

Harlaxton General Conditions of Contract (Version 1 2016)

Table of Contents

Definitions and Interpretations

Clause		Page
1.1	Definitions	3
1.2	Interpretation	4
1.3	Singular and Plural	4
1.4	Notices and Consents	4
1.5	Headings and Marginal Notes	5

Assignment and Sub Contracting

2.1	Assignment	5
2.2/2.3/2.4	Sub-Contracting	5

Precedence of Documents

3.1	Precedence of Documents	5
-----	-------------------------	---

Basis of Quotation/Price

4.1	Basis of Quotation/Price	5
4.2/4.3	Site Data	5
4.4	Unexpected Site Conditions	6

Changes in Costs

5.1	Statutory and Other Regulations	6
5.2	Labour materials and costs	6

Details Confidential

6.1	Details Confidential	6
-----	----------------------	---

Notices

7.1	Notices to Purchaser	6
7.2	Notices to Harlaxton	6
7.3	Service of Notices	6

Purchasers General Obligations

8.1	Access to Site	7
8.2	Legal Obligations	7
8.3	Foundations	7
8.4	Purchasers Lifting Equipment	7
9.1	Utilities and Power	7
10.1	Power etc for Tests on Site	7
10.2	Breach of Purchaser's General Obligations	7

Harlaxton's Obligations

10.3	General	7
10.4	Manner of Execution	7
10.5	Harlaxton's Design	8
10.6	Lead Time	8

10.7	Programme of Work	8
10.8/10.9	Rate of Progress	8
11.1	Drawings	8
11.2	Approved Drawings	8
11.3	Inspection of Drawings	8
11.4	Drawings/Information provided	8
11.5	Operation and Maintenance Instructions	9
11.6	Purchasers use of Drawings etc supplied by Harlaxton	9
11.7	Harlaxton's use of Drawings etc supplied by the Purchaser	9
12.1	Manufacturing Drawings etc	9
12.2	Errors in drawings etc. supplied by Harlaxton	9
12.3	Errors in drawings etc supplied by the Purchaser	9
13.1	Harlaxton's Representatives or Workmen	9
13.2	Returns of Labour	9
14.1	Fencing Guarding Lighting and Watching	9
15.1	Site Services	10
16.1	Clearance of Site	10
17.1	Hours of Work	10
18.1	Safety	10
19.1	Extraordinary Traffic	10
20.1	Special Loads	10
21.1	Extraordinary Traffic Claims	10
22.1	Setting Out	10

Inspection and Testing of Plant Before Delivery

23.1	Purchaser's entitlement to inspect	11
23.2	Dates for Inspection	11
23.3	Services for Inspection	11
23.5	Failure on Tests or Inspection	11
24.1	Delivery	11

Suspension of Works Delivery or Erection

25.1	Instructions to Suspend works	11
25.2	Additional Cost caused by Suspension	12
25.3	Payment for Plant Affected by Suspension	12
25.4	Disallowance of Additional cost or payment	12
25.5	Resumption of Work, Delivery or Erection	12
25.6	Effects of Suspension on Defects Liability	13
26.1	Defects before Taking-Over	13

Variations

27.1	Meaning of Variation	13
27.2	Purchasers Power to Vary	13
27.3	Valuation of variations	13
27.4	Harlaxton's Records of Costs	13
27.5/27.6	Notice and Confirmation of Variations	14

Tests on Completion

28.1	Notice of Tests	14
28.2	Time for Tests	14
28.3	Delayed Tests	14
28.4	Repeat Tests	14
28.5	Consequences of Failure to Pass Tests on Completion	14

Taking Over

29.1	Taking Over by Sections	15
29.2	Taking Over Certificates	15
29.3	Effect of taking over Certificate	15

29.4	Outstanding Work	15
30.1	Use before taking Over	15
31.1	Interference with Tests	15
31.2	Tests During Defects Liability Period	15

Time for completion

32.1	Time for Completion	16
33.1	Extension of Time for Completion	16
33.2	Delays by Sub Contractors	16
33.3	Mitigation of Consequences of Delay	16

Delay

34.1	Delay in Completion	16
34.2	Prolonged Delay	16

Defects Liability

35.1	Defects After Taking Over	17
35.2	Making Good Defects	17
35.3	Notice of Defects	17
35.4	Extension of Defects Liability	17
35.5	Delay in Remedying Defects	17
35.6	Removal of Defective Work	18
35.7	Further Tests	18
35.8	Harlaxton to Search	18
35.9	Liability for Defects	18
35.10	Latent Defects	18

Vesting of Plant and Contractor's Equipment

36.1	Ownership of Plant	19
------	--------------------	----

Harlaxton's Equipment

37.1	Harlaxton's Equipment	19
37.2	Harlaxton's Equipment on Site	19
37.3	Loss or Damage to Harlaxton's Equipment	19
37.4	Maintenance of Harlaxton Equipment	19

Payment Terms

38.1	Application for Payment	19
38.2/38.3	Interim Payments	20
38.4	Value included in Invoices for Interim Payments	20
38.5	Withholding Payment	20
38.6	Effect of Payment	20
38.7	Effect of Final Invoice for Payment	20
38.8	No effect in the Case of Gross Misconduct	20
39.1	Payment	20
39.2	Delayed payment	20
39.3	Remedies on Failure to Make Payment	20

Claims

40.1	Notification of Claims	21
40.2	Allowance for Profit on Claims	22
40.3	Purchaser's Liability to Pay Claims	22

Patent Rights Etc

41.1	Indemnity against Infringement	22
41.2	Conduct of Proceedings	22

41.3	Purchaser's Indemnity against Infringement	23
41.4	Infringement Preventing Performance	23

Accidents and Damage

42.1	Care of Works	23
42.2	Making Good Loss or Damage to the Works	23
42.3	Damage to Works caused by Purchaser's Risks	23
42.4	Injury to Persons and Property Whilst Harlaxton has Responsibility For care of the Works	24
42.5	Injury to Persons and Damage after Responsibility for Care of Works	24
42.6	Accidents or Injury to Workmen	24
42.7	Claims in respect of Damage to Persons or Property	24

Limitations of Liability

43.1	Mitigation of Loss	25
43.2	Indirect or Consequential Damage	25
43.4	Limitation of Harlaxton's Liability	25
43.4	Exclusive Remedies	25

Purchaser's Risks

44.1	Purchaser's Risks	25
------	-------------------	----

Force Majeure

45.1	Force Majeure	26
45.2	Notice of Force Majeure	26
45.3	Termination for Force Majeure	26
45.4	Payment on Termination for Force Majeure	26

Insurance

46.1	Insurance of Works	27
46.2	Extension of Works Insurance	27
46.3	Application for Insurance Monies	27
46.4	Third party Insurance	27
46.5	Insurance against Accident etc to Workmen	27
46.6	General Insurance Requirements	27
46.7	Exclusions from Insurance Cover	28
47.1	Remedy on Failure to Insure	28

Harlaxton's Default

48.1	Default	28
48.2	Valuation at Date of Termination	28
48.3	Payment after termination	29
49.1	Bankruptcy and Insolvency	29

Purchaser's Default

50.1	Notice of Termination due to Purchasers Default	29
50.2	Removal of Harlaxton's Equipment	30
50.3	Payment on Termination Due to Purchasers Default	30

Disputes and Mediation

51.1	Notice of Mediation	30
51.2	Performance to Continue during Mediation	30
52.1	Sub Contractor's Servants and Agents	31
53.1	Applicable Law	31

GENERAL CONDITIONS

Definitions and Interpretations

- 1.1** In construing the Contract the following words and expressions shall have the following meanings hereby assigned to them.
- 1.1. a** “Purchaser” means the person named as such in the Special Conditions and the legal successors in title to the Purchaser but not (except with the consent of the Contractor) any assignee of the Purchaser
- 1.1.b** “Harlaxton” means Harlaxton Engineering Services Limited whose quotation/proposal has been accepted by the Purchaser and the legal successors in title to Harlaxton
- 1.1. c** “the Conditions” means these Harlaxton’s Terms and Conditions, these General Conditions and any Special Conditions.
- 1.1.e** “Contract” means the Quotation and/ or other Agreement between the Purchaser and Harlaxton (howsoever made) for the execution of the works including the Quotation and Letter of Acceptance, Harlaxton’s terms and Conditions, Specification and the drawings (if any) referred to or agreed and any schedules as are referred to therein
- 1.1. f** “Contract price” means the sum stated in the Quotation as the price payable to Harlaxton for the execution of the works.
- 1.1.g** “Contract value” means such part of the Quotation price, adjusted to give effect to such additions or deductions as are provided for in the Contract, other than sub-clause 5.2 (labour materials and transport) as is properly apportioned to the Plant or work in question. In determining Contract value the state, condition and topographical location of the plant, the amount of work done and all other relevant circumstances shall be taken into account.
- 1.1.j** “Cost” means all expenses and costs incurred including overhead financing charges properly allocable thereto with no allowance for profit.
- 1.1. k** “Quotation “means Harlaxton’s priced offer to the Purchaser for the execution of the works.
- 1.1. l** “Official Acceptance” means the formal acceptance by the Purchaser of the Quotation/proposal incorporating any amendments or variations to the Quotation/proposal agreed by the Purchaser and Harlaxton
- 1.1.m** “Completion Date” means the period of time for completion of the works or any section thereof as stated in the Contract or as extended under sub-clause 33.1 (Extension of Time for completion) calculated from whichever is the later of:-
- (a)** the date specified in the Contract as the date for commencement of the works
 - (b)** the date of receipt of such payment in advance of the commencement of the works as may be specified in the contract
 - (c)** The date any necessary legal, financial or administrative requirements specified in the Contract as conditions precedent to commencement have been fulfilled.
- 1.1.n** “Harlaxton’s Equipment” means all appliances or things of whatsoever nature required for the purposes of the works but does not include plant, materials or other things intended to form or forming part of the works

- 1.1. o** “Plant” means machinery, computer hardware and software, apparatus, materials, articles and things of all kinds to be provided under the Contract other than Harlaxton’s equipment.
- 1.1. p** “Works” means all Plant to be provided and work to be done by Harlaxton under the Contract.
- 1.1. q** “Section of the works” or “Section” means the parts into which the Works are divided by the Specification
- 1.1. r** “Programme” means the programme referred to in Clause 10.7 (Programme of Work)
- 1.1. s** “Specification” means the specification of the works annexed to or included in the Contract including any modifications thereof made under Clause 27 (Variations).
- 1.1. t** “The Special Conditions” means the alterations to these General Conditions specified and identified as the Special Conditions in the Contract.
- 1.1. u** “Site” means the actual place or places provided or made available by the Purchaser, to which Plant is to be delivered to where work is to be done by Harlaxton together with so much of the area surrounding the same as Harlaxton shall with the consent of the Purchaser actually use in connection with the Works otherwise than merely for the purposes of access.
- 1.1. v** “Tests on completion” means the tests specified in the Contract (if any) (or otherwise agreed by the Purchaser and Harlaxton) which are to be made by Harlaxton upon completion of erection and/or installation before the Works are taken over by the Purchaser
- 1.1. w** “Defects Liability Period” has the meaning assigned by Sub-clause 35.9 (Liability for Defects)
- 1.1. x** “Purchasers Risks” has the meaning assigned by Sub-clause 44.1 (Purchasers Risks)
- 1.1. y** “Force Majeure” has the meaning assigned by clause 45.1 (Force Majeure).
- 1.1. aa** “Writing” means any hand written, type written or printed statement
- 1.1. bb** “Day” means calendar day
- 1.1. dd** “Week” means any period of 7 days
- 1.1. ee** “Month” means calendar month
- | | |
|-------------------------------|--|
| Interpretation | 1.2 Words importing persons or parties shall include firms, limited companies, Corporation and any organisation having legal capacity |
| Singular and Plural | 1.3 Words importing a particular gender mean and include the other gender and words importing a singular number mean and include the plural number and vice versa, unless the context clearly indicated to the contrary. |
| Notices & Consents | 1.4 wherever in the Conditions provision is made for the giving of notice or consent By any person, unless otherwise specified such notice or consent shall be in writing and the word “notify” shall be construed accordingly. Any consent required of a party shall Not by unreasonably withheld. |

Headings & Marginal Notes	<p>1.5 the headings or marginal notes in the conditions shall not be deemed part thereof or by taken into consideration in the interpretation or construction thereof or of the Contract.</p>
	<p>Assignment and Sub Contracting</p>
Assignment	<p>2.1 Harlaxton shall not assign the benefit of the Contract in whole or in part or any of his Obligations under the Contract without providing the Purchaser with reasonable notice in writing. A charge in favour of the Contractor's Bankers of any monies due under the Contract, or the subrogation of insurers to the Contractor's rights shall not be considered an assignment.</p>
Sub-Contracting	<p>2.2 Except where otherwise provided by the contract Harlaxton shall not sub contract any part of the works without providing the Purchaser with reasonable notice in writing.</p> <p>2.3 Harlaxton shall however not provide notice of sub-contracting where these are for minor details nor for purchase of materials or for any part of the works of which the manufacture or supplier is named in the contract.</p> <p>2.4 Harlaxton shall be responsible for the acts, defaults and neglects of any Sub Contractor, his agents, servants or workmen as fully as if they were the acts defaults or neglects of Harlaxton, his agents, servants or workmen.</p>
	<p>Precedence of Documents</p>
	<p>3.1 Unless otherwise provided in the Quotation Harlaxton's Terms and Conditions as amended by the Official Acceptance shall prevail over any other document forming part of the Contract and in the case of conflict between Harlaxton's Terms and Conditions and the General Conditions of Contract the General Conditions of Contract shall prevail. Subject thereto the Quotation shall prevail over any other document forming part of the Contract.</p>
	<p>Basis of Quotation and Price</p>
	<p>4.1 Harlaxton shall be deemed to have "desktop" inspected the proposed route and any offer is based on the relevant local authorities granting permissions for undertaking the stated route and is subject to inspection of existing utility drawings within the vicinity.</p> <p>In addition Harlaxton have undertaken a "desktop" inspection the entire "off-site" route and the price offered is fixed for excavation and re-instatement in the surface material apparent at the time of inspection. Should we subsequently discover concrete beneath asphalt / bituminous type wearing surfaces, concrete surfaces of greater than normal (150mm) thickness, or reinforced concrete and a direct route through the aforementioned surfaces is required, we shall seek to be reimbursed for all additional net costs. However should the above situation arise we shall deviate from the route where practical and in the event the total aggregate route length as described in our offer increases by less than 2% due to such deviations to avoid such unforeseen conditions, all additional costs will be borne by Harlaxton.</p>
Site Data	<p>4.2 The Quotation shall be deemed to have been based on such data on climatic, hydrological, soil and general conditions of the site and for the operation of the works as the Purchaser has made available to Harlaxton for the purposes of the quotation.</p>

4.3 Harlaxton shall be responsible for their own interpretation of such data and for any misunderstanding or incorrect information however obtained except information provided in writing by the Purchaser or any statutory authority or third party necessarily involved with the Contract.

Unexpected Site Conditions

4.4 In the case of work underground or involving excavation where the actual conditions of the ground are not stated in the Quotation or if hard rock, rocky soil, sold chalk, water resulting in permanent de-watering plant being required, running sand. Slag, pipes, concrete or other obstructions are found, and a deeper depth is required, or if it should be necessary to leave in timber or provide support for existing work (such necessity not having been indicated in the contract) and such conditions or obstructions could not reasonably have been ascertained from information made available to Harlaxton by the Purchaser or as a result of an error omission or inaccuracy in any of the assumptions or matters identified in the quotation, Harlaxton shall forthwith inform the Purchaser of the obstructions or hazards encountered and obtain the approval of the purchaser to the steps he proposes to take to deal with the same.

If Harlaxton, in taking such steps incurs extra costs, they reserve the right to add such costs to the Quotation price.

Changes in Costs

Statutory and Other Regulations

5.1 If the cost to Harlaxton of performing his obligations under the Contract shall be increased or by reason of the making after the date of the Quotation of any Law or of any Order, Regulation or By - Law having the force of Law that shall affect Harlaxton in the performance of his obligations, the amount of such increase shall be added to the Contract price.

Labour materials & Transport

5.2 If by reason of any rise in the cost of labour or in the cost of material or transport above such costs ruling at the date of the Quotation, the cost to Harlaxton of performing their obligations under the Contract shall be increased the amount of such increase shall be added to the Contract price.

Details Confidential

Details Confidential

6.1 The Purchaser and Harlaxton shall treat the details of the Contract and any information made available in relation thereto as private and confidential and neither of them shall publish or disclose the same or any particulars thereof (save insofar as may be necessary for the purposes of the Contract), without the previous consent of the other provided that nothing in this Clause shall prevent the publication or disclosure of any such information that has come within the public domain otherwise than by breach of this Clause.

Notices

Notices to Purchaser

7.1 Any notice to be given to the Purchaser under the Contract shall be served by sending the same by post or email (with read receipt)

Notices to Harlaxton

7.2 All certificates, notices or decisions, instructions and orders to be given by the Purchaser under the Contract shall be served by sending the same by post or email (with read receipt).

Service of Notices

7.3 Any notice sent by email (with read receipt) shall be deemed to have been served at the time of transmission. A notice sent by post shall be deemed to have been served 4 days after posting.

Purchaser's General Obligations

Access to Site	8.1 The purchaser shall give Harlaxton access (but not exclusive access) to the site on the date specified in the Contract. If no date is stated then access shall be given in reasonable time having regard to the completion date. The Purchaser shall provide such roads and/or other means of access to the site as may be stated in the contract and/or specification subject to such reasonable limitations as to use as may be imposed.
Legal Obligations	8.2 The purchaser shall comply with any legal obligations that are set out in the Quotation.
Foundations	8.3 Buildings, structures, foundations, approaches or work, equipment or materials to be provided by the Purchaser shall be provided within the time specified in the Contract or in the Programme, shall be of the quality specified and in a condition suitable for the efficient transport, reception, installation and maintenance of the Works.
Purchasers Lifting Equipment	8.4 The Purchaser shall at Harlaxton's request and expense operate for the purposes of the works any suitable lifting equipment belonging to the Purchaser that may be available on the Site and of which details are given in the Special Conditions. The Purchaser shall during such operation retain control of and be responsible for the safe working of the lifting equipment.
Utilities and Power	9.1 The Purchaser shall make available on the site for use by Harlaxton for the purposes of the works such supplies of electricity water gas air and other services as may be specified in the Special Conditions. Such supplies shall be made available at the points specified in the Contract on the terms mentioned in Sub-Clause 15.1 (site services)
Power etc. for Tests On Site	10.1 Where the Contract provides for any tests on site the purchaser shall unless otherwise stated in the Special Conditions, provide free of charge such fuel, electricity skilled and unskilled labour, materials stores, water apparatus, instruments and feedstocks as may be requisite and as may reasonably be requested by Harlaxton to enable the tests to be carried out effectively.
Breach of Purchaser's General Obligations	10.2 In the event that the Purchaser shall be in breach of any of his general obligations imposed by this clause then the additional cost reasonably incurred by Harlaxton in Consequence thereof shall be added to the Quotation/Contract price

Harlaxton's Obligations

General	10.3 Harlaxton shall, subject to the provisions of the Quotation, with due care and diligence, design, manufacture, deliver to site, erect and test the Plant, execute the Works (and carry out the tests on completion within the time for completion. Harlaxton shall make good defects in the works and provide specialist advice to enable the Tests (where these are included) to be carried out by the Purchaser. Harlaxton shall subject to sub-clause 10.1 (Power etc. for Tests on site) provide all labour, skilled and unskilled, the supervision thereof on all Harlaxton's equipment required for the execution of the works.
Manner of Execution	10.4 The works shall be manufactured and executed in the manner set out in the specification or, where not so set out, to the reasonable satisfaction of the Purchaser and all work on site shall be carried out in accordance with such reasonable directions as the Purchaser may give.

Harlaxton's Design	<p>10.5 Harlaxton shall be responsible for the design of the Plant and of the works in accordance with the requirements of the specification. In so far as Harlaxton is required by the Contract to comply with any detailed design provided by the Purchaser or any statutory authority or third party necessarily involved with the Contract. Harlaxton shall be responsible for such design unless within a reasonable time after receipt thereof they shall have given notice to the Purchaser disclaiming such responsibility.</p> <p>Unless otherwise provided in the Contract Harlaxton does not warrant that the works as described in the specification or the incorporation thereof within some larger projects will satisfy the Purchaser's requirements.</p>
Lead Time	10.6 Within the timescales stated in the Contract.
Programme of Work	<p>10.7 The programme shall be in such form as may be specified in the Contract. Harlaxton shall not without the Purchaser's consent make any material alteration to the programme.</p> <p>If modifications are required for reasons for which Harlaxton is not responsible, the cost of producing any revised programme shall be added to the contract price.</p>
Rate of Progress	<p>10.8 The Purchaser shall notify Harlaxton if they decide that the rate of progress of the works or of any section is too slow to meet the time for completion and that this is not due to a circumstance for which Harlaxton is entitled to an extension of time under sub clause 33.1(Extension of Time for completion)</p> <p>10.9 Following receipt of such a notice Harlaxton shall take such steps as may be reasonably necessary to remedy or mitigate the likely delay include the revision of the programme. Harlaxton shall not be entitled to any additional payment for taking such steps.</p>
Drawings	<p>11.1 Harlaxton shall submit to the Purchaser for approval:</p> <ul style="list-style-type: none"> (a) Within the times given in the Contract or in the programme such drawings, samples, or information (including calculations) as may be called for therein, and in the numbers therein required; (b) During the progress of the works within such reasonable times as the Purchaser may require such drawings of the general arrangement and details of the works as may be specified in the Contract or as the Purchaser may reasonably require
Approved Drawings	11.2 The Purchaser shall signify his approval or disapproval thereof within the timescales given in the Contract. Any drawings which the Purchaser does not approve will be modified and re submitted to the Purchaser for approval.
Inspection of Drawings	11.3 The Purchaser shall have the right at all reasonable times to inspect all drawings of any part of the works
Drawings/Information provided	<p>11.4 Harlaxton shall provide within the Contract or within the times stated in the Contract or in the Programme -</p> <p>Details and/or drawings and any other information required to the Purchaser in respect of the following:-</p> <ul style="list-style-type: none"> a. To show how the plant is to be affixed b. To show suitable foundations or other means of support b. To show suitable access for the plant and any necessary equipment to the point on Site where the plant is to be erected and

c. To show the necessary connections to the Plant

Operation and Maintenance Instructions

11.5 Within the time or times stated in Contract and/or Programme (if stated as being

provided) Harlaxton shall supply operating and maintenance instructions and drawings of the works as built. These shall be in such detail as will enable the Purchaser to operate, maintain, dismantle reassemble and adjust all parts of the works and will be supplied in the form and numbers stated in the Contract.

Purchasers Use of Drawings etc. Supplied By Harlaxton

11.6 Drawings and information supplied by Harlaxton may be used by the Purchaser only for the purposes of completing, maintaining, adjusting and repairing the works. No licence is granted to the Purchaser to copy or use the drawings or information so supplied in order to make or have made spare parts Of the works. Drawings or information supplied by Harlaxton shall not without Harlaxton's consent be used, copied or communicated to a third party by the Purchaser otherwise than as strictly necessary for the purposes of the Contract.

Harlaxton's use of Drawings etc. Supplied by The Purchaser

11.7 Drawings and information supplied by the Purchaser to Harlaxton for the purposes of the Contract shall remain the property of the Purchaser. They shall not without the consent of the Purchaser be used, copied or communicated to a third party by Harlaxton otherwise than as strictly necessary for the purposes of the Contract.

Manufacturing Drawings etc.

12.1 Notwithstanding any other provisions of the Contract Harlaxton shall not be required provide to the Purchaser drawings nor any of their confidential manufacturing drawings, designs, or know how nor the confidential details of manufacturing practices, processes or operations.

Errors in drawings Etc. Supplied by Harlaxton

12.2 Notwithstanding approval by the Purchaser of drawings, samples or information submitted by Harlaxton, Harlaxton shall at their own expense carry out any alterations or remedial work necessary by such errors omissions or discrepancies for which they are responsible and modify the drawings, samples or information accordingly.

Errors in drawings etc. supplied by the purchaser The Purchaser

12.3 The Purchaser shall be responsible for errors, omissions or discrepancies in drawings and written information supplied by him. The Purchaser shall at his own expense carry out any alterations or remedial work necessitated by such errors omissions or discrepancies for which he is responsible to pay Harlaxton the cost incurred by them in carrying out in accordance with the Purchasers instructions any such alterations or remedial work so necessitated.

Harlaxton's Representatives or Workmen

13.1 Harlaxton may employ one or more competent representatives whose name or names shall have been notified previously to the purchaser by Harlaxton to superintend the carrying out of the works on the site. The said representative or if more than one of such representatives, shall be present on the site during working hours, and any orders or instructions which the purchaser may give to the said representative of Harlaxton shall be deemed to have been given to them.

Returns of Labour

13.2 Harlaxton shall if required by the Purchaser send to the Purchaser or their representative a return of the supervisory staff employed by Harlaxton and his sub-contractors upon the site. The returns shall be provided in such form and with such frequency as the Purchaser may reasonably require.

Fencing Guarding Lighting and watching

14.1 Harlaxton shall be responsible for necessary fencing, guarding, lighting and watching of works on the site until completed and for the proper provision of temporary roadways, footways guards and fences so far as may be necessary for the works being

undertaken for the protection of the owners and occupiers of any adjacent property affected by the works, the public and others. Harlaxton shall not use any naked light on the site without the specific consent of the Purchaser.

Site Services	15.1 Harlaxton shall provide (if referred to in the Contract) any apparatus necessary for the use of such supplies of electricity, water gas and other services as are made available for Harlaxton's use by the Purchaser under sub-clause 9.1 (Utilities and Power).
Clearance of site	16.1 From time to time during the progress of the works Harlaxton shall clear away and remove from the site all surplus materials and rubbish and on completion their equipment. Harlaxton shall at all times leave the site and the works clean and in a safe and workmanlike condition to the Purchaser's satisfaction.
Hours of Work	17.1 Unless otherwise provided in the Contract the Purchaser shall give Harlaxton facilities for carrying out the works on the site continuously during the normal working hours generally recognised. The Purchaser may after consulting with Harlaxton direct that work shall be done at other times if it shall be practicable in the circumstances for the work to be so done. The extra cost of the work shall be added to the contract price unless such work has by the default of Harlaxton become necessary to ensure completion of the works within the time for completion.
Safety	18.1 Harlaxton shall be responsible for the adequacy stability and safety of his operations on site and shall comply with the Purchaser's safety regulations applicable at the site unless specifically authorised by the Purchaser to depart therefrom in any particular circumstances.
Extraordinary Traffic	19.1 Harlaxton shall use every reasonable means to prevent damage to any of the highways or bridges on the routes to the site by any traffic of Harlaxton or any of his sub-contractors
Special Loads	20.1 Should Harlaxton consider that the moving of one or more loads of Plant or equipment is likely to damage any highway or bridge unless special protection or strengthening is carried out then Harlaxton shall before moving the load notify the Purchaser. Harlaxton shall in the notice state the weight and other particulars of the load to be moved and under his proposal for protecting or strengthening the highway or bridge. Unless within 14 days of receipt of such notice the Purchaser by notice directs that such protection or strengthening is unnecessary then Harlaxton shall carry out their proposals with any modification thereof that the Purchaser may require and the cost of the work shall be added by Harlaxton to the Contract price.
Extraordinary Traffic Claims	21.1 If Harlaxton shall receive any claim in respect of damage or injury to highways or bridges arising out of the execution of the works he shall immediately report the claim to the Purchaser. The Purchaser shall then negotiate the settlement of and pay all sums due in respect of such claim. The Purchaser shall indemnify Harlaxton in respect of the claim and in respect of all proceedings, damages, costs charges and expenses in relation thereto. If it is found that any part of such claim results from the negligence of Harlaxton or from their failure to perform their obligations under sub-clauses 19.1 and 20.1 then the Purchaser shall advise Harlaxton of this sum and request reimbursement
Setting Out	22.1 Harlaxton shall accurately set out the works (<i>if this is specified and agreed in the Contract</i>) in relation to original points, lines and levels of reference (if necessary) given by the Purchaser in writing and provide all necessary instruments, appliances and labour therefor. If at any time during the execution of the works any error appears in the positions levels dimensions or alignment of the works Harlaxton shall rectify the error but will only bear

the cost of rectifying the error if this was solely caused by them and the error did not result from incorrect information supplied in writing by the Purchaser or duly appointed representative or from default by another Contractor in which case the costs incurred by Harlaxton will be added to the contract price and paid by the Purchaser.

INSPECTION OF PLANT BEFORE DELIVERY

Purchaser's entitlement

To inspect

23.1 The Purchaser shall be entitled at all reasonable times during manufacture to inspect at Harlaxton's premises the materials and workmanship of all plant to be supplied under the Contract (if applicable). If part of the plant is being manufactured on other premises Harlaxton shall obtain for the Purchaser permission to inspect as if the plant were being manufactured on Harlaxton's premises. Such inspection shall not release Harlaxton from any obligation under the Contract.

Dates for

Inspection

23.2. Harlaxton shall agree with the Purchaser the date on and the place at which any plant will be ready for inspection as provided in the Contract. The Purchaser shall give Harlaxton at least 48 hours' notice of his intention to attend the inspection. If the Purchaser shall not attend at the place so named on the date agreed, Harlaxton may proceed with the inspection which shall be deemed to have been made in the Purchaser's presence. Harlaxton shall forthwith forward to the Purchaser duly certified copies of the results of such inspection.

Services for

Inspection

23.3 Where the Contract provides for inspection on the premises of Harlaxton or of any sub- contractor Harlaxton shall provide free of charge such assistance labour materials electricity fuel stores apparatus and instruments as may be requisite and as may be reasonably demanded to carry out such inspection.

Failure on

Inspection

23.5 If after inspecting/ examining any plant the Purchaser shall decide that such plant or any part thereof is defective or not in accordance with the Contract he may reject the said plant or part thereof by giving to Harlaxton within 14 days' notice of such rejection stating therein the grounds upon which the said decision is based. Following any such rejection Harlaxton shall make good or otherwise repair or replace the rejected plant and resubmit the same for inspection in accordance with this clause and all expenses reasonably and properly incurred by the Purchaser in consequence of such inspection and the Purchaser's attendance shall be deducted from the Contract price.

Delivery

24.1 Harlaxton shall make a request to the Purchaser for permission to deliver any plant or Harlaxton's equipment to the site. No plant or equipment may be delivered to site without the Purchaser's permission.

Harlaxton shall be responsible for the reception and unloading on site of all plant and equipment delivered by them for the purposes of the Contract. However if this plant and equipment is delivered by third party i.e. a carrier/transporter then it is the Purchaser's responsibility to arrange for unloading on site at their expense following agreement with the Purchaser as to the delivery arrangements.

SUSPENSION OF WORKS DELIVERY OR ERECTION

Instructions to Suspend works.

25.1 The Purchaser may at any time instruct Harlaxton to suspend the progress of the

If by reason of any delay or failure on the part of the Purchaser, or of failure by the Purchaser to give the permission referred to in clause 24.1 (Delivery) or from any cause for which the Purchaser or some other contractor employed by him is responsible, Harlaxton is prevented from either:

- (a) Delivering to the site any plant which is ready for delivery at any time for delivery thereof specified in the Contract or if no time is specified at the time appropriate for it to be delivered having regard to the time for completion or
- (b) Erecting any plant which has been delivered to the site

Then the Purchaser shall be deemed to have given instructions to suspend the progress of the works and/or plant affected and inure the same

Unless otherwise instructed by the Purchaser, Harlaxton shall during any suspension affecting the progress of the works o site maintain his staff labour and equipment on or near the site ready to proceed with the works upon receipt of the Purchasers further instructions.

**Additional Cost caused
By Suspension**

25.2 Any additional cost incurred by Harlaxton in complying with the provisions of and/or the Purchaser's instructions under sub-clause 25.1 (Instructions to Suspend) shall be added to the Contract price.

Payment for Plant

Affected by Suspension

25.3 Harlaxton shall be entitled to payment for plant, work on which or the delivery of which at the normal delivery date has been suspended for more than 7 days and the contract value of such plant as at the date of suspension shall be included in any interim certificate of payment under sub-clause 39.3 (Remedies on failure to make Payment)

**Disallowance of
Additional cost or payment**

25.4 Harlaxton shall not be entitled to be paid any additional costs under Sub Clause 25.2 (Additional cost for suspension) nor to an payment under Sub Clause 25.3 (Payment for plant affected by suspension) if suspension is necessary by reason of default on the part of Harlaxton or for the proper execution or the safety of the Works or Plant save where such necessity results from any act or default of the Purchaser or the occurrence of any of the Purchaser's Risks.

Resumption of Work

25.5 At any time after suspension under Sub Clause 25.1 (Instructions to suspend) the Purchaser may give notice to Harlaxton to proceed with the delivery or erection of Plant and/or work the subject of suspension under this Clause.

Delivery or Erection

If suspension has continued for more than 90 days and the suspension is not necessitated by the reasons stated in sub clause 25.4 (Disallowance of additional cost or payment) Harlaxton may by notice to the Purchaser to require him to give notice to proceed within 30 days.

If notice to proceed is not given within that time Harlaxton may elect to treat the suspension as an omission under clause 27 (Variations) on the part of the works affected thereby. If the suspension affects the whole of the works the Contractor may terminate the Contract in which event he shall be entitled to be paid in accordance with Sub-Clause 51.3 (Payment on Termination on Purchaser's Default) as if the Contract had been terminated under Sub Clause 50.3 (Payment on Termination due to Purchaser's Default). If Harlaxton does not elect to treat the suspension as an omission or to terminate the Contract as the case may be, he shall be entitled to be paid the contract value of the plant affected by the suspension.

Upon receipt of notice not proceed, Harlaxton shall examine the Plant and work affected by the suspension. Harlaxton shall make good any deterioration or defect in or loss of such Plant or work that may have occurred during suspension. The cost incurred in making such examination and of making good and resuming work shall be added to the Contract price.

Harlaxton shall not be entitled to be paid any costs incurred in making good any deterioration, defect or loss caused by defective materials or workmanship or by the Contractor's failure to comply with any instructions of the Purchaser under Sub Clause 25.1 (Instructions to Suspend)

Effect of Suspension On Defects Liability	25.6 If Harlaxton shall solely in consequences of suspension, be required to perform their obligations under Clause 35 (Defects Liability) in relation to defects in any Plant at a time which is more than 3 years after the normal delivery date therefor, the additional cost incurred by Harlaxton shall be added to the Contract price.
Defects before Taking-Over	<p>26.1 If in respect of any part of the works not yet taken over the purchaser shall at any Time:-</p> <ul style="list-style-type: none"> (a) Decide that any work done or Plant supplied or materials used by Harlaxton or any Sub Contractor is or are defective or not in accordance with the Contract or that such part is defective or does not fulfil the requirements of the Contract (all such matters being hereinafter in this Clause called “defects”) and (b) As soon as reasonably practicable notify Harlaxton of the said decision, specifying particulars of the defects alleged and of where the same are alleged to exist or to have occurred, and (c) So far as may be necessary place the Plant at Harlaxton’s disposal, then Harlaxton shall with all speed and except as provided in Sub Clause 25.5 (Resumption of work delivery or erection) at his own expense make good the defects so specified

VARIATIONS

Meaning of Variation	27.1 In these Conditions the term “variation” means an alteration to the works whether by way of addition, modification or omission,
-----------------------------	---

Purchaser’s power to Vary	<p>27.2 The Purchaser shall have the power by written notice to Harlaxton from time to time during the execution of the Contract to instruct Harlaxton to make any variations to the Works referred to in their Quotation.</p> <p>Harlaxton shall carry out such variations and be bound by these conditions in so doing as though the variations were stated in the works specification/Quotation.</p> <p>As soon as possible after having received any such instruction Harlaxton shall notify the Purchaser if, in Harlaxton’s opinion, the variation will involve an addition to or deduction from the Contract price and if further payments are due from the Purchaser then these should be agreed in writing between the parties and payment should be made in accordance with Clause 38 Payment Terms.</p>
----------------------------------	---

Nothing in this Sub Clause shall prevent the Contractor from making proposals to the Purchaser for variations to the works but no variation so proposed shall be carried out by Harlaxton except as directed by the Purchaser and agreed in writing between the parties.

Valuation of Variations	27.3 The amount to be added to or deducted from the Contract price shall if not the subject of a quotation from Harlaxton which has been accepted by the Purchaser prior to the variation having been ordered, be determined by Harlaxton and such amount should be in such circumstances reasonable. Due account shall be taken of any partial execution of the Works which is rendered useless by any such variation.
--------------------------------	--

Harlaxton’s Records of costs	27.4 In any case where Harlaxton is instructed to proceed with a variation prior to the determination of the value thereof under Sub Clause 27.3 (Valuation of Variations) Harlaxton shall keep contemporary records of the cost of making the variation and of time expended thereon, Such records should be made available to the Purchaser upon reasonable request.
-------------------------------------	---

Notice and Confirmation

Of Variations

27.5 When ordering any variation to any part of the works, the Purchaser shall give Harlaxton such reasonable notice as will enable him to make his arrangements accordingly.

In cases where Plant is already manufactured or in the course of manufacture or any work done or drawings or patterns made that require to be altered, Harlaxton shall be entitled to be paid the cost of such alterations.

If in the opinion of Harlaxton any such variation is likely to prevent or prejudice them from or in fulfilling any of their obligations under the Contract, he shall notify the Purchaser thereof with full supporting details. The Purchaser shall decide forthwith whether or not the variation shall be varied out.

If the Purchaser confirms his instructions in writing the said obligations shall be modified to such an extent as may be justified. Until the Purchaser so confirms his instructions, they shall be deemed not to have been given.

27.6 Harlaxton shall on receipt of the Purchaser's instructions **27.2** (Purchaser's Power to Vary) or confirmation of instructions under Sub Clause **27.5** (Notice and Confirmation of Variations) immediately proceed to carry out such instructions, unless Harlaxton has notified the Purchaser that the variation in his opinion will involve a net addition to or deduction from the Contract Price of more than 15 per cent.

Subject thereto, the carrying out of such instructions shall not, without the consent of the Purchaser, be delayed pending agreement on price.

TESTS ON COMPLETION

(issued once all monies invoiced and due under the terms of the Contract are paid by the Purchaser)

Notice of Tests

28.1 Harlaxton shall give to the Purchaser 14 days' notice of the date after which he will be ready to make the Tests on Completion (*if these are applicable*). Unless otherwise agreed the Tests on Completion shall take place within 7 days after the said date on such day or days as the Purchaser shall notify Harlaxton

Time for Tests

28.2 If the Purchaser fails to appoint a time after having been asked so to do or to attend at any time or place duly appointed for making the Tests on Completion, Harlaxton shall be entitled to proceed in his absence and the Tests on Completion shall be deemed to have been made in the presence of the Purchaser. Harlaxton shall forward to the Purchaser duly certified copies of the results of the Tests on Completion.

Delayed Tests

28.3 If the Tests on completion are delayed by the Contractor, the Purchaser may, by notice, call upon the Contractor to make them within 14 days from the receipt of the said notice. The Contractor shall make the Tests on Completion on such days within the said 14 days as the Contractor may fix and of which he shall give notice to the Purchaser.

Repeat Tests

28.4 If any part of the Works fails to pass the Tests on Completion they shall be repeated within a reasonable time upon the same terms and conditions. All costs which the Purchaser may incur in the repetition of the Tests on Completion shall be borne by themselves. The provisions of this Sub clause shall also apply to any tests carried out under Sub clause 35.7 (Further Tests)

Consequences of Failure To Pass Tests on Completion

28.5 If the works or any Section fails to pass the Tests on Completion (including any repetition thereof) Harlaxton shall take whatever steps may be necessary to enable the works or the Section to pass the Tests on Completion and if this is deemed to be the fault of the Purchaser or the Network Operator requires additional works to be undertaken then the cost of these works and additional testing should be borne by the Purchaser.

TAKING OVER

Taking Over by Sections

29.1 If the Contract provides for the Works to be taken over by Sections the provisions of this Clause shall apply to each such Section as it applies to the Works

Taking Over Certificates

29.2 When the Works have passed the Tests on Completion and are complete (except in minor respects that do not affect their use for the purpose for which they are intended) the Purchaser shall issue a certificate to Harlaxton and to the Purchaser (herein called a "Taking Over Certificate") The Purchaser shall in the Certificates certify the date upon which the Works passed the Tests on Completion and were so complete.

The Purchaser shall be deemed to have taken over the Works on the date so certified. Except as permitted by Clause 30.1 (Use before Taking Over) the Purchaser shall not use the Works before they are taken over.

Effect of taking over Certificate

29.3 Upon the issue of a Taking Over Certificate, risk of loss or damage to the Works (other than any parts thereof excluded by the terms of the Taking Over Certificate) shall pass to the Purchaser and he shall take possession thereof.

Outstanding Work

29.4 Harlaxton shall rectify or complete to the reasonable satisfaction of the Purchaser within the time stated in the Taking Over Certificate any outstanding items of work or Plant noted as requiring rectification or as incomplete. In the event Harlaxton fails to do so the Purchaser may arrange for the outstanding work to be done and the cost thereof shall be certified by the Purchaser and deducted from the Contract price.

Use before Taking Over

30.1 If by reason of any default on the part of Harlaxton, a Taking Over Certificate has not been issued in respect of the whole of the Works within one month after Time for Completion. The Purchaser shall be entitled to use any section or part of the Works in respect of which a Taking Over Certificate has not been issued, provided the same is reasonably capable of being used Harlaxton shall be afforded the earliest possible opportunity of taking such steps as may be necessary to permit the issue of the Taking Over Certificate. The provisions of Sub Clause 42.1 (Care of the Works) shall not apply to any Section or part of the Works while being so used by the Purchaser and Clause 35.1 (Defects Liability) shall apply thereto as if a Taking Over Certificate had been issued from the date the Section or part was taken into use.

Interference With Tests

31.1 If by reason of any act or omission of the Purchaser, the Purchaser or some other contractor employed by the Purchaser, Harlaxton shall be prevented from carrying out the Tests on Completion in accordance with Clause 28 (Tests on Completion) then unless in the meantime the Works have been proved not to be substantially in accordance with the Contract, the Purchaser shall be deemed to have taken over the Works and the Purchaser shall upon the application of Harlaxton, issue a Taking-Over Certificate accordingly.

Tests During Defects Liability Period

31.2 In any case where a Taking Over Certificate has been issued under Sub Clause 31.1 (Interference with Tests) Harlaxton shall be under an obligation to carry out the Tests on Completion during the Defects Liability Period as and when required by 14 days' notice from the Purchaser. Such allowances shall be made from the results required to be attained in the Tests on Completion as may be reasonably having regard to any use of the Works by the Purchaser prior to the Tests on Completion and to any deterioration therein which may have occurred since the issue of the Taking Over Certificate in respect thereof. The additional Costs incurred by Harlaxton in making the Tests on Completion in accordance with this Sub Clause shall be certified by the Purchaser and added to the Contract Price.

TIME FOR COMPLETION

Time for Completion

32.1 Subject to any requirement under the Contract for the completion of any Section before the whole of the Works, Harlaxton shall so execute the Works that they shall be complete and pass the Tests on (but not the Performance Tests if any be included) within the Time for Completion.

Extension of Time For Completion

33.1 If by reason of any variation ordered pursuant to Clause 27 (Variations) or of any act or omission on the part of the Purchaser or of any industrial dispute or by reason of circumstances beyond the reasonable control of Harlaxton arising after the acceptance of the Quotation, Harlaxton shall have been delayed in the completion of the Works whether such delay occurs before or after the Time for Completion, then provided that Harlaxton shall as soon as reasonably practicable have given to the Purchaser notice of his claim for an extension of time with full supporting details, the Purchaser shall on receipt of such notice grant Harlaxton from time to time in writing either prospectively or retrospectively such extension of the Time for Completion as may be reasonable.

Delays by Sub-Contractors

33.2 Any delay on the part of a Sub Contractor which prevents Harlaxton from completing the works within the Time for Completion shall entitle the Contractor to an extension thereof provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under Sub Clause 33.1 (Extension of Time for Completion)

Mitigation of Consequences of Delay

33.3 In all cases where Harlaxton has given notice under Sub-Clause 33.1 (Extension of Time for Completion) Harlaxton shall consult with the Purchaser in order to determine the steps (if any) which can be taken to overcome or minimise the actual or anticipated delay Harlaxton shall thereafter comply with all reasonable instructions which the Purchaser shall give in order to overcome or minimise such delay. If compliance with any such instruction shall cause Harlaxton to incur extra Costs and Harlaxton is entitled to an extension of time under Sub Clause 33.1, the amount of such extra Costs shall be added to the Contract price.

DELAY

Delay in Completion

34.1 If Harlaxton fails to complete the works in accordance with the Contract Save as regards his obligations under Clauses 35 (Defects Liability) within the Time for Completion, or if no time be fixed, within a reasonable time, there shall be deducted from the Contract price or paid to the Purchaser by the Contractor the percentage of the Contract Value of such parts of the Works as cannot in consequence of the said failure be put to the use intended for each week between the Time for Completion and the actual date of completion will be charged at two per cent per annum above average of the base rates of the London clearing banks in force. The amount so deducted or paid shall not exceed the maximum percentage of 5 per cent of the Contract Value of such parts of the Works, and such deduction or payment shall subject to Sub Clause 34.2 (Prolonged Delay) be in full satisfaction of Harlaxton's liability for the said failure.

Prolonged Delay

34.2 If any part of the Works in respect of which the Purchaser has become entitled to the maximum amount provided under Sub Clause 34.1 (Delay in Completion) remains uncompleted the Purchaser may by notice to Harlaxton require them to complete. Such notice shall fix a final Time for Completion which shall be reasonable having regard to such delay as has already occurred and to the extent of the work required for completion. If for any reason other than one for which the Purchaser or some other

contractor employed by him is responsible, Harlaxton fails to complete within such time, the Purchaser may by further notice to Harlaxton elect either:

- (a) To require Harlaxton to complete, or
- (b) To terminate the Contract in respect of such part of the Works

And recover from Harlaxton any reasonable loss suffered by the Purchaser by reason of the said failure up to an amount not exceeding that part of the Contract Price that is properly apportioned to such part of the Works as cannot by reason Harlaxton's failure be put to the use intended.

DEFECTS LIABILITY

Defects After Taking over

35.1 in these Conditions the expression "Defects Liability Period" means the period stated in the Network Operator's Special Conditions which can vary between 12 – 36 months . If no such period is stated then 12 months shall be substituted, calculated from the date of taking over of the Works under Clause 29 (Taking Over). Where any Section or part of the Works is taken over separately the Defects Liability Period in relation thereto shall commence on the date of taking over thereof.

Making Good Defects

35.2 Harlaxton shall be responsible for making good by repair or replacement with all possible speed at his expense any defect in or damage to any part of the Works which may appear or occur during the Defects Liability Period and which arises either:

- (a) From any defective materials, workmanship or design, or
- (b) From any act or omission of the Contractor done or omitted during the said period

Harlaxton's obligations under this Clause shall not apply to any defects in designs furnished or specified by the Purchaser or any statutory authority or third party necessarily involved with the Contract in respect of which Harlaxton disclaimed Responsibility in accordance with Sub Clause 10.5 (Harlaxton's Design), nor to any damage to any part of the Works in consequence thereof

Notice of Defects

35.3 If any such defect shall appear or damage occur the purchaser shall forthwith inform Harlaxton thereof stating in writing the nature of the defect or damage. The provisions of this clause shall apply to all repairs or replacements carried out by Harlaxton to remedy defects and damage as if the said repairs or replacements had been taken over on the date they were completed; however the Defects Liability Period in respect thereof shall not extend beyond two years from the date of taking over or such other period as may be stated in the Special Conditions.

Extension of Defects Liability

35.4 The Defects Liability Period shall be extended by a period equal to the period during which the Works (or that part thereof in which the Defect or damage to which this Clause applies has appeared or occurred) cannot be used by reason of that defect or damage.

Delay in Remedying Defects

35.5 If any such defect or damage be not remedied within a reasonable time, the Purchaser may proceed to do the work at Harlaxton 's risk and expense provided that he does so in a reasonable manner and notifies Harlaxton of his intention so to

do. The Costs reasonably incurred by the Purchaser shall be deducted from the Contract price or be paid by Harlaxton to the Purchaser.

**Removal of
Defective Work**

35.6 Harlaxton may with the consent of the purchaser remove from the Site any part of the Works which is defective or damaged if the nature of the defect or damage is such that repairs cannot be expeditiously carried out on the Site.

Further Tests

35.7 If the repairs or replacements are of such a character as may affect the operation of the Works or any part thereof, the Purchaser may within one month after such repair or replacement give to Harlaxton notice requiring that further Tests on Completion be made, in which case such Tests shall be carried out as provided in Clause 28 (Tests on Completion) as the case may be.

**Harlaxton to
Search**

35.8 Harlaxton shall, if required by the Purchaser in writing, search for the cause of any defect, under the direction of the Purchaser. Unless such defect shall be one which the Contractor would otherwise be responsible for making good under Sub Clause 35.2 (Making Good Defects) the cost of the work carried out by Harlaxton in searching as aforesaid shall be borne by the Purchaser and added to the Contract Price.

Liability for Defects

35.9 Harlaxton's liability under this Clause shall be in lieu of any condition or warranty implied by law as to the quality or fitness for any particular purpose or the workmanship of any part of the Works taken over under Clause 29 (Taking Over) and save as in this Sub Clause and in Sub Clause 35.10 (Latent Defects) expressed, neither Harlaxton nor his Sub Contractors, their respective servants or agents shall 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 or damages to such part, or for any damage or loss of whatsoever kind attributable to such defects or damage or any work done or service or advice rendered in connection therewith.

For the purposes of this Sub Clause Harlaxton contracts on his own behalf and on behalf of and as trustee for his Sub Contractors, servants and agents. Nothing in this Clause shall affect the liability of Harlaxton under these Conditions in respect of any part of the Works not yet taken over or his liability for death or personal injury caused by his wilful or negligent acts or omissions.

Latent Defects

35.10 If any defect of the kind referred to in Sub Clause 35.2 (Making Good Defects) shall appear in any part of the Works within the period defined in Sub Clause 35.1 the same shall be made good by Harlaxton by repair or replacement at Harlaxton's option provided that the defect was caused by the gross misconduct of Harlaxton as defined below and would not have been disclosed by a reasonable examination prior to the expiry of the Defects Liability Period.

"Gross Misconduct" does not comprise each and every lack of care or skill but means an act or omission on the part of Harlaxton which implies either a failure to pay due regard to the serious consequences which a conscientious and responsible contractor would normally foresee as likely to ensue or a wilful disregard of any consequences of such act or omission.

VESTING OF PLANT AND CONTRACTOR'S EQUIPMENT

Ownership of Plant 36.1 Plant to be supplied pursuant to the Contract shall become the property of the Purchaser when it is fully paid for in accordance with the terms of the Quotation and Harlaxton's Terms and Conditions

HARLAXTON'S EQUIPMENT

Harlaxton's Equipment 37.1 Harlaxton shall within 30 days after the Letter of Acceptance and if necessary provide to the Purchaser a list of the Contractor's Equipment that the Contractor intends to use on the Site.

Harlaxton's Equipment On Site 37.2 Harlaxton's Equipment shall, when brought onto the Site, be deemed to be exclusively intended for the execution of the Works. Harlaxton shall not thereafter remove the same or any part thereof from the Site without the consent of the Purchaser which shall not be withheld in the case of Harlaxton's Equipment not currently required for the execution of the Works on Site.

Loss or Damage To Harlaxton's Equipment 37.3 Harlaxton shall be liable for loss of or damage to any of the Contractor's Equipment which may occur otherwise than through the default of the Purchaser or those for whom he is responsible.

Maintenance of Harlaxton Equipment 37.4 Harlaxton shall be responsible for maintaining their Equipment on Site in safe working order.

PAYMENT TERMS

Application for Payment 38.1 Payment Terms are in accordance with those contained, set out and/or referred to within the Quotation agreed between the Purchaser and the Contractor which together with Harlaxton's Terms and Conditions forms the basis of the Contract between the parties.

Harlaxton retains legal ownership of all goods until payment of all monies due and owing under the Contract are received from the Purchaser

Applications for payment shall be by way of invoice by Harlaxton to the Purchaser and should be paid immediately.

Please note that claims for additional payment in accordance with any conditions will also be made by invoice to the Purchaser by Harlaxton.

It should be noted that Total Energisation will not take place until all payments due and owing to Harlaxton are received and cleared through their banking system.

Unless otherwise provided in the Quotation Harlaxton may make application to the Purchaser for interim payments in respect of:-

- Plant in the course of manufacture
- Plant delivered and in transit to the Site
- Works executed on the site
- Claims for additional payment in accordance with the Conditions
- Plant affected by suspension under Sub Clause 25.1 (instructions to suspend)

Interim Payments

38.2 Applications for interim payments shall be in the form of an invoice accompanied:-

- (a) In the case of Plant in the course of manufacture by such evidence of the value of the work done as may be specified
- (b) In the case of Plant delivered or in transit to the site by such evidence of delivery and payment of freight and insurance or other documents of title and by such other documents as may be specified
- (c) In the case of work executed on the site, by such evidence of the value of the work done as may be specified
- (d) In the case of claims for additional payment, by the particulars required under Sub Clause 40.1 (Notification of Claims)
- (e) In the case of Plant affected by suspension under Sub Clause 25.3 (Payment for Plant Affected by Suspension) by such evidence of the value of the work done as the Purchaser may reasonably require

38.3 The Purchaser shall pay all invoices issued by Harlaxton in respect of interim payments immediately upon receipt of such invoices as per Sub Clause 38.1.

Value included in Invoices for Interim payments

38.4 every invoice for interim payments shall certify the total sum due to Harlaxton from the Purchaser in accordance with the terms of payment specified in respect of:-

- Work undertaken in the course of manufacture and/or duly executed on the site and/or
- Plant delivered to the Site including where appropriate freight, carriage and insurance charges and/or
- Claims for additional payment and/or
- Plant affected by suspension under Sub Clause 25.3 (Payment for Plant Affected by Suspension)

Provided that no sum shall be included in any interim invoice for payment in respect of any Work or Plant which in the reasonable opinion of the Purchaser:

- Does not comply with the Quotation/Contract, or
- Has been brought and is at the date of the invoice, prematurely upon the site.

Withholding Payment

38.5 An interim payment shall not be withheld on account of defects of a minor character which are not such as to affect the use of the Works

Effect of Of Payment

38.6 No payment other than a final payment shall be relied upon as conclusive evidence of any matter stated therein, nor shall it affect or prejudice any right of the Purchaser or Harlaxton against the other.

Effect of Final**Invoice for payment**

38.7 Final invoice for payment shall be conclusive evidence:

- That the works or section to which such invoice relates is in accordance with the Quotation/Contract
- That Harlaxton has performed all his obligations under the Contract in respect thereof and
- Of the value of the Works or Section

Payment of the amount in the final invoice shall be conclusive evidence that the Purchaser has performed all his obligations under the Quotation/contract in relation to the Works or Section thereof to which the invoice relates

A final invoice of payment shall not be conclusive as to any matter dealt with in the invoice in the case of fraud or dishonesty relating to or affecting any such matter.-

A final invoice for payment shall not be conclusive if any proceedings arising out of the Contract whether under Clause 51 (Disputes and Mediation) or otherwise shall have been commenced by either party in relation to the Works or Section to which the invoice relates,

- Before the final certificate of payment has been issued, or
- Within three months thereafter

**No Effect in the
Case of Gross
Misconduct**

38.8 Nothing in this Clause shall affect the rights of the Purchaser or the obligations of Harlaxton under Sub Clause 35.10 (Latent Defects).

Payment

39.1 The Purchaser shall pay to Harlaxton the sum certified as due to Harlaxton in an invoice as soon as it is received in accordance with the Quotation/Contract unless otherwise specified therein.

Delayed Payment

39.2 If payment of any sums payable under Sub Clause 38 (Payment Terms) is delayed, Harlaxton shall be entitled to receive interest on the amount unpaid during the period of delay. The interest shall be at the rate of two per cent per annum above average of the base rates of the London clearing banks in force from time to time during the period of delay. Harlaxton shall be entitled to interest without formal notice and without prejudice to any other right or remedy.

**Remedies on
Failure to Make
Payment**

39.3 If the Purchaser fails to issue payment to which the Contractor is Harlaxton shall be entitled:-

- (a) To stop work until the failure be remedied, by giving 7 days' notice to the Purchaser in which event the additional cost to the Contractor occasioned by the stoppage and the subsequent resumption of work shall be added to the Contract price and/or
- (b) To terminate the Contract by giving 14 days' notice to the Purchaser in any case where the Purchaser has failed to make payment under an invoice raised Harlaxton whether or not Harlaxton has previously stopped work under paragraph (a) of this Sub Clause

CLAIMS

**Notification of
Claims**

40.1 In every case where by virtue of these Conditions circumstances arise which Harlaxton considers entitle him to claim additional payment the following provisions shall take effect:

- (a) Within 30 days of the said circumstances arising Harlaxton shall if he intends to make any claim for additional payment give to the Purchaser notice of his intention to make a claim and shall state the reasons by virtue of which he considers that he is entitled thereto.
- (b) As soon as reasonably practicable after the date of the notice given by Harlaxton of his intention to make a claim for additional payment, and not later than the expiry of the last Defects Liability Period, Harlaxton shall submit to the Purchaser full particulars of and the actual amounts of his claim. Harlaxton shall thereafter promptly submit such further particulars as the Purchaser may reasonably require to assess the value of the claim

Allowance for Profit on Claims

40.2 In any case where under the provisions of

Sub Clause	4.4	(Unexpected Site Conditions)
	10.2	(Breach of Purchaser's General Obligations)
	10.7	(Programme of Work)
	12.2	(Errors in Drawings etc. Supplied by Purchaser)
	20.1	(Special Loads)
	22.1	(Setting Out)
	25.2	(Additional Cost Caused by Suspension)
	25.5	(Resumption of Work, Delivery or Erection)
	27.5	(Notice and Confirmation of Variations)
	31.2	(Tests during Defects Liability Period)
	33.3	(Mitigation of Consequences of Delay)
	35.8	(Harlaxton to Search)
	39.3	(Remedies on Failure to Certify or Make Payment) or
	51.2	(Performance to Continue During Mediation)

Harlaxton is entitled to be paid or to have included in the Contract price any extra or additional costs the Contractor shall add to such Costs on account of profit the percentage of 20% thereof.

Purchaser's Liability To pay Claims

40.3 Notwithstanding anything contained in these conditions the Purchaser shall not be liable to make payment in respect of any claim for an additional payment unless Harlaxton has complied with the requirements of this Clause

PATENT RIGHTS ETC

Indemnity against Infringement

41.1 Harlaxton shall indemnify the Purchaser against all actions claims demands Costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of letters patent, registered design, copyright, trade mark or trade name protected in the United Kingdom or in the country where the Works are to be erected by the use or possession of any Plant supplied by the Contractor, but such indemnity shall not cover any use of the Works otherwise than for the purpose indicated by or reasonably inferred from the Specification or any infringement which is due to the use of any Plant in association or combination with any other plant not supplied by Harlaxton.

Conduct of Proceedings

41.2 In the event of any claim being made or action being brought against the Purchaser arising out of the matters referred to in this Clause, Harlaxton shall be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same, and any litigation that may arise therefrom. The Purchaser shall not unless and until Harlaxton shall have failed to take over the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto. The conduct Harlaxton or of such negotiations or litigation

shall be conditional upon Harlaxton having first given to the Purchaser such reasonable security as shall from time to time be required by the Purchaser to cover the amount ascertained or agreed or estimated as the case may be of any compensation, damages, expenses and costs for which the Purchaser may become liable. The Purchaser shall, at the request of Harlaxton afford all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable expenses incurred in so doing.

Purchaser's Indemnity Against Infringement

41.3 The Purchaser on his part warrants that any design or instruction furnished or given by him shall not be such as will cause Harlaxton to infringe any letters patent, registered design copyright, trade mark or trade name in the performance of the Quotation/Contract and shall indemnify Harlaxton in the same terms as Harlaxton indemnifies the Purchaser under Sub Clause 42.1 (Indemnity against Infringement). The provisions of Sub Clause 42.2 (Conduct of Proceedings) shall apply mutatis mutandis.

Infringement Preventing Performance

41.4 If Harlaxton shall be prevented from executing the Works, or the Purchaser is prevented from using the Works in consequence of any infringement of letters patent, registered design, copyright, trade mark or trade name and the party indemnifying the other in accordance with Sub Clause 42.1 (Indemnity against Infringement) is unable within 90 days after notice thereof from the other party to procure the removal at his own expense of the cause of prevention then:

- (a) In the case of an infringement which is the subject of Harlaxton's indemnity to the Purchaser under Sub Clause 42.1 (Indemnity against Infringement) the Purchaser may treat such prevention as a default by Harlaxton and exercise the powers and remedies available to them under Clause 48.1 (Harlaxton Default) and
- (b) In the case of an infringement which is the subject of the Purchaser's indemnity under Sub Clause 41.3 (Purchaser's Indemnity against infringement) Harlaxton may treat such prevention as a default by the Purchaser and exercise the powers and remedies available to Harlaxton under Sub Clause 50.1 (Purchaser's Default).

ACCIDENTS AND DAMAGE

Care of the Works

42.1 Harlaxton shall be responsible for the care of the Works or any Section thereof until the date of taking over applicable thereto. Harlaxton shall also be responsible for the care of any outstanding work which he has undertaken to carry out during the Defects Liability Period until all such outstanding work is complete. In the event of termination of the Contract in accordance with these Conditions, responsibility for the care of the works shall pass to the Purchaser upon expiry of the notice of termination whether given by the Purchaser or Harlaxton

Making Good Loss or Damage to the Works

42.2 In the event that any part of the Works shall suffer loss or damage Harlaxton has responsibility *up to the point of network adoption* for the care thereof, the same shall be made good by Harlaxton at his own expense except to the extent that such loss or damage shall be caused by the Purchaser's Risks. Harlaxton shall also at his own expense make good any loss or damage to the Works occasioned by him in the course of operations carried out by him for the purpose of completing any outstanding work or of complying with his obligations under Clause 35 (Defects Liability).

Damage to Works Caused by Purchaser's Risks

42.3 In the event that any part of the Works shall suffer loss or damage whilst Harlaxton has responsibility for the care thereof which is caused by any of the

Purchaser's Risks the same shall, if required by the Purchaser within six months after the happening of the event giving rise to loss or damage, be made good by Harlaxton. Such making good shall be at the expense of the Purchaser at a price to be agreed between Harlaxton and the Purchaser. In default of agreement such sum as is in all the circumstances reasonable shall be determined by mediation under Clause 51 (Disputes and Mediation). The price or sum so agreed or determined shall be added to the Contract Price.

**Injury to Persons and Property
Whilst Harlaxton has
Responsibility for care of the
Works**

42.4 Except as hereinafter mentioned the Contract shall be liable for and shall indemnify the Purchaser against all claims in respect of personal injury or death and in respect of loss of or damage to any property (other than property forming part of the Works not yet taken over) which arises out of or in consequence of the execution of the Works

Whilst Harlaxton has responsibility for the care thereof and against all demands, costs, charges and expenses arising in connection therewith. Harlaxton shall not be liable under this Sub Clause for, and the Purchaser shall indemnify him from and against any claims in relation to death or personal injury or loss of or damage to property to the extent that the same results from any act or neglect of the Purchaser, his agents, servants or other contractors (not being Harlaxton servants, agents or Sub Constructors) and in the case of damage to property to the further extent that the damage is an inevitable consequence of the execution of the works.

**Injury to Persons and Damage after
Responsibility for
Care of Works**

42.5 If there shall occur any death or injury to any person or loss of or damage to any property (other than the Works) after the responsibility for the care of the Works shall have passed to the Purchaser Harlaxton shall be liable for and shall indemnify the Purchaser against all such claims and all actions, demands, costs, charges and expenses arising in connection therewith to the extent that such death or personal injury or loss of or damage to property was caused by the negligence or breach of statutory duty of Harlaxton, his Sub Contractors, servants or agents or by defective design (other than a design for which Harlaxton has disclaimed responsibility in accordance with Sub Clause 10.5 (Contractor's Design), materials or workmanship but not otherwise. Harlaxton liability for any loss or damage to the Works shall be limited to the fulfilment of his obligations in relation thereto under Clause 35 (Defects Liability).

**Accidents or Injury
To Workmen**

42.6 Harlaxton shall indemnify the Purchaser against all actions suits, claims, demands, costs, charges and expenses arising in connection with the death of or injury to any person employed by Harlaxton or his Sub Contractors for the purposes of the Works. This indemnity shall not apply to the extent that any death or injury results from any act or default of the Purchaser, his servants, agents or other contractors for whom he is responsible. The Purchaser shall indemnify Harlaxton against all claims, damages, costs, charges and expenses to such extent.

**Claims in respect
Of Damage to Persons or
Property**

42.7 In the event of any claim being made against the Purchaser arising out of the matters referred to and in respect of which it appears that the Contractor may be liable under this Clause Harlaxton shall be promptly notified thereof and may at his own expenses conduct all negotiations for the settlement of the same and any litigation that may arise in relation thereto. The Purchaser shall not unless and until Harlaxton shall have failed to take over the conduct of the negotiations or litigation make any admission which might be prejudicial thereto. The conduct by Harlaxton of such negotiations or litigation shall be conditional Harlaxton having first given to the Purchaser such reasonable security as shall

from time to time be required by him to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses and costs for which the Purchaser may become liable. The Purchaser shall at the request of Harlaxton all available assistance for any such purpose and shall be repaid all Costs reasonably incurred in so doing.

LIMITATIONS OF LIABILITY

Mitigation of Loss

43.1 In all cases the party establishing or alleging a breach of contract or a right to be indemnified. In accordance with the Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost.

Indirect or Consequential Damage

43.2 Except as expressly provided in Sub Clauses 34.1 (Delay in completion) for the payment or deduction of liquidated damages for delay or failure to achieve performance and except for those provisions of the Conditions whereby under Sub Clause 40.2 (Allowance for Profit on Claims) Harlaxton is expressly stated to be entitled to receive profit. Neither Harlaxton nor the Purchaser shall be liable to the other by way of indemnity or by reason of any breach of the Contract or of statutory duty or by reason of tort (including but not limited to negligence) for any loss of profit, loss of use, loss of production, loss of contractors or for any financial or economic loss or for any indirect or consequential damage whatsoever that may be suffered by the other.

Limitation of Harlaxton's Liability

43.3 In no circumstances whatsoever shall the liability of Harlaxton to the Purchaser under the Conditions for any one act or default exceed the Quotation/Contract price. Harlaxton shall have no liability to the Purchaser for or in respect or in consequence of any loss of damage to the Purchaser's property which shall occur after the expiration of the Defects Liability Period except as stated in Sub Clause 56.10 (Latent Defects).

Exclusive Remedies

43.4 The Purchaser and Harlaxton intend that their respective rights, obligations and liabilities as provided for in the Conditions shall be exhaustive of the rights, obligations and liabilities of each of them to the other arising out of, under or in connection with the Quotation/Contract or the Works, whether such rights obligations and liabilities arise in respect or in consequence of a breach of contract or of statutory duty or of a tortious or negligent act or omission which gives rise to a remedy at common law. Accordingly, except as expressly provided for in the Conditions neither party shall be obligated or liable to the other in respect of any damages or losses suffered by the other which arise out of, under or in connection with the Quotation/Contract or the Works, whether by reason or in consequence of any breach of Contract or of statutory duty or tortious or negligent act or omission

PURCHASERS RISKS

Purchaser's Risks

44.1 The Purchaser's Risks' are:-

Fault, error, defect or omission in the design of any part of the Works by the Purchaser (responsibility for which has been disclaimed by the Contractor in the manner provided for by Sub Clause 10.5 (Harlaxton's Design))

The use or occupation of the Site by the Works, or for the purposes of the Contract, interference, whether temporary or permanent with any right of way, light, air or water or with any easement wayleaves or right of a similar nature which is the inevitable result of the construction of the Works in accordance with the Contract.

Damage (other than that resulting from Harlaxton's method of construction) which is the inevitable result of the construction of the Works in accordance with the Contract.

- Use of the Works or any part thereof by the Purchaser
- The act, neglect or omission or breach of contract or of statutory duty of the Purchaser, his agents, servants or other contractors for whom the Purchaser is responsible.
- Force Majeure except to the extent insured under the insurance policies to be effected by Harlaxton in accordance with Clause 46 (insurance)

FORCE MAJEURE

Force Majeure

45.1 Force Majeure means:-

- War, hostilities, (whether war be declared or not) invasion, act of foreign enemies
- Ionising radiations, or contamination by radio activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof
- Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds
- Rebellion, revolution, insurrection, military or usurped power or civil war
- Riot, civil commotion or disorder
- Any circumstances beyond the reasonable control of either of the parties

Notice of Force Majeure

45.2 If either party is prevented or delayed from or in performing any of his obligations under the Contract by Force Majeure, then he should immediately notify the other party in writing of the circumstances constituting the Force Majeure and of the obligations performance of which is thereby delayed or prevented and the party giving the notice shall thereupon be excused the performance or punctual performance, as the case may be, of such obligations for so long as the circumstances of prevention or delay may continue.

Termination for Force Majeure

45.3 Notwithstanding that Harlaxton may have been granted under Sub Clause 33.1 (Extension of Time for Completion) an extension of the Time for Completion of the Works, if by virtue of Sub Clause 45.2 (Notice of Force Majeure) either party shall be excused the performance of any obligation for a continuous period of 120 days then either party may at any time thereafter, and provided such performance or punctual performance is still excused, by notice to the other terminate the Contract.

Payment on Termination for Force Majeure

45.4 If the Contract is terminated under Sub Clause 45.3 (Termination for Force Majeure) the Purchaser shall pay to Harlaxton (*within 7 days of the date of termination*) in so far as the same shall not have already been included for payment paid by the Purchaser or be the subject of an advance payment, the Contract value of the Works executed prior to the date of termination.

Harlaxton shall also be entitled to be paid:

- (a) The Cost of materials or goods reasonably ordered for the Works or for use in connection with the Works which have been delivered to Harlaxton or of which Harlaxton is legally liable to accept delivery. Such materials or goods shall become the property of the Purchaser when fully paid for by the Purchaser. The Purchaser shall only be entitled to withhold payment in respect of any goods or materials that have been ordered by the Purchaser but not delivered if Harlaxton have not committed to payment prior thereto with the supplier.
- (b) The amount of any other expenditure which in the circumstances was reasonably incurred by Harlaxton in the expectation of completing the whole of the Works
- (c) The reasonable cost of removal of Harlaxton's Equipment and the return thereof to Harlaxton's works in his country or to any other destination at no greater cost

- (d) The reasonable cost of repatriation of all Harlaxton's staff and workmen employed at the Site on or in connection with the Works at the date of such termination

INSURANCE

Insurance of Works

46.1 Any goods delivered to the Purchaser will be insured by the Purchaser at their own cost upon point of delivery. Harlaxton shall insure works and Contractor's Equipment and keep each part thereof insured for their full replacement value against all loss or damage from whatever cause arising, other than the Purchaser's Risks. Such insurance shall be effected from the date of the Quotation Acceptance until 14 days after the date of completion in respect of the Works or any Section thereof, or if earlier, 14 days after the date when responsibility for the care of the Works passes to the Purchaser

Extension of Works Insurance

46.2 Harlaxton shall so far as reasonably possible extend the insurance under sub clause 46.1 (Insurance of Works) to cover damage which t Harlaxton is responsible for making good pursuant to Clause 35 (Defects Liability) or which occurs whilst the Contractor is on Site for the purpose of making good a defect or carrying out the Tests on Completion during the Defects Liability Period or completing any outstanding work of which arises during the Defects Liability Period from a cause occurring prior to take over and for which Harlaxton is liable under Sub Clause 42.4 (Injury to Persons and Damage after responsibility for Care of Work passes to the Purchaser)

Application for Insurance Monies

46.3 All monies received under any such policy shall be applied in or towards the replacement and repair of the Works lost, damaged or destroyed but this provision shall not affect Harlaxton's liabilities under the Quotation.

Third Party Insurance

46.4 Harlaxton shall prior to the commencement of any work on the Site by the Contractor pursuant to the Quotation, insure in an amount not being less than the amount stated in the Special Conditions against his liability for damage or death or personal injury occurring before all the works have been taken over to any person (including any employee of the Purchaser) or to any property (other than property forming part of the Works) due to or arising out of the execution of the Works. The terms of the Policy shall include a provision whereby, in the event of any claim being made against the Purchaser in respect of which Harlaxton would be entitled to indemnify under the policy, the insurers will indemnify the Purchaser against such claims and any costs, charges and expenses in respect thereof.

Insurance against Accident etc. To Workmen

46.5 Harlaxton shall insure and shall maintain insurance against his liability under Sub Clause 42.6 (Accidents or Injury to Workmen). The terms of any such policy shall also include the provision to indemnify the Purchaser mentioned in Sub Clause 46.4 (third party Insurance) provided always that in respect of any persons employed by any Sub Contractor, Harlaxton's obligation under this Sub Clause shall be satisfied if the Sub Contractor shall have insured against the liability in respect of such persons in such manner that the Purchaser is indemnified under the policy, but Harlaxton shall require such Sub Contractor to produce to Harlaxton when required the policy, the receipt for the premiums or satisfactory evidence of insurance cover.

General Insurance Requirements

46.6 All insurances shall be effected with a reputable insurer and Harlaxton shall from time to time when so required by the Purchaser produce the Policy and evidence of it being in force. Harlaxton shall notify the Purchaser of any alteration to the terms of the policy following its production.

**Exclusions from
Insurance Cover**

46.7 The Insurance Policies may exclude cover for any of the following

- (a) The cost of making good or repairing any Plant which is defective or work which is not in accordance with the Quotation.
- (b) The Purchaser's Risks
- (c) Indirect or consequential loss or damage including any deductions from the Contract Price for delay
- (d) Fair wear and tear, shortages and pilferages
- (e) Risks related to mechanically propelled vehicles for which third party or other insurance is required by law

**Remedy on Failure
To insure**

47.1 If Harlaxton shall fail to effect and keep in force the insurances referred to in the Conditions the Purchaser may effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Purchaser from any monies due or which may become due to Harlaxton under the Contract or recover the same as a debt from Harlaxton

HARLAXTON'S DEFAULT
Default

48.1 If Harlaxton shall assign the Contract, or sub-let the whole of the Works without the Consent of the Purchaser, or has rejected the Works or a Section under Sub Clause 28.5 (Consequences of Failure to Pass Tests on Completion) or shall certify that Harlaxton:

- (a) Has abandoned the Contract or
- (b) Has without reasonable excuse suspended the progress of the Works for 30 days after receiving from the Purchaser written notice to proceed or
- (c) Despite previous warnings in writing from the Purchaser is not executing the Works in accordance with the Quotation or is failing to proceed with the Works with due diligence or is neglecting to carry out his obligations under the Quotation/Contract so as to affect adversely the carrying out of the Works

Then the Purchaser may give 21 days' notice to Harlaxton of his intention to proceed in accordance with the provisions of this Clause. Upon the expiry of such notice the Purchaser may without prejudice to any other remedy under the Contract forthwith terminate the Quotation and enter the Site and expel the Contractor therefrom but without thereby releasing Harlaxton from any of his obligations or liabilities which have accrued under the Quotation and without affecting the rights and powers conferred by the Quotation on the Purchaser. Upon such termination the Purchaser may himself complete the Works or may employ any other Contractor so to do.

**Valuation at Date
Of Termination**

48.2 As soon as practicable after the Purchaser has terminated the Contract the Purchaser shall by or after reference to the parties and after making such enquiries as he thinks fit, value the works and all sums then due to Harlaxton as at the date of termination in accordance with the principles of Clause 38 (Payment Terms) and certify the amount thereof. The amount is herein called "the termination value".

**Payment after
Termination**

48.3 The Purchaser shall not be liable to make any further payments to Harlaxton until the Costs of execution and all other expenses incurred by the Purchaser in completing the Works have been ascertained and the amount payable certified by the Purchaser ("the cost of completion") If the cost of Completion when added to the total amounts already paid to the contractor as at the date of termination exceeds the total amount which the Purchaser certifies would have been payable to Harlaxton for the execution of the Works, the Purchaser shall certify such excess and Harlaxton shall upon demand pay to the Purchaser the amount of such excess. Any such excess shall be deemed a debt due by Harlaxton to the Purchaser and shall be recoverable accordingly. If there is no such excess Harlaxton shall be entitled to be paid the difference (if any) between the Termination Value and the total of all payments received by Harlaxton as at the date of Termination.

**Bankruptcy and
Insolvency**

49. 1 If Harlaxton shall become bankrupt or insolvent, or have a receiving order made against him, or compound with his creditors, or being a Corporation commence to be wound up, not being a members voluntary winding up for the purpose of amalgamation or reconstruction, or have an administrator or a receiver or manager for the benefit of his creditors or any of them, the Purchaser shall be entitled:

- (a) To terminate the Quotation forthwith by notice to the Contractor or to the administrator, receiver, manager or liquidator or to any person in whom the Contract may become vested, in which event the provisions of Clause 48 (Harlaxton r's Default) shall apply, or
- (b) To give such administrator, receiver, manager or liquidator or other person the option of carrying out the Contract subject to his providing a guarantee for the due and faithful performance of the Quotation up to an amount to be agreed.

PURCHASERS DEFAULT
**Notice of Termination
Due to Purchaser's
Default**

50, 1 In the event of the Purchaser:

- (a) Failing to pay to Harlaxton the amount due under any Invoice after the date of its issue subject to any deduction that the Purchaser is entitled to make under the Quotation/Contract, or
- (b) Becoming bankrupt or (being a corporation) going into liquidation other than for the purpose of a scheme of reconstruction or amalgamation, or carrying on its business under an administrator, receiver, manager or liquidator for the benefit of its creditors or any of them,

Harlaxton shall be entitled without prejudice to any other rights or remedies under the Contract (and in respect of paragraph (a) above in addition to the provisions of Sub Clause 39.3 (Remedies on Failure to Certify or Make Payment) to terminate the Quotation/Contract by giving 14 days' notice to the Purchaser.

**Removal of
Harlaxton Equipment**

50.2 Upon the giving of notice under Sub Clause 50.1 (Notice of Termination due to Purchaser's Default) Harlaxton shall with all reasonable despatch remove from the Site all Contractor's Equipment

Payment on Termination

Due to Purchaser's Default **50.3** In the event of termination under Sub Clause 50.1 (Notice of Termination due to Purchaser's Default) The Purchaser shall act as provided in Sub Clause 48.2 (Valuation at Date of Termination) and certify the Termination value of the Works as at the date of termination. The Purchaser shall on the application of Harlaxton accompanied by supporting details also certify the amount of any expenditure reasonably incurred by Harlaxton in the expectation of the performance of, or in consequence of the termination of, the Quotation to the extent that the same has not been included in the Termination Value. The Purchaser shall also certify in respect of Harlaxton's loss of anticipated profit on the Contract the percentage referred to in Sub Clause 40.2 (Allowance for Profit on Claims) on the difference between the total of the Termination Value plus the expenditure before referred to and the Contract Price but in no case shall the total amounts so certified exceed the Contract Price. Thereafter Harlaxton shall issue a certificate of payment for the amount by which the said Termination Value, expenditure and allowance for profit exceeds the total of sums previously paid to the Contractor and such certificate of payment shall be paid by the Purchaser immediately after the date of issue.

DISPUTES AND MEDIATION
**Notice of
Mediation**

51.1 If at any time any, dispute or difference shall arise between the Purchaser and Harlaxton in relation to the Quotation or in any way connected with the Works which cannot be settled amicably by way of either party calling for a meeting between the parties to discuss any issues which may arise, either party shall as soon as reasonably practicable give to the other notice of the existence of such, dispute or difference, specifying its nature and the point at issue, and the same shall be referred to the Mediation of a person to be agreed upon. Failing agreement upon such person within 30 days after the date of such notice the Mediation shall be conducted by a person appointed on the application of either party to CEDR Mediation (cedr.com)

**Performance to
Continue during
Mediation**

51.2 performance of the Contract shall continue during Mediation unless the Purchaser shall order the suspension thereof. If such suspension be ordered the additional costs to Harlaxton occasioned by such suspension shall be added to the Contract Price. No payment due or payable by the Purchaser shall be withheld on account of a pending reference to Mediation.

**Sub Contractor's Servants
And Agents**

52. 1 It is expressly agreed that no servant or agent of Harlaxton nor any Sub Contractor shall in any circumstances whatsoever (with the exception of liability for death or personal injury caused by wilful or negligent acts or omissions) be under any obligation, responsibility or liability to the Purchaser for or in respect of any loss, damage or injury of whatsoever kind and howsoever arising. Without prejudice to the generality of the foregoing every limitation and exclusion of liability of Harlaxton contained in the Conditions shall also extend to protect every such servant, agent or Sub Contractor. For the purposes of this Clause Harlaxton is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or who may from time to time become servants, agents or Sub Contractors as aforesaid and to such extent all such persons shall be or be deemed to be parties to the Quotation.

Applicable Law

53.1 The Quotation shall in all respects be governed by and interpreted in accordance with the Laws of England and the Parties hereby submit to the exclusive jurisdiction of the English Courts