

Bellway Homes Limited

Purchase Conditions

(Supply only)

[INSERT FULL NAME OF SUPPLIER]



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1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, unless the context otherwise requires, the words or expressions that begin with capital letters shall have the precise meanings as set out below:

- 1.1.1 '**Appendix**' means the appendix and any documents attached to the Purchase Order;
- 1.1.2 '**Authorised Representative**' means a person authorised by Bellway and stated in the Purchase Order or such other person as Bellway shall notify to the Supplier in writing to perform such role;
- 1.1.3 '**Bellway**' means Bellway Homes Limited (company number 670176) whose registered office is at Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle upon Tyne, NE13 6BE;
- 1.1.4 '**Cancellation Payment**' means an amount equating to the lesser of; (i) five per cent (5%) of the Price; or (ii) five hundred pounds (£500);
- 1.1.5 '**Claim**' means any claim or entitlement which the Supplier has or may have against Bellway under, arising out of or in connection with the Purchase Contract (including, without limitation, an extension of time to deliver the Products or any additional payment in connection with a Variation or any payment whatsoever in addition to or in excess of the Price or any upwards adjustment to the Price) and howsoever arising under any circumstances whatsoever (including, without limitation, by reason of a breach of contract on the part of Bellway, breach of statutory duty or tortious or negligent act or omission);
- 1.1.6 '**Conditions**' means these terms and conditions as may be varied by the Special Conditions;
- 1.1.7 '**Copyright Material**' means any and all documents (whether in hard copy, digital or electronic format and whether in existence as at the date of the Purchase Contract or yet to be created) including but not limited to reports, drawings, plans, specifications, minutes and calculations produced or prepared by the Supplier or on its behalf in connection with the Project or as part of the Purchase Contract;
- 1.1.8 '**Delivery Address**' means the address for the delivery of the Products as identified in the Purchase Order or any other location specified by Bellway;
- 1.1.9 '**Delivery Dates**' means the date(s) for completion of the delivery and installation (where applicable) of the Products as specified by Bellway;
- 1.1.10 '**Group Company**' means any subsidiary or holding company of Bellway or of another subsidiary or holding company of Bellway, as subsidiary and holding company are understood within Section 1159 Companies Act 2006, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in Section 1159(1)(a);
- 1.1.11 '**Insolvent**' means in relation to the Supplier any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration (or the service at court of any notice of intention to appoint an administrator) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Supplier other than a solvent liquidation or reorganisation; or
 - (b) a composition, compromise, assignment or arrangement with any creditor; or
 - (c) the appointment of a liquidator (other than in respect of a solvent liquidator of the Supplier), provisional liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Supplier

or any of its assets; or

- (d) enforcement of any security over any assets of the Supplier or any analogous procedure or step is taken in any jurisdiction; or
 - (e) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Supplier; or
 - (f) any financial indebtedness of the Supplier is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described); or
 - (g) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 1.1.12 **'Material Breach'** means any breach of the Purchase Contract by the Supplier where Bellway has served notice on the Supplier that it has seven (7) days in which to rectify the breach and the Supplier fails to do so;
- 1.1.13 **'NHBC'** means the National House Building Council (company limited by guarantee under company number 320784) whose registered office at NHBC House, Davy Avenue, Knowlhill, Milton Keynes MK5 8FP or an insurer of equivalent or similar standing nominated by Bellway and the identity of which shall be notified by Bellway to the Supplier;
- 1.1.14 **'Performance'** means the manufacture, ordering of goods and materials, entry on site, delivery and installation (if applicable) or setting aside goods or materials for the purposes of the Purchase Contract;
- 1.1.15 **'Price'** means all sums payable to the Supplier for Performance and the Products as stated in the Purchase Order;
- 1.1.16 **'Products'** means all goods, materials and products to be supplied, delivered and installed (if applicable) pursuant to the Purchase Contract whether as expressly described in the Purchase Contract or to be inferred therefrom (including any instalment, component, part of or raw materials used in such goods);
- 1.1.17 **'Project'** means the works on or in connection with the Site to which it is intended the Products will form a part;
- 1.1.18 **'Purchase Contract'** means the contract between Bellway and the Supplier comprising the Purchase Contract Documents relating to the Products and Performance;
- 1.1.19 **'Purchase Contract Documents'** means the Purchase Order; the Conditions (as may be amended by any Special Conditions); and any other documents listed by Bellway in the Appendix;
- 1.1.20 **'Purchase Order'** means the order from Bellway to the Supplier relating to the Performance and the Products;
- 1.1.21 **'Requisite Consents'** means any and all relevant permissions, consents, approvals, licences, certificates and permits in relation to the Site or the Products and which term includes but is not limited to any modification, variation or amendment to any relevant Requisite Consent;
- 1.1.22 **'Site'** means the location of the Project as described in the Purchase Order;

- 1.1.23 '**Special Conditions**' means special conditions (if any) that may amend, modify or supplement these Conditions and which may be specified by Bellway in the Appendix;
- 1.1.24 '**Statutory Requirements**' means any and all requirements pursuant to any Act of Parliament, any instrument, rule or order made under any Act of Parliament, any subordinate legislation within the meaning of Section 21(i) of the Interpretation Act 1978, or any regulation or byelaw of any local authority or of any statutory undertaker which has any jurisdiction with regard to the Project or Performance or the Products or with whose systems the same are or will be connected including without limitation any statutory provisions and any decision of a relevant authority or organisation thereunder which controls the right to develop the Site, or other requirement from any relevant authority relating to pollution or protection of the environment and/or human health and safety and/or planning, or any exercise of the Royal Prerogative, any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, any other applicable law and the term 'Statutory Requirements' includes but is not limited to any modification, amendment or re-enactment (whether before or after the date the Purchase Contract is entered into) to any relevant Statutory Requirements;
- 1.1.25 '**Supplier**' means the legal entity with whom Bellway enters into the Purchase Contract and to whom the Purchase Order is addressed;
- 1.1.26 '**Supplier's Persons**' means the Supplier's contractors, consultants, suppliers, servants, agents, partners, workers and employees engaged in connection with the Purchase Contract;
- 1.1.27 '**Third Party**' means any one or more of the following class or classes of person:
- (a) any person who as a tenant enters into an agreement for lease or lease in relation to any part of the Site;
 - (b) any person who enters into an agreement to provide finance to Bellway or to a purchaser or tenant of any part of the Site;
 - (c) a management company set up in relation to any part of the Site; and
 - (d) any person who enters into an agreement to purchase a freehold or leasehold interest in any part of the Site;
 - (e) any Group Company; and
 - (f) the NHBC;
- 1.1.28 '**Variation**' means a variation, modification, omission, addition or other alteration (including but not limited to the nature, scope, quantity, subject matter, delivery arrangements, installation requirements or timing of Delivery Dates) to the Performance or the Products; and
- 1.1.29 '**Working Day**' means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday and excludes the period from 23 December to 2 January (inclusive) in any year.
- 1.2 In these Conditions, unless the context otherwise requires:
- 1.2.1 words in the singular shall include the plural and in the plural shall include the singular;
 - 1.2.2 clause headings are inserted for convenience only and shall not affect the construction of these Conditions;
 - 1.2.3 a reference to one gender shall include a reference to the other genders;
 - 1.2.4 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time or it is in force as at the date of the Purchase Contract;

- 1.2.5 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time and/or as at the date of the Purchase Contract under that statute or statutory provision;
- 1.2.6 a reference to a 'person' includes any individual, firm, partnership, company and any other legal entity;
- 1.2.7 a reference to a party or the parties is a reference to a party or the parties to the Purchase Contract and references to a party shall include its successors in title and permitted assigns;
- 1.2.8 a reference to writing or written includes email, but not fax;
- 1.2.9 any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction; and
- 1.2.11 any words following the terms including, include, includes, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms and the use of the words 'other' or 'otherwise' shall not be construed as having a limiting effect.

2. BASIS OF THE PURCHASE CONTRACT

- 2.1 Any quotation and/or tender received by Bellway from the Supplier in respect of the Products is deemed to have been made subject to the Conditions. Any terms and conditions of the Supplier are superseded, are of no effect and do not form part of or apply to the Purchase Contract in all circumstances even if included as part of the Purchase Contract Documents unless and to the extent incorporated as Special Conditions.
- 2.2 The Supplier shall (if requested) sign a copy of these Conditions for deposit with Bellway by way of acknowledgement that these Conditions shall govern all present and future contractual relations between Bellway and the Supplier until further notice is given by Bellway to the Supplier.
- 2.3 Without prejudice to and whether or not the Supplier has complied with clause 2.2, the Supplier shall be deemed to have read and accepted these Conditions in full for all present and future contract relations between Bellway and the Supplier until further notice is given by Bellway to the Supplier.
- 2.4 The terms and conditions of the Purchase Contract may only be amended or varied in writing and signed in pen and ink on hard copy by the Authorised Representative. Any other purported variation shall be of no effect.
- 2.5 Notwithstanding the date Bellway and the Supplier enter into the Purchase Contract, any goods supplied or works performed by or on behalf of the Supplier prior to the date of the Purchase Contract in anticipation of Bellway entering into the Purchase Contract with the Supplier (including but not limited to any work carried out pursuant to any letters of intent) shall be treated as forming part of the Performance and the Products and shall be subject to the terms of the Purchase Contract and the Supplier assumes full responsibility for the same. Any monies already paid as at the date of the Purchase Contract by Bellway to the Supplier in connection with the Performance and the Products shall be treated as payments on account of the Price.

3. PURCHASE CONTRACT DOCUMENTS

- 3.1 Where there is any conflict, ambiguity or discrepancy within or between any of the Purchase Contract Documents, Bellway shall instruct the Supplier as to which of the discrepant items is to be adopted and the Supplier shall (subject always to complying with all Statutory Requirements) comply with such instruction at no cost to Bellway and without any adjustment to the Price or the

Delivery Dates and without any entitlement to a Claim.

4. GENERAL OBLIGATIONS AND WARRANTIES

- 4.1 The Supplier warrants to Bellway that the Supplier is fully experienced, qualified, equipped, organised and financed to perform its obligations under the Purchase Contract, and warrants to Bellway that the Products:
- 4.1.1 will be of sound and satisfactory quality and fit for all purposes for which the Products are commonly supplied and/or for any special purposes which are notified to the Supplier;
 - 4.1.2 will correspond with any relevant specification or sample provided to the Supplier or where no specification or sample has been provided, will meet Bellway's performance criteria and conform to best industry practice;
 - 4.1.3 will be free from defects in design, material and workmanship;
 - 4.1.4 will comply with all and will not contravene any Requisite Consents or Statutory Requirements relating to the manufacture and sale of materials and goods, product safety, packaging, labelling and hazardous substances (including the appropriate British Standard and Codes of Practice or equivalent specification unless otherwise agreed);
 - 4.1.5 will be compatible with any equipment or other goods or materials or existing buildings and structures as described in the Purchase Contract Documents; and
 - 4.1.6 will comply with the general requirements of safety in terms of risk presented to the health and safety of persons.
- 4.2 So far as it is able, the Supplier will pass on to Bellway the benefits of any warranties or guarantees given by any third party supplier in relation to the Products.
- 4.3 Insofar as the Supplier is responsible for the design of the Products or any part thereof it warrants and undertakes to Bellway that it shall produce such design exercising the level of skill and care to be expected of a properly qualified and competent designer experienced in producing goods of a similar size, scope and complexity as the Products.
- 4.4 The Supplier warrants to Bellway that the Supplier has not used or specified for use and will not use and has exercised and will continue to exercise the level of skill and care referred to in clause 4.3 to see that there are not used in the manufacture of the Products, any substances and materials not in conformity with any relevant British or European Standards or Codes or Practice or which are generally known to the UK building industry at the time of specification or use to be deleterious to health and safety or to the durability of the Products in the particular circumstances in which they are used, or which are not used in accordance with the guidance contained in the publication "Good Practice in the Selection of Construction Materials" (2011, British Council of Offices).
- 4.5 The Supplier shall ensure that copies of any test certificates or product guarantees or warranties referred to in the Purchase Contract Documents (or otherwise required under any Statutory Requirements or by a regulatory body or as part of any Requisite Consents) are provided to Bellway upon delivery of the Products. In relation to the supply of timber, before submitting an invoice, the Supplier must provide Chain of Custody accreditation and evidence satisfactory to Bellway to prove the origin of the timber.
- 4.6 The Supplier shall:
- 4.6.1 if requested to do so, provide samples of the Products for Bellway's evaluation and approval at the Supplier's cost and expense;
 - 4.6.2 ensure that the Products will be safe and delivered in a safe manner and accompanied by comprehensive instructions as to the use, handling, maintenance, storage, safety and erection, assembly and/or installation of the Products (where the Supplier is not required to carry out such erection, assembly and/or installation as part of the Purchase Contract);

- 4.6.3 provide any reasonably necessary technical support and training in relation to the erection, assembly and/or installation of the Products (where the Supplier is not required to carry out such erection, assembly and/or installation as part of the Purchase Contract);
 - 4.6.4 comply with Bellway's Health and Safety Policy;
 - 4.6.5 ensure that all duties and obligations under any Statutory Requirements which relate to the manufacture and/or use of the Products (including but not limited to any legal requirements imposed under the Factories Act 1961 or regulations made thereunder and the requirements of Section 6 of the Health and Safety at Work etc. Act 1974 as amended) are satisfied;
 - 4.6.6 give all the notice(s) and/or approvals required by any Statutory Requirements with regard to the Products;
 - 4.6.7 pay all statutory fees and charges in respect of the Products; and
 - 4.6.8 keep Bellway indemnified against all penalties and liability of any kind for breach of any Statutory Requirements.
- 4.7 Bellway shall be deemed not to have any intrinsic expert or specialist knowledge or skill in relation to the Performance and the Products and the Supplier is deemed to be aware of and to accept this.
- 4.8 The Supplier shall ensure that all spare and/or replacement parts, components and materials for the Products shall be available from the Supplier for twelve (12) years from date of first use by Bellway of the Products in question. Where replacement parts, components or materials are not available, the Supplier will provide a full replacement to Bellway at the Supplier's cost and for no further fee.

5. PRICES AND PAYMENT

- 5.1 In consideration of the satisfactory supply, delivery and installation (if applicable) of the Products, Bellway shall pay to the Supplier the Price in accordance with and subject to these Conditions. Subject to payments in respect of Variations pursuant to clause 6, the Price shall be as stated in the Purchase Order and, unless otherwise so stated, shall be:
- 5.1.1 fixed;
 - 5.1.2 exclusive of any applicable VAT (which shall be payable by Bellway subject to receipt of a VAT invoice); and
 - 5.1.3 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery and unloading of the Products to the Delivery Address and any duties, imposts or levies other than VAT.
- 5.2 If the Price is not stated in the Purchase Order, the Price shall be the lowest price currently quoted or charged at the time of the Purchase Order by the Supplier for the Products but shall in no event be higher than the price most recently charged to Bellway by the Supplier for such Products.
- 5.3 Unless otherwise stated in the Purchase Contract the rates and prices stated in the Purchase Contract are deemed to be sufficient to cover all the Supplier's obligations in relation to the Products and Performance whether express or implied and without prejudice to the generality of the foregoing where the Products (or any part thereof) or Performance is to be performed otherwise than at the Supplier's premises then the Supplier shall be deemed to have satisfied itself as to all local conditions requirements or difficulties or any other factors which may in any way affect the Performance or the Products.
- 5.4 Once the Purchase Order has been issued, no increase in the Price may be made under any circumstances whatsoever (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of Bellway signed by the Authorised Representative.

- 5.5 Unless otherwise stated in the Purchase Contract Documents the Supplier may submit an invoice to Bellway:
- 5.5.1 within thirty (30) days after delivery of the Products; or
 - 5.5.2 where the Products are to be installed, within thirty (30) days after completion of the installation of the Products.
- 5.6 The Supplier shall provide a separate invoice for each individual delivery and installation to Bellway. The Supplier's invoice shall be in triplicate and shall attach a copy of the receipted advice note as referred to in clause 13.9 (Completion and Delivery). The invoice must contain:
- 5.6.1 the Purchase Contract number;
 - 5.6.2 a full description including quantity of the Products;
 - 5.6.3 the number and date of the advice note;
 - 5.6.4 a breakdown of the amount invoiced clearly showing the amounts charged for Products supplied to each relevant plot/house/flat/unit numbers as set out in the Purchase Order;
 - 5.6.5 the total value of the invoice indicating the materials and labour element separately where applicable; and
 - 5.6.6 Value Added Tax where applicable shall be shown separately on all invoices.
- 5.7 Invoices not complying with the terms of clause 5.6 shall not be valid for the purposes of clause 5.5 and may be returned to the Supplier and disregarded.
- 5.8 Time of payment shall not be of the essence of the Purchase Contract.
- 5.9 Bellway shall be entitled to deduct from the Price:
- 5.9.1 the unit price for such proportion of the Products as may be defective and rejected by Bellway together with the costs of returning such Products to the Supplier;
 - 5.9.2 any costs or expenses incurred by Bellway as a consequence of the Supplier failing to deliver the Products to the correct destination;
 - 5.9.3 any amount which is disputed by Bellway, pending resolution of such dispute; and
 - 5.9.4 any sums owing by the Supplier to Bellway under any other contract or agreement.
- 5.10 The final date for payment of each invoice shall be the end of the calendar month after the month during which each relevant and properly prepared and submitted invoice is received by Bellway.
- 5.11 If Bellway fails to pay a sum due to the Supplier by the final date for payment, simple interest shall be added to the unpaid sum from the final date for payment until the actual date of payment. This shall be calculated on a daily basis at the annual rate of four per cent (4%) above the Bank of England Base Rate. The Parties acknowledge that the liability of Bellway under this clause is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.12 In the event that the Products are directly involved in Bellway's performance of any agreement or agreements Bellway enters into with a third party or third parties and Bellway is reliant upon payment from any third party then on the one hand Bellway undertakes to use its best endeavours to obtain payment from the third party but on the other hand no liability shall arise upon Bellway to make any payment to the Supplier whatsoever unless and until such time as the third party makes a corresponding payment to Bellway.
- 5.13 Bellway may deduct from any payment due under the Purchase Contract the amount of any bona fide claims set-off or counterclaim by Bellway against the Supplier under the Purchase Contract

or any other contract or agreement Bellway has entered into or will enter into with the Supplier (whether before or after the date of the Purchase Contract) after giving the Supplier a notice stating its intention to do so.

- 5.14 For the avoidance of doubt, Bellway shall be entitled to recover from the Supplier any overpayments made at any time. All interim payments made to the Supplier shall be payments on account only of sums due under the Purchase Contract.

5A THE PROMPT PAYMENT CODE

- 5A.1 Bellway hereby confirms to the Supplier that they are a signatory to the Prompt Payment Code ("PPC") (as published by the Institute of Credit Management from time to time) and Bellway and the Supplier agree that these Conditions (and all pre-contract discussions and negotiations) comply with the provisions and spirit of the PPC and the Supplier shall as far as is reasonably practicable in the event where they themselves are not a signatory to the PPC ensure that when engaging any sub-supplier they shall also comply with the provisions and spirit of the PPC so as to develop a culture of best and prompt payment practice.

6. CHANGES/VARIATIONS

- 6.1 The Supplier shall carry out any Variations required by Bellway and no change shall vitiate the Purchase Contract. No Variations shall be complied with or paid for unless the subject of an instruction in writing by Bellway and signed by the Authorised Representative. Variations shall be valued by agreement between Bellway and the Supplier or, if they fail to agree, in accordance with the rates and prices in the Purchase Contract Documents or (if no applicable rates and prices exist) such prices as shall be fair and reasonable in the circumstances.
- 6.2 Bellway reserves the right to take any action in the event of an emergency or unforeseen situation arising in connection with the Purchase Contract and in particular may require the Supplier to deliver the Products in advance of the time specified. The Supplier shall use all reasonable endeavours to comply with Bellway's instructions in such an event.
- 6.3 In the event a Variation results in any works, services, goods, materials, plant or equipment being omitted from the Purchase Contract, Bellway shall deduct an appropriate sum from the Price in accordance with clause 6.1 and it shall be entitled to engage another supplier to carry out and complete the order for such omitted works, services, goods, materials, plant or equipment without terminating the Supplier's engagement under the Purchase Contract. Bellway shall not be liable to the Supplier for any costs, losses, damages or expenses accrued, suffered or incurred by the Supplier arising from such omission. The act of giving work to or placing an order with a third party or instructing a third party to supply such works, services, goods, materials, plant or equipment shall not be treated or construed as a breach of contract by Bellway.

7. ASSIGNMENT/SUB-CONTRACTING/THIRD PARTY RIGHTS

- 7.1 The Supplier must not sub-let all or any part of the Purchase Contract or assign or charge all or any part of the Purchase Contract or any rights or benefits under it without Bellway's prior written consent (such consent not to be unreasonably withheld or delayed).
- 7.2 Notwithstanding whether or not Bellway permits the Supplier to sub-let any part or all of the Purchase Contract or any of its obligations or duties under it, the Supplier will remain responsible and liable for all the design, manufacture, supply, delivery, works, obligations and duties it sub-lets to a third party as if the Supplier had performed such design, manufacture, supply, delivery, works, obligations and duties itself. Any sub-letting of part or all of the Purchase Contract or any obligations or duties under it, whether or not Bellway has given its consent, shall not in any way relieve the Supplier from or reduce any of its obligations, duties and liabilities arising from or in connection with the Purchase Contract.
- 7.3 Bellway may assign the benefit of or any rights under the Purchase Contract to any person by way of absolute legal assignment on two occasions, provided that any assignment (whether by legal assignment, equitable assignment, charge or otherwise and including re-assignments) to and from any Group Company or any party providing finance in connection with the Project or the

Site or any part of it will not count towards the number of assignments permitted without consent under this clause 7.3. No further or other assignment is permitted without the Supplier's prior written consent, such consent not to be unreasonably withheld or delayed.

- 7.4 The Supplier shall not be entitled to contend that any person to whom the Purchase Contract is assigned in accordance with this clause is precluded from recovering under the Purchase Contract any loss incurred by such assignee resulting from any breach of the Purchase Contract (whenever happening), by reason that such person is an assignee and not a named party under the Purchase Contract by reason that Bellway or any intermediate assignee or party escaped any loss by reason of the disposal of any interest in the Project or that Bellway or any intermediate beneficiary has not suffered any or as much loss as such assignee.
- 7.5 The obligations and duties imposed on the Supplier and the rights and remedies vested in Bellway in connection with the Purchase Contract shall be enforceable by and shall (in addition) vest in any Third Party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 7.6 In any proceedings brought by any Third Party, the Supplier shall not be entitled to rely on:
- 7.6.1 any set-off with respect to its remuneration under the Purchase Contract;
 - 7.6.2 any counterclaim which would have been available to the Supplier if such proceedings had been brought by Bellway; or
 - 7.6.3 any set-off or counterclaim relating to any matter not connected to the Project, the Site or the Products.
- 7.7 Subject always (and if applicable) to the parties complying with the termination and variation provisions of these Conditions, Bellway and the Supplier shall be entitled to agree any amendment, variation, waiver or release under or arising from or in respect of the Purchase Contract, and to terminate the Supplier's engagement under the Purchase Contract or otherwise bring the Purchase Contract to an end without the consent of any Third Party being required.

8. DRAWINGS AND INFORMATION, COPYRIGHT, PATENTS AND INTELLECTUAL PROPERTY

- 8.1 No drawings, designs, specifications, know how or other information provided in connection with the Purchase Contract by Bellway or its servants or agents (including all features whether patented or patentable or not and whether separately or collectively shown) nor any other intellectual copyright matter so provided may be reproduced in whole or in part nor used for any purpose other than the execution of the Purchase Contract. All such drawings, designs and other matters are provided on loan only to the Supplier and are subject to immediate return upon demand.
- 8.2 The Supplier at its own expense shall prepare and submit for approval such drawings as may be required by Bellway but approval by Bellway its servants or agents or any third party shall in no sense relieve the Supplier from any of its obligations under the Purchase Contract. No drawings shall be varied or modified after such approval in any respect without prior written approval from Bellway which if necessary shall be promptly applied for in good time with full supporting explanation and particulars.
- 8.3 Copyright in any Copyright Material shall remain vested in the Supplier, but the Supplier hereby grants to Bellway and Bellway's successors in title and permitted assigns an irrevocable, royalty-free, non-exclusive licence to copy, use and reproduce the Copyright Material for any and all purposes relating to the Project and such other purposes as may be reasonably foreseeable, except that Bellway shall not be entitled to reproduce any designs contained in the Copyright Material for the purposes of an extension to the Project. This licence shall include the right to grant sub-licences in the terms of this licence and shall be transferable to third parties without the Supplier's consent.
- 8.4 The Supplier shall not be liable for any use by Bellway or Bellway's appointees of any of the Copyright Material for any purpose other than that for which the Copyright Material was prepared

and provided by the Supplier or as may be reasonably foreseeable.

- 8.5 The Supplier agrees that the Supplier have not and will not produce, specify or employ any Copyright Material in breach of any copyright, patent or other right of any third party and the Supplier agrees to indemnify Bellway from and against any and all claims, demands, costs, losses and expenses which Bellway suffers or incurs in connection with such breach.
- 8.6 The Supplier will at any time provide to Bellway on Bellway's request with copies (in hard copy, REVIT, CAD format, electronic format and (in addition) such other format as Bellway may reasonably require) of the Copyright Material and any other information, correspondence and documentation the Supplier has prepared in connection with the Purchase Contract and the Supplier agrees not to exercise any lien for any reason which the Supplier might otherwise be entitled to exercise over the Copyright Material.
- 8.7 The Supplier hereby waives and agrees not to assert any moral rights in the Copyright Material granted pursuant to the Copyright Designs and Patents Act 1988.
- 8.8 The Supplier shall indemnify, save, defend and hold harmless Bellway against and from all actions, liabilities, claims, demands, proceedings, losses, damages, expenses, costs, fees, charges whatsoever or howsoever arising out of or in connection with the infringement of any patent or other intellectual property right in respect of the Products supplied hereunder or in relation thereto save where the patent or other intellectual property right is supplied by Bellway.

9. TECHNICAL DATA

- 9.1 The Supplier at its own expense shall supply as built drawings, operating instructions, maintenance manuals, fabrication reports and the like as and when required by Bellway.
- 9.2 The Supplier shall be responsible for any errors or omissions in any information, drawings, packing details or any other documents produced by it, whether such information has been approved by Bellway or not.
- 9.3 In the event that the Supplier discovers any ambiguity or discrepancy in the drawings, specification and documents issued in connection with the Purchase Contract or subsequently whether by way of Variation or otherwise the Supplier shall immediately submit the ambiguity or discrepancy to Bellway for its determination.

10. FREE ISSUE MATERIALS

- 10.1 The Supplier shall be responsible and account for all material issued free, whether directly or indirectly by Bellway. The Supplier must keep detailed records of all receipts and issues and provide a detailed reconciliation to Bellway when requested. Scrap and wastage of materials must also be accounted for. Free issue materials shall at all times be and remain the property of Bellway as the case may be but the Supplier shall maintain an adequate policy of insurance in respect of the excess amount not covered by the insurances required under the Purchase Contract for such material and shall produce evidence of cover as and when reasonably required to do so.

11. INSPECTION AND TESTING

- 11.1 Bellway and its representatives shall at all reasonable times be granted access to any premises (including those of the Supplier's suppliers) and be allowed to inspect and test (or on Bellway's request, re-inspect or re-test) the Products at any time prior to acceptance of delivery.
- 11.2 The Supplier shall make available at its own expense all tools, instruments, apparatus, facilities, services and materials necessary for carrying out tests on the Products (or on Bellway's request, confirmatory re-tests) as may be required by Bellway and when requested the Products shall be completely assembled for such tests and at Bellway's reasonable request if so required shall be dismantled for inspection before despatch.
- 11.3 Unless Bellway expressly directs otherwise, where reasonably practicable not less than fourteen (14) days' notice shall be given to Bellway that the Products or any part thereof are ready for inspection and/or testing.

- 11.4 Neither inspection, testing nor acceptance of any of the Products nor any waiver of any rights in respect thereof by Bellway nor its representative shall release the Supplier in any respect from any of its obligations under the Purchase Contract or otherwise including without limitation its responsibility for any defects subsequently found in materials and/or workmanship.
- 11.5 Where following testing or inspection any Products appear to be defective, faulty or not otherwise in accordance with the Purchase Contract Bellway shall have the right to reject such Products and/or terminate the Purchase Contract and the provisions of clause 12 shall apply.
- 11.6 The Supplier shall supply at the Supplier's expense certificates of analysis, tests, inspection or origin and information relating to the components, parts or raw materials used in the manufacturing of the Products as may be required by Bellway or by law which shall in any event be delivered to Bellway not later than the Products to which they relate.
- 11.7 The Supplier's obligations under the Purchase Contract shall not be affected by:
- 11.7.1 any power or duty of Bellway or of any professional consultants or contractors or any other third party who has a material interest in the Project to grant or withhold approval of or object to any matter in connection with the Project or to inspect any part of the Site or the Products; or
- 11.7.2 the grant or failure to grant such approval or the making of or failure to make such objection or any such inspection of or failure to inspect any part of the Site or the Products.
- 11.8 Bellway expressly does not warrant and makes no representation as to the accuracy or sufficiency of any information, reports, plans or surveys relating to the Project or the Site, which have been provided or are provided to the Supplier (whether before or after the date of the Purchase Contract) by Bellway or any other third party.

12. MAKING GOOD DEFECTS AND RIGHT OF REJECTION

- 12.1 If Bellway or its representatives considers any of the Products or any installation of the Products to be defective or inferior in quality of material, workmanship or design and/or not in accordance with the Purchase Contract in any respect then (without limiting any other right or remedy that Bellway may have) Bellway shall have the option to:
- 12.1.1 reject any such Products and/or terminate the Purchase Contract. In the event of such rejection or termination Bellway shall be entitled to procure substitute Products and Performance from a third party and recover from the Supplier on demand the cost of so doing and any loss or expense it incurs as a result thereof; or
- 12.1.2 require the Supplier to replace any Products in their entirety or make good by repair or replacement such defects or to pay the cost of replacement or repair by others (in accordance with clause 13.15). Following such replacement or rectification Bellway shall be entitled to require the Supplier to re-submit to Bellway the replacement or corrected Products for re-inspection and re-testing.
- 12.2 If the Supplier fails to repair or replace any such Products within a reasonable period of time in accordance with clause 12.1.2, Bellway shall be entitled to reject such Products and/or terminate the Purchase Contract and procure substitute Products in accordance with clause 12.1.1, or (without prejudice to any other rights it may have under the Purchase Contract) rectify any defects in the Products itself or engage a third party to carry out such repairs. The Supplier shall be responsible for and indemnify Bellway from and against any and all costs, losses, damages and expenses suffered or incurred by Bellway arising from or in consequence of the defect and in any event making good of defects shall not prejudice any other rights or remedies to which Bellway is or shall become entitled to pursuant to the Purchase Contract.
- 12.3 Bellway's rights under this clause 12 shall apply at any time prior to acceptance of the Products by Bellway in accordance with clause 13.10 and also following such acceptance in the event of it becoming apparent to Bellway that any of the Products are defective, faulty or not otherwise in accordance with the Purchase Contract.

- 12.4 Where Bellway rejects any Products it shall so notify the Supplier in writing and upon issuing such notification, property and risk in any such rejected Products shall revert to the Supplier and Bellway shall be entitled to a full refund of the Price relating to such rejected Products if Bellway has paid for such Products (whether or not Bellway has previously required the Supplier to repair or replace the rejected Products). If such Products have already been delivered, the Supplier shall make arrangements with Bellway for the collection of such Products at the Supplier's own expense.
- 12.5 Bellway's rights and remedies under these Conditions are in addition to the rights and remedies available to Bellway in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample incorporated into the Purchase Contract.
- 12.6 The terms of the Purchase Contract shall apply to any repaired or replacement Products supplied by the Supplier.

13. COMPLETION, DELIVERY AND INSTALLATION (IF APPLICABLE)

- 13.1 The Products shall be completed, delivered to and installed at (if installation works are specified in the Purchase Contract Documents) the Delivery Address by the Delivery Dates in accordance with these Conditions.
- 13.2 Where the Delivery Date of the Products is to be specified after entering into the Purchase Contract, Bellway shall give the Supplier reasonable notice of the specified date and all information reasonably required by Bellway to enable it to accept delivery.
- 13.3 Time of Performance is of the essence of the Purchase Contract. Notwithstanding this, if for any reason Bellway requests Performance to be delayed, the Supplier shall agree to such request at no extra cost to Bellway and the provisions of this clause 13 shall apply to any such revised date for Performance.
- 13.4 The Supplier shall immediately report any delay or anticipated delay whatsoever and its cause and shall keep Bellway fully informed with dates of anticipated actual delivery and installation and shall use its best endeavours (without prejudice to its other contractual obligations) to eliminate such cause or causes of delay.
- 13.5 The Supplier shall provide at its own expense such bar charts, suggested programmes and progress data as Bellway shall request from time to time.
- 13.6 Any of the Products (or any instalment or part of them) ready for delivery before Bellway requires delivery shall be stored by the Supplier at its own risk and expense.
- 13.7 If the Products are not delivered and/or installed accordingly then the Supplier shall be fully responsible for any additional expenses arising therefrom. In any event unless otherwise provided the Supplier shall be responsible for despatch delivery (including packaging, loading and if so required unloading) to the site designated by Bellway.
- 13.8 The Products upon delivery shall be accompanied by an advice note showing the Purchase Contract number, date of delivery, the quantity, weight and full description of the goods delivered.
- 13.9 The Supplier shall upon delivery obtain a receipt for the Product signed by an authorised signatory of Bellway. Such receipt shall be upon a duplicate copy of the advice note and shall be forwarded to Bellway with the Supplier's invoice.
- 13.10 Once Bellway has had a reasonable opportunity to inspect the Products following delivery and installation (where applicable) and has not identified any defects or faults in the Products, installation (where applicable) or any breach by the Supplier of the terms of the Purchase Contract, the Authorised Representative shall sign the delivery note to confirm that delivery has been effected and accepted and installation completed (where applicable). Such acceptance shall however not be construed as confirmation by Bellway that the Products delivered are of the correct quality, quantity, specification, materials, design and/or workmanship or that installation is in accordance with the Purchase Contract and shall in no way diminish the liability of the Supplier

under the Purchase Contract. The Products shall only be accepted after the Supplier has in the opinion of Bellway satisfied the requirements of the Purchase Contract in every respect.

- 13.11 Bellway reserves the right to reject partial deliveries of the Products.
- 13.12 Deliveries will only be accepted by Bellway between 8:30am and 4:00pm unless by prior written arrangement with Bellway.
- 13.13 Any Products supplied in excess of the amount ordered by Bellway will be deemed delivered free of charge unless collected within 24 hours of delivery at the Supplier's sole risk and expense.
- 13.14 Where the Purchase Contract specifies that the Supplier is responsible for installing the Products, the Supplier shall be responsible for installation of the Products at the dates and times specified in the Purchase Contract and such installation or removal will be carried out and completed:
 - 13.14.1 in a good and workmanlike manner;
 - 13.14.2 in accordance with any relevant specification or where no specification has been provided, in accordance with Bellway's performance criteria and best industry practice;
 - 13.14.3 in accordance with any statutory or third party consent or licence required in respect of the installation;
 - 13.14.4 using suitably qualified personnel;
 - 13.14.5 in accordance with accepted industry standards;
 - 13.14.6 having regard to the comfort and convenience of any occupiers and causing the minimum disruption possible to any third parties carrying out works for Bellway on the Site; and
 - 13.14.7 in accordance with (and the Supplier procures that the Supplier's employees, servants and agents shall comply with) Statutory Requirements, Requisite Consents and Bellway's reasonable on site rules, regulations and requirements from time to time in force. The Supplier is deemed to have full knowledge of such rules, regulations and requirements, copies of which can be supplied on request.
- 13.15 Where the Purchase Contract specifies that the Supplier is responsible for installing the Products, the Supplier shall immediately and at its own cost make good any damage it may cause in the course of installing the Products to Bellway's satisfaction. The Supplier shall completely remove all rubbish, surplus materials and temporary equipment and clear the surrounding areas.

14. PACKING AND MARKING

- 14.1 Where the Products consist of more than one item of goods then each separate item must be tagged and indelibly marked with the Purchase Contract number, if appropriate. All items shall be carefully packed and protected to protect against damage in transit in such a way as to facilitate rational and economical off-loading. All costs of packing, tagging, marking etc are at the expense of the Supplier and no packaging is returnable unless otherwise agreed by Bellway in writing signed by the Authorised Representative or specified in the Purchase Contract Documents. The Supplier warrants that all packing, packaging and marking complies with all Statutory Requirements.
- 14.2 In the case of any delivery having a weight of more than half a tonne or any individual package having a volume in excess of one cubic metre the Supplier shall give Bellway not less than ten (10) Working Days' notice in writing stating the Purchase Contract number, quantity and full description and weight of the Product and the date and time (where appropriate) of the proposed delivery.

15. LIENS

- 15.1 The Supplier agrees to waive any right to exercise a lien upon the Products or upon any materials, component parts, work in progress and, relevant drawings and acknowledges that its sole remedy

in the event of any breach by Bellway of its obligations under the Purchase Contract is to seek financial relief through the courts. As and when required by Bellway the Supplier shall give a certificate of waiver of lien, and of any other rights over the Products or to any injunctive or performance remedies to Bellway or to any third party nominated by Bellway.

16. PRE-CONTRACTUAL REPRESENTATIONS

- 16.1 In entering into the Purchase Contract, Bellway shall be entitled to rely and has relied on any pre-contractual representations made by the Supplier, whether written or oral, regarding the subject matter of the Purchase Contract. The Supplier shall indemnify Bellway in full from and against all liabilities, losses (whether direct or indirect and including loss of profits), damages (including special and consequential damages), costs and expenses (including legal expenses) awarded against or incurred or paid or suffered by Bellway as a result of or in connection with Bellway's reliance on any pre-contractual representations made by the Supplier or the Supplier's Persons, including but not limited to any and all advice or recommendations (whether written or oral) given by the Supplier or the Supplier's Persons as to the suitability or adequacy of the Products for the purpose for which Bellway intends to use the Products.

17. SUSPENSION AND TERMINATION

- 17.1 Bellway may instruct the Supplier to suspend Performance at any time and for any reason on reasonable notice. Where Performance has been suspended pursuant to this clause Bellway may at any time require the Supplier in writing to resume Performance of its obligations under the Purchase Contract in whole or in part and set new Delivery Dates for delivery of the Products and the Supplier shall as soon as reasonably practicable so resume Performance.
- 17.2 Bellway may terminate the Supplier's engagement under the Purchase Contract at any time and for any reason by giving to the Supplier not less than seven (7) days' prior written notice. On expiry of such notice period, the Supplier's engagement under the Purchase Contract will terminate automatically.
- 17.3 In the event of termination pursuant to clause 17.2 Bellway shall fully discharge all Bellway's liabilities to the Supplier under the Purchase Contract by paying for all Products satisfactorily delivered to Site up to the date of termination and paying the Cancellation Payment to the Supplier.
- 17.4 On termination under clause 17.2, Bellway shall not be liable to the Supplier for any losses, costs, damages, claims or expenses suffered or incurred by the Supplier arising from or in connection with such termination under clause 17.2 (and, without prejudice to the foregoing, Bellway shall not be liable to pay the Supplier any amounts in respect of loss of profit, loss of contract, loss of opportunity).
- 17.5 Without prejudice to Bellway's rights under clause 17.2, if any one or more of the following occurs then Bellway may give written notice to the Supplier to terminate the Supplier's engagement under the Purchase Contract and such termination shall take effect from the date of receipt by the Supplier of such notice:
- 17.5.1 Material Breach by the Supplier; or
 - 17.5.2 a breach by the Supplier of the terms of any of clauses 23, 24 or 25; or
 - 17.5.3 the Supplier fails to progress the Purchase Contract at a rate of progress sufficient to meet the Delivery Dates or in accordance with Bellway's direction; or
 - 17.5.4 the Supplier refuses or fails to repair, replace or reinstate any defective work, plant, materials or equipment; or
 - 17.5.5 the Supplier fails to comply with any Statutory Requirements or Requisite Consents; or
 - 17.5.6 any act or threat of violence or dishonesty or criminal damage by the Supplier or the Supplier's Persons relating to the Project or Site;

17.5.7 the Supplier is or is likely to become (in Bellway's reasonable opinion) Insolvent.

- 17.6 Bellway shall not be liable to the Supplier for any losses, costs, damages, claims or expenses suffered or incurred by the Supplier arising from or in connection with such termination under clause 17.5 (and shall not be liable to pay any loss of profit, loss of contract, loss of opportunity) and Bellway shall not be obliged to make any further payment to the Supplier in such circumstances until completion of the Project or Bellway decides that it does not intend to complete the Project, whichever is the earlier. On termination under clause 17.5, the Supplier shall be liable to Bellway for all costs, losses, damages, claims and expenses which Bellway suffers or incurs arising from or in connection with such termination.
- 17.7 If Bellway purports to terminate the Supplier's engagement under clause 17.5, but no ground for termination under clause 17.5 has arisen, or any ground that had arisen had been waived by Bellway, then Bellway shall be deemed to have decided to terminate and to have terminated the Supplier's engagement under the Purchase Contract under clause 17.2.
- 17.8 In the event of any termination under clause 17, no forbearance whether by allowing an opportunity to rectify such default or breach or otherwise shall constitute a waiver of Bellway's rights to terminate. Termination of the Supplier's engagement under the Purchase Contract shall not affect the accrued rights and remedies available to either party as at the date of such termination. The Supplier's obligations shall survive termination of the Supplier's engagement under the Purchase Contract or in the event the Purchase Contract is brought to an end for any reason, except the obligation to supply and deliver Products after the date of such termination.
- 17.9 In the event of termination pursuant to this clause 17, Bellway shall be entitled to enter the Supplier's premises or any place where the Products are situated in whole or in part and take possession of the whole or any part of the Products and remove the same and title thereto (insofar as the same shall not already be vested in Bellway) shall forthwith vest in Bellway and conversely Bellway shall be entitled to repudiate title in or otherwise reject any goods which it does not require.

18. TITLE AND RISK

- 18.1 Title and ownership in the Products shall pass from the Supplier to Bellway on the sooner of; (i) the creation of the relevant goods forming the whole or part of the Products; or (ii) allocation from stock or acquisition by the Supplier of the relevant goods forming the whole or part of the Products. Notwithstanding the passing of title and ownership, the risk in such goods shall remain with the Supplier until acceptance or installation (if applicable) of the Products by Bellway in accordance with the provisions of the Purchase Contract, whichever shall be later. All materials or equipment forming part of the Products in which title has passed shall be:
- 18.1.1 clearly marked by the Supplier as Bellway's property and shall be stored separately from the Supplier's property;
- 18.1.2 properly packaged to withstand freight handling and periods of storage as necessary (and if the Products are damaged due to faulty or inadequate packing, the provisions of clauses 12.2, 12.3 and 12.5 apply irrespective of whether Bellway has signed and returned the delivery note in accordance with clause 13.10); and
- 18.1.3 insured for their full replacement cost with a reputable insurer carrying on business in the United Kingdom and approved by Bellway.

19. INDEMNITIES AND INSURANCES

- 19.1 The Supplier shall be liable for and indemnify, save, defend and hold harmless Bellway against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of reputation and all interest, penalties and legal and other reasonable professional fees, costs and expenses) accrued, suffered or incurred by Bellway arising out of or in connection with:
- 19.1.1 breach of contract, breach of statutory duty or negligent performance or non-performance

or non-observance of the terms of the Purchase Contract by the Supplier or any of the Supplier's Persons;

- 19.1.2 the enforcement of the Purchase Contract;
 - 19.1.3 any claim made against Bellway for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Copyright Material;
 - 19.1.4 any claim made against Bellway by a third party arising out of or in connection with the Performance and supply of the Products, to the extent that such claim arises out of any breach of contract, breach of statutory duty, negligent performance, tortious liability or failure or delay in performance of the Purchase Contract by the Supplier or any of the Supplier's Persons;
 - 19.1.5 personal injury to or the death of any person arising out of or in the course of or caused by the Performance or supply of the Products, except to the extent that the same is due to any act or neglect of Bellway;
 - 19.1.6 any nuisance or interference with the rights of any third party (including rights of way, light, air or water) that are an avoidable consequence of the Performance or supply of the Products; and
 - 19.1.7 any loss, injury or damage to property (real or personal) arising out of or in connection with the Performance or supply of the Products and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Supplier or the Supplier's Persons. This liability and indemnity excludes loss or damage to the extent insured by Bellway.
- 19.2 The Supplier shall maintain insurance cover against such liabilities as are referred to at clause 19 and shall provide to Bellway on demand valid certificates of insurance in respect thereof.
- 19.3 Without prejudice to clause 19.2, the Supplier shall have in force policies of insurance showing adequate cover with such insurers as Bellway may approve including:
- 19.3.1 insurance of the Products for their full replacement cost, such insurance to be maintained up until the point at which the Products have been delivered, unpacked, checked and accepted by Bellway save where the Products are being installed by the Supplier, in which case such insurance shall also be maintained throughout the period of installation;
 - 19.3.2 public liability insurance against all damage whether to persons or property belonging to Bellway or otherwise and whether occurring during the performance of the Supplier's obligations under the Purchase Contract or otherwise with a minimum cover of ten million pounds (£10,000,000) for each and every claim unless the Purchase Contract specifies a higher/lower level of cover, such insurance to be maintained up until the point at which the Products have been delivered, unpacked, checked and accepted by Bellway save where the Products are being installed by the Supplier, in which case such insurance shall also be maintained throughout the period of installation; and
 - 19.3.3 product liability insurance with a minimum cover of five million pounds (£5,000,000) for each and every claim save where the Purchase Contract specifies a higher/lower level of cover, such insurance to be maintained for the period until twelve (12) years after the date on which the Products have been delivered, unpacked, checked and accepted by Bellway.
- 19.4 The Supplier shall take out and maintain any other insurance which it is required to effect by law or statute and such other insurance which would be effected by a prudent supplier producing similar goods to the Products.
- 19.5 The Supplier shall within five (5) Working Days of a request by Bellway, provide Bellway with copies of the insurance policies the Supplier is required to maintain under the Purchase Contract or such other evidence of insurance as Bellway may reasonably require.

20. SEVERANCE

- 20.1 If any term or condition of the Purchase Contract is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable by law it shall be severed and deemed to be deleted from the Purchase Contract and the validity and enforceability of the remainder of the Purchase Contract shall not be affected or impaired in any way and shall remain in full force and effect. If any provision of the Purchase Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification as may be necessary to make it valid.

21. CONFIDENTIALITY AND PUBLICITY

- 21.1 In this clause, '**Confidential Information**' means all information (written or oral) or documents (however recorded or preserved) disclosed or made available by or which the Supplier obtains from or receives (directly or indirectly) from Bellway or its contractors, consultants, employees, servants, agents or advisers in connection with the Purchase Contract or the Project or the Site or any part of them or as a result of the discussions leading up to or the entering into or performance of the Supplier's obligations and duties in connection with the Purchase Contract including but not limited to:

- 21.1.1 the existence and terms of the Purchase Contract;
- 21.1.2 any information that would be regarded as confidential by a reasonable business person relating to:
- (a) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of Bellway or of any Group Company, and
 - (b) the operations, processes, product information, know-how, designs, trade secrets or software of Bellway; and
 - (c) any information or analysis derived from the Confidential Information,

BUT not any information that:

- 21.1.3 was already lawfully known, or became lawfully known to the Supplier independently; or
- 21.1.4 is in or comes into the public domain other than due to wrongful use or disclosure by the relevant party.
- 21.2 The Supplier shall treat as confidential any and all Confidential Information and must not copy, use, reproduce or exploit the Confidential Information in any way whatsoever except as may be required and necessary for the proper performance of the Supplier's obligations and duties under the Sub-Contract. Except as expressly permitted under clause 21.3, the Supplier must not disclose any such Confidential Information to any third party without Bellway's prior written consent.
- 21.3 The Supplier shall be entitled to disclose Confidential Information:
- 21.3.1 as may be required and necessary for the proper performance of its obligations and duties under the Sub-Contract; or
 - 21.3.2 in order to seek professional advice from its accountants, auditors, insurers, insurance brokers or solicitors in relation to its rights and obligations under the Purchase Contract; or
 - 21.3.3 as may be required by law, by any governmental or other regulatory authority or any award or order of any competent tribunal having jurisdiction under the Sub-Contract provided that, to the extent it is legally permitted to do so, the Supplier gives Bellway as much advanced written notice of such required disclosure as is reasonably practicable in the given circumstances; or

- 21.3.4 is or becomes generally available to the public (other than as a result of its disclosure by the Supplier or any of the Supplier's Persons in breach of these Conditions).
- 21.4 The Supplier will apply the same security measures and degree of care to the Confidential Information as the Supplier applies to its own confidential information, which the Supplier warrants as providing adequate protection from unauthorised disclosure, copying or use.
- 21.5 The Supplier will take all practicable steps to see that the Supplier's Persons are bound by similar confidentiality obligations and publicity restrictions as stated in this clause 21.
- 21.6 Following receipt of a request to do so from Bellway, the Supplier shall promptly:
- 21.6.1 destroy or return to Bellway any or all documents and materials (in hard and/or electronic format, together with any copies) containing, reflecting, incorporating, or based on the Confidential Information;
 - 21.6.2 erase all or specified classes, categories or parts of the Confidential Information from its computer systems; and
 - 21.6.3 certify in writing to Bellway that it has complied with the requirements of this clause.
- The provisions of this clause 21 shall continue to apply to any such documents and materials retained by the Supplier for the duration of its obligations, duties and liabilities in connection with the Purchase Contract.
- 21.7 The Supplier shall not without Bellway's prior written consent:
- 21.7.1 take or permit to be taken any photographs of the Project or the Site or any part of them for use in publicity or advertising; or
 - 21.7.2 publish alone or in conjunction with any other person or permit to be published by any other person any articles, photographs, videos or other illustrations relating to the or Project or the Site or any part of them or the subject matter of the Purchase Contract; or
 - 21.7.3 provide or permit to be provided to any publication, journal or newspaper or any radio or television programme or internet site or social media any information in relation to the Site or Project or any part thereof or copy, use or reproduce any Bellway logo or images or associated assets, such as uniform or signage.
- 21.8 Bellway may monitor all references to Bellway that are in the public domain, including but not limited to any reference to Bellway in any social media, blogs, forums, on Twitter, Linked-in and Facebook posts. The Supplier shall ensure that it does not and shall procure that the Supplier's Persons do not make (whether direct or indirect and whether alone or in conjunction with anyone else) any adverse or negative comments, observations or remarks (including, but not limited to, anything which could bring Bellway, its business or personnel into disrepute or damage reputation or in any way defame or disparage Bellway, its customers, employees, suppliers or other stakeholders or which could constitute discrimination, bullying, harassment or victimisation of Bellway's employees or other third parties) about Bellway or any element of its business or personnel in any social media. The Supplier shall indemnify, save, defend and hold harmless Bellway in full from and against all liabilities, losses (whether direct or indirect and including loss of profits, loss of contracts and loss of opportunities), damages (including special and consequential damages), costs and expenses (including legal expenses) awarded against or incurred or paid or suffered by Bellway as a result of or in connection with a breach of this clause.

22. NOTICES

- 22.1 Any notice to be given under or in connection with the Purchase Contract shall be sent to the relevant party's contact details as referred to in the Purchase Contract Documents or such other contact details as may be notified in writing by either party from time to time. Any notice not given or sent in accordance with this clause shall be of no effect. Bellway may serve a notice in connection with the Purchase Contract by any effective means, including but not limited to by email. In the case of notices to be given to Bellway, all notices must be marked for the attention

of the Authorised Representative and may only be sent by personal delivery or post. In the case of adjudication and/or court proceedings only, copies of all notices must (in addition) be sent to:

Address: Bellway Homes Limited, Seaton Burn House, Dudley Lane, Seaton Burn Newcastle upon Tyne NE13 6BE

FAO: Group General Counsel and Company Secretary

AND

Address: DAC Beachcroft LLP, Wellbar Central, 36 Gallowgate, Newcastle upon Tyne, NE1 4TD

FAO: Bellway Construction Contact Partner

22.2 Subject to clause 22.3, in the absence of evidence of earlier receipt a notice is deemed to be received:

22.2.1 if delivered personally when left at the address referred to in the relevant party's address; and

22.2.2 if sent by post two (2) Working Days after posting it; and

22.2.3 if sent by email, then on completion of its transmission.

22.3 In the case of a notice given pursuant to this clause 22 where this occurs:

22.3.1 after five (5) p.m. on a Working Day; and/or

22.3.2 on a day which is not a Working Day

THEN the date of service shall be deemed to be the next Working Day.

23. BRIBERY ACT COMPLIANCE

23.1 In this clause 23:

23.1.1 the expressions 'adequate procedures', 'foreign public official', 'associated person(s)' and 'performing services' shall bear the meanings assigned to them in the Bribery Act 2010 ('the **Bribery Act**') and, as the case may be, any Guidance for the time being issued under section 9 of the Bribery Act ('the **Guidance**'); and

23.1.2 an associated person of the Supplier includes any contractual counterparty or sub-contractor of the Supplier.

23.2 The Supplier shall and shall procure that any associated person or other person performing services in connection with the Purchase Contract shall:

23.2.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption practices including the Bribery Act and the Guidance (together 'the Requirements'); and

23.2.2 comply with Bellway's Anti-bribery Policy as Bellway may update the same from time to time a copy of which is available for inspection at Bellway's registered office at all times during working hours upon request.

23.3 The Supplier shall not engage in, and shall procure that any associated person or other person performing services in connection with the Purchase Contract shall not engage in, any activity practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act if such activity practice or conduct had been carried out in the United Kingdom.

23.4 The Supplier shall:

23.4.1 have and maintain in place throughout the term of the Purchase Contract their own policy

and procedures including adequate procedures to ensure compliance with the Requirements, the Policy and clause 23.3 above and shall enforce them whenever appropriate;

- 23.4.2 promptly report to Bellway any request or demand for any financial or other advantage of any kind offered promised or given to it in connection with the performance of the Purchase Contract;
 - 23.4.3 at Bellway's request certify to Bellway in writing signed by it or its duly authorised officer compliance with this clause by it and by all associated persons of it performing services in connection with the Purchase Contract;
 - 23.4.4 forthwith notify Bellway in writing in the event that a foreign public official becomes an officer or employee of it or acquires a direct or indirect interest in the Supplier and the Supplier warrants that no officer, employee or direct or indirect owner of it is a foreign public official as at the date of the Purchase Contract; and
 - 23.4.5 be directly liable to Bellway in the event of any breach of this clause 23 by an associated person of it and shall fully indemnify Bellway for any costs, losses, damages or expenses consequent upon such breach howsoever arising.
- 23.5 Without prejudice to any other rights Bellway may have under or in connection with the Purchase Contract, breach of this clause 23 by the Supplier shall entitle Bellway at its option to terminate the Purchase Contract forthwith with immediate effect. On termination in accordance with this clause 23, the Supplier shall be liable to Bellway for all costs, losses, damages, claims and expenses which Bellway suffers or incurs arising from or in connection with such termination.

24. MODERN SLAVERY ACT COMPLIANCE

- 24.1 In performing their obligations under the Purchase Contract, the Supplier shall comply and shall ensure that each of its employees, suppliers, sub-contractors, servants and agents shall comply with:
 - 24.1.1 the Modern Slavery Act 2015; and
 - 24.1.2 Bellway's Anti-Slavery Policy as Bellway may update the same from time to time, a copy of which is available for inspection at Bellway's registered office at all times during working hours upon request.
- 24.2 Bellway may terminate the Purchase Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of Bellway's Anti-Slavery Policy or breach of this clause 24.
- 24.3 The Supplier shall permit Bellway and its third party representatives, on reasonable notice, but without notice in case of any reasonably suspected breach of the Supplier's breach of this clause 24, to have access to and take copies of the Supplier's records and any other information (or those of the Supplier's Persons) and to meet with the Supplier or Supplier's Persons to audit the Supplier's compliance with its obligations under this clause 24.

25. DATA PROTECTION

- 25.1 In this clause 25, the following terms shall have the following meanings:
 - 25.1.1 **'Data'**: all data which is processed by the Supplier or provided to the Supplier for processing or which may be made (directly or indirectly) available to the Supplier as part of or relating to the Performance or the Products or in connection with the Purchase Contract;
 - 25.1.2 **'Data Protection Laws'**: means the General Data Protection Regulation (GDPR), and the Data Protection Act 2018, and the Privacy and Electronic Communications (EC Directive) Regulations 2003 together with any other laws applicable to the protection of personal data in force from time to time in England and Wales and any related regulations

and guidance (as from time to time amended, extended, re-enacted or consolidated) and all subordinate legislation, regulations and guidance made pursuant to any of them;

25.1.3 'data controller, data processor', 'data subject', 'personal data', 'personal data breach', 'processing' (and 'process' and 'processed' shall be construed accordingly) shall have the meaning set out in the Data Protection Laws; and

25.1.4 **'Data Protection Regulator'**: means the Information Commissioner's Office, the Article 29 Working Party and the European Data Protection Board, and in each case any successor body from time to time.

25.2 The parties acknowledge that for the purposes of the Purchase Contract, Bellway is the data controller and the Supplier is the data processor. The details of the processing carried out by the Supplier on Bellway's behalf are set out below:

Purposes of Processing	to permit or enable the Supplier to commence, carry out or complete the Performance or supply or deliver the Products or perform any obligations or duties it has in connection with the Purchase Contract.
Duration of Processing	until the date which is four (4) years after completion of the Performance and delivery of the Products or such longer duration as may be specified in the Purchase Contract.
Nature of Processing	processing in relation to the Performance and the Products or the Project or the Site or the performance of the Supplier's duties or obligations in connection with the Purchase Contract.
Description of data	name, phone number, postal address, email address, job title/position and any other data identified or referred to in the Purchase Contract or provided to the Supplier for the performance of its obligations under the Purchase Contract.
Special categories of data	any special categories of data identified or referred to in the Purchase Contract.
Categories of Data Subjects	Bellway's employees and those of any other contractor, subcontractors or any other party connected to the carrying out or completion, testing, inspection or approval of the Performance or the Products or any part of the Project and any of Bellway's customer or residents or occupiers of the Site or Project or any part of it.

25.3 Bellway consents and gives general authority to the Supplier to:

25.3.1 appoint sub-processors in relation to the performance of the Purchase Contract; and

25.3.2 use sub-processors who are based outside of the European Economic Area on condition that the Supplier puts in place measures to ensure adequacy of the protection of the personal data within the Data in accordance with Data Protection Laws.

25.4 The Supplier agrees in relation to the Data to:

25.4.1 implement appropriate technical and organisational measures in such a manner as meets the requirements of the Data Protection Laws and ensures the protection of the rights of data subjects;

25.4.2 only process personal data in accordance with the relevant principles under the Data Protection Laws;

25.4.3 only process the personal data for and on behalf of Bellway for the purposes of performing the Purchase Contract with Bellway and in accordance with any other instructions issued by Bellway in writing from time to time unless otherwise required by law or any other

regulatory body (in which case the Supplier shall, where permitted, notify Bellway of that legal or regulatory requirement in writing before processing);

- 25.4.4 impose upon each third party sub-processor (and procure each such third party sub-processor's compliance with) the terms of this clause 25 as if the processing being carried out by the sub-processor was being carried out by the Supplier and to give Bellway notice of any changes to its sub-processors so that Bellway has the opportunity to object to the change;
 - 25.4.5 ensure that persons authorised by it to process the personal data within the Data have committed themselves to duties of confidentiality or are under an appropriate statutory duty of confidentiality;
 - 25.4.6 take all measures required by and to comply with Article 32 of GDPR;
 - 25.4.7 only transfer or allow the transfer of the personal data outside the European Economic Area where adequate protections for the personal data within the Data exist as required by Data Protection Laws;
 - 25.4.8 taking into account the nature of the processing, assist Bellway by appropriate technical and organisational measures (so far as this is possible) for the fulfilment of Bellway's obligation to respond to requests for exercising a data subjects rights set out in Chapter III of GDPR;
 - 25.4.9 assist Bellway in ensuring compliance with the obligations under Articles 32 – 36 of GDPR taking into account the nature of processing and the information available to the Supplier;
 - 25.4.10 at Bellway's choice, delete or return all the personal data within the Data to Bellway on completion of the Performance or the supply and delivery of the Products and rectification of all defects and delete existing copies unless required by law or regulatory requirements to retain such personal data;
 - 25.4.11 maintain complete and accurate records and information to demonstrate its compliance with the obligations set out in this clause 25 and make available to Bellway all information necessary to demonstrate compliance with the obligations laid down in Article 28 GDPR and allow for and contribute to audits, including inspections, conducted by Bellway or another auditor appointed by Bellway including but not limited to giving Bellway (or its designated auditors) access to the Supplier's premises on reasonable notice and provide all reasonable assistance to Bellway to enable it (or its designated auditors) to audit the Supplier's compliance with this clause 25 and the Data Protection Laws;
 - 25.4.12 notify Bellway immediately if in its opinion any instruction from Bellway would contravene the Data Protection Laws or any other Statutory Requirements;
 - 25.4.13 ensure that only such of the Supplier's Persons who may be required by the Supplier to assist it in meeting its obligations under the Purchase Contract shall have access to the personal data; and
 - 25.4.14 promptly notify (and in any event within 24 hours) and provide full details to Bellway of any potential or actual loss of personal data, take all measures necessary to remedy or address the breach or potential breach and co-operate with Bellway to resolve such issue.
- 25.5 Where Bellway requires assistance from the Supplier in order to respond to requests, queries and/or investigations in respect of the personal data within the Data or requires the Supplier to help Bellway in reconstructing and/or otherwise safeguarding the personal data within the Data or requires that the Supplier assists Bellway in complying with Data Protection Laws, the Supplier shall (at its cost) provide Bellway with such assistance as Bellway reasonably requests within any timescales reasonably specified by Bellway.
- 25.6 Each party shall:
- 25.6.1 comply with all Data Protection Laws;

- 25.6.2 co-operate with any regulatory authority for data processing; and
 - 25.6.3 not do or omit to do anything which will place the other party in breach of any Data Protection Laws.
- 25.7 The Supplier shall indemnify, save, defend and hold Bellway harmless from and against any and all losses, damages, claims, costs and expenses (including, without limitation, reasonable legal expenses) suffered or incurred by or awarded against Bellway as a result of or in connection with:
- 25.7.1 any breach by the Supplier of this clause 25;
 - 25.7.2 any penalties or fines levied by a Data Protection Regulator, the costs of any investigative, corrective or compensatory action required by a Data Protection Regulator or of defending any investigation, allegation or claim made by a Data Protection Regulator, (in each case) where those fines, costs or claims have arisen as a result of a breach of the Purchase Contract by the Supplier; and/or
 - 25.7.3 where the Supplier, through its acts or omissions, is itself in breach of, or causes Bellway, to be in breach of the Data Protection Laws.

26. AUDIT

- 26.1 The Supplier shall keep and maintain the duration of the Purchase Contract and until fifteen (15) years after the completion of the Performance and supply and delivery of the Products under the Purchase Contract full and accurate records (together with such supporting or underlying documents and materials) of the performance of the Supplier's obligations and duties under the Purchase Contract (including but not limited to all or any part of the Performance or the Products), all expenditure, disbursements and expenses reimbursed by Bellway and all payments made by Bellway. The Supplier shall at any time on reasonable notice permit Bellway and its authorised representatives such access to audit, inspect and take copies of those records as may be required by Bellway in connection with the Purchase Contract. In addition, Bellway shall be entitled from time to time to conduct an audit of the Supplier's operations, facilities and working conditions and its quality, environmental, ethical and health and safety procedures and systems to ensure that the Supplier has the appropriate facilities, procedures, systems and personnel appropriate to as may be required for the Supplier to carry out and complete the Performance and the supply and delivery of the Products and to comply with its obligations and duties under the Purchase Contract.
- 26.2 The Supplier will take all practicable steps to see that the Supplier's Persons are bound by similar obligations in their respective contracts as stated in this clause 26.
- 26.3 If any inspection or audit by Bellway pursuant to this clause 26 discovers substantive findings related to fraud, misrepresentation, or non-performance, the Supplier shall reimburse Bellway all of Bellway's costs, losses and expenses accrued, suffered or incurred arising from or associated with such inspection or audit.

27. WAIVER

- 27.1 Any agreement by Bellway to waive any obligation or liability of the Supplier will only be effective if in writing, refers to the Purchase Contract and this clause and is signed in pen and ink by the Authorised Representative. Failure to exercise, or any delay in exercising any right or remedy by Bellway provided under the Purchase Contract or by law shall not constitute a waiver by Bellway of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy by Bellway.
- 27.2 Except as expressly set out in clause 27.1, no waiver, forbearance, release, inspection, approval, comment, review or consent or omission to inspect, approve, comment, review or consent by Bellway or its employees, servants, suppliers or agents shall in any way derogate, limit or reduce the Supplier's duties and obligations in connection with the Purchase Contract. Notwithstanding any other provision of the Purchase Contract, the term "approval" when used in the context of any approval to be given by Bellway shall have the meaning "acceptance of general principles only"

and no such approval shall diminish or relieve the Supplier from any of its obligations or responsibilities under the Purchase Contract.

28. BELLWAY POLICIES AND PROCEDURES

28.1 The Supplier shall comply with (and procure that its employees, servants and agents comply with) all aspects of Bellway's policies and procedures relevant to the Purchase Contract and current as at the date of the Purchase Contract and as may be updated from time to time (copies of which are available for inspection during business hours at Bellway's office or address or on request or can be found on Bellway's website <https://www.bellwayplc.co.uk/supply-chain-information>).

29. FURTHER ASSURANCES

29.1 The Supplier agrees to execute and deliver such documents and instruments and take such further actions as Bellway may, from time to time, reasonably request in order to effectuate the purposes and to carry out the terms of the Purchase Contract.

30. LIMITATION PERIOD

30.1 Notwithstanding the manner in which the Purchase Contract has been entered into, the statutory contractual limitation period in respect of the Supplier's obligations and liabilities under the Purchase Contract shall extend to the expiration of twelve (12) years after the date of completion of Performance and delivery of all Products to Bellway under the Purchase Contract. For the avoidance of doubt, the provisions of the Limitation Act 1980 (and any subsequent amendment or re-enactment) relating to claims in contract are excluded and do not apply to claims, actions or proceedings by Bellway against the Supplier.

31. DISPUTE RESOLUTION

31.1 The Supplier will co-operate and assist Bellway in dealing with any dispute that Bellway may have with any third party in relation to the Purchase Contract or the Project in so far as it relates to the Products.

32. GOVERNING LAW AND JURISDICTION

32.1 The Purchase Contract shall be governed and construed in accordance with English law and the English courts shall have exclusive jurisdiction (except for the purposes of enforcement of an English court judgment or order in another jurisdiction) with regard to all matters arising from it.

SIGNED: **POSITION**

PRINT NAME:

DATE:

FOR AND ON BEHALF OF: [INSERT FULL NAME OF SUPPLIER]