of this Agreement, ownership of the Works and any Materials shall not pass to the Customer until Lynx has been paid the Contract Price.
- 11.3 Until such time as ownership of the Works passes to the Customer, Lynx shall be entitled to require the Customer to deliver up the Works to Lynx at any time and Lynx shall be entitled and is hereby granted an irrevocable licence by the Customer to enter upon the Site and repossess the Works using any means of access to the Works Lynx may deem necessary or desirable (including the Customer's plant, equipment and scaffolding).

12. Drawings and technical documents

- 12.1 Lynx shall retain the copyright and other intellectual property rights in Lynx's Documents.
- 12.2 Subject to payment of the Contract Price, Lynx grants to the Customer an irrevocable, transferable, royalty-free and non-exclusive licence to use and reproduce Lynx's Documents for the purposes of insuring, financing, operating, maintaining, dismantling, reassembling, adjusting or repairing the Works (each a "Permitted Purpose"). This licence shall:
- (a) remain valid for the working life of the Works; and
- (b) permit the Customer to provide copies of Lynx's Documents to its professional advisors acting on behalf of the Customer in relation to the Works and to any third party as part of the sale of the Works.
- 12.3 Lynx shall not be liable for use of Lynx's Documents for a purpose other than a Permitted Purpose.
- 12.4 Lynx shall provide access to the Customer to any monitoring software which forms part of the Works for any Permitted Purpose ("Software"). The Customer shall be responsible for any associated fees, maintenance and support in relation to the Software. The Customer and Lynx shall each be responsible for complying with the terms of use of the Software.
- 12.5 Except as expressly stated in this Agreement, no other rights or licences are transferred or granted by Lynx in relation to Lynx's Documents to the Customer or any other third party.

13. Termination

- 13.1 Either party may terminate this Agreement immediately on the occurrence of an Insolvency Event in relation to the other party.
- 13.2 If Lynx is in fundamental and persistent breach of this Agreement, the Customer may serve written notice on Lynx specifying the default and requiring its remedy and if Lynx fails to remedy any default notified by the Customer pursuant to clause 13.2 within 28 days of receipt of such notice from the Customer the Customer may by further notice terminate the employment of Lynx under this Agreement.
- 13.3 If the employment of Lynx is terminated due to either an Insolvency Event occurring in relation to Lynx or pursuant to clause 13.2:
- (a) Lynx shall promptly cease the Works and vacate the Site.
- (b) the Customer shall:
- (i) acting reasonably seek to agree with Lynx the value of the Works and any other sums due to Lynx for work executed in accordance with this Agreement;
- (ii) pay to Lynx the value of any Works carried out and for which Lynx has not been paid;
- (iii) be entitled to employ others to carry out and complete the outstanding Works and to make good any defects in the Works.
- 13.4 If the Customer:
- (a) does not pay by the final date for payment the amount properly due to Lynx in respect of any application for payment; or
- (b) is in breach of this Agreement; or
- (c) causes or contributes to (whether by act or omission) an act of breach or prevention and such breach or prevention has prevented Lynx from carrying out any of its obligations under this Agreement for a continuous period of 7 days,

Lynx may serve written notice on the Customer specifying the default and requiring its remedy and if the Customer fails to remedy any default notified by Lynx pursuant to clause 13.4 within 28 days of receipt of such notice from Lynx, Lynx may by further notice terminate this Agreement.

- 13.5 If the employment of Lynx is terminated due to either an Insolvency Event occurring in relation to the Customer or pursuant to clause 13.4:

- (a) Lynx shall promptly cease the Works;
- (b) the Customer shall pay to Lynx:
- (i) the value of the Works and any other sums due to Lynx for work executed in accordance with this Agreement;
- (ii) the cost of Materials ordered for the Works which have been delivered to Lynx or of which Lynx is liable to accept delivery;
- (iii) the amount of any loss or expense suffered by Lynx as a result of termination including a fair allowance for loss of profit.

14. Limitation of liability

- 14.1 Unless otherwise stated in the Proposal, Lynx shall not be liable to the Customer for loss of profit, loss of revenue, loss of renewable benefits, loss of use of electricity or equipment, loss of production or down time costs, loss of opportunity, loss of contract, loss of goodwill, business interruption and consequential or indirect loss.
- 14.2 Subject to clause 14.3 and unless otherwise stated in the Proposal, Lynx's aggregate liability arising under or in connection with this Agreement (whether arising in contract, tort, by reason of indemnification, breach of statutory duty, equity or otherwise) in relation to the Works and the Site shall not exceed an amount equivalent to the Contract Price.
- 14.3 Nothing in this Agreement shall exclude or limit the liability of either party for death or personal injury resulting from negligence or fraud or fraudulent misrepresentation.
- 14.4 Lynx's liability under this Agreement shall be in lieu of any contract term implied by law as to the quality or fitness for any purpose or the workmanship of any part of the Works and, save as expressed in this Agreement, Lynx shall not be liable, whether in contract, in tort (including but not limited to negligence) or by reason of breach of statutory duty or otherwise, in respect of defects in the Works or damage to the Site, or for any damage or loss of whatsoever kind attributable to such defects or damage or any work done or service rendered in connection therewith.
- 14.5 Notwithstanding any other provision of this Agreement or the method of execution of this Agreement by the parties, no action or proceedings shall be commenced against Lynx under this Agreement after the expiry of the Defects Notification Period.
- 14.6 Unless otherwise stated in the Proposal, Lynx's liability under or in connection with this Agreement or the Works shall be limited to the cost of repair or replacement of any defect in the Works.

15. Force majeure

- 15.1 Subject to sub-clause 15.2 neither party shall be deemed to be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to an event of force majeure.
- 15.2 The party affected by the event of force majeure shall immediately give the other party written notification of the nature and extent of the event, take all reasonable steps to alleviate its effects, shall resume performance as soon as practicable and shall within 7 days notify the other party that the event has ended.
- 15.3 If a party is affected by an event of force majeure and the written notice in relation to the event has not been withdrawn within 6 months, the other party may terminate this Agreement with immediate effect by serving a written notice on the affected party. The service of such notice shall be without prejudice to any rights or obligations which have accrued prior to termination. In the event of termination pursuant to clause 15.3, the parties shall bear their own costs.

16. Disputes

- 16.1 Any dispute or difference arising between the parties in connection with this Agreement may be referred to adjudication in accordance with the Statutory Scheme.
- 16.2 Subject to clause 16.1 above, if any dispute or difference as to any matter or thing of whatsoever nature arising under this Agreement or in connection therewith, except in connection with the enforcement of any decision of an adjudicator appointed to determine a dispute or difference arising there under, shall arise between the parties either during the progress or after the completion or abandonment of the Works or after the termination of this Agreement it shall be referred to arbitration in accordance with the Arbitration Act 1996.

17. Assignment and sub-contracting

- 17.1 Neither party may assign, transfer, charge or otherwise encumber this Agreement or any right, benefit or interest under it, without the prior

written consent of the other party, such consent not to be unreasonably withheld or delayed.

17.2 Lynx shall be entitled to sub-contract the performance of any of its obligations under this Agreement without the consent of the Customer.

18. Entire agreement

18.1 This Agreement sets out the entire agreement and understanding between the parties and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Agreement.

19. Confidentiality

19.1 Subject to clause 19.2 each party shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Agreement which relates to the provisions or subject matter of this Agreement, to any other party to this Agreement or the negotiations relating to this Agreement.

19.2 Any party may disclose information which would otherwise be confidential if and to the extent that:

- (a) it is required to do so by law or regulatory or governmental body to which it is subject;
- (b) it considers it necessary to disclose the information to its professional advisers, auditors and bankers;
- (c) the information has come into the public domain through no fault of that party;
- (d) Lynx wishes to utilise any details in connection with the Customer or the Works as part of its sales and marketing activities, in which case the Customer shall provide reasonable assistance to Lynx including providing a testimonial for use in connection with Lynx's case studies;
- (e) Lynx wishes to disclose the information to one of its sub-contractors or suppliers; or
- (f) each party to whom it relates has given its consent in writing.

20. Governing law

This Agreement and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by English law.

21. Third Party Rights

No express term of this Agreement nor any term implied under it is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise by any person who is not a party to it.