

**TERMS AND CONDITIONS OF BUSINESS**

**DEFINITIONS**

**Aborted Visit** means:

- any Site visit by Cubex which is cancelled by the Customer less than four weeks before the agreed date for the same; or
- any Site visit agreed between the Customer and Cubex which is cancelled due to any issues that are beyond the control of Cubex.

**Additional Services Costs** means those rates stated in the Quote.

**Additional Visit** means a visit by Cubex to Site in excess of the agreed number of visits stated in the Contract and/or Programme

**Contract** means the contract formed (including any Variations thereunder) by acceptance of the Quote by the Customer and/or acceptance by Cubex of the Customer's counter-offer made by making proposed amendments to the Quote.

**Contract Sum** means the sum payable by the Customer to Cubex under these Terms

**Cubex** means Cubex (UK) Ltd, company number 07778486 with registered office Prospect House, Huyton Church Road, Huyton, Merseyside, L36 5SH.

**Cubex Drawings** means those drawings prepared by or on behalf of Cubex in relation to the Contract.

**Customer** means any entity or party entering into a Contract with Cubex pursuant to these Terms.

**Customer Delay** means any delay or disruption whatsoever due to issues beyond the control of Cubex.

**Customer Requirements** means any specification, design, drawing, or information provided by the Customer to Cubex in respect of the Contract.

**Design Submission Procedure** means the procedure if any in Schedule 1 of these Terms outlining the approval of Cubex Drawings by the Customer.

**Due Date** means the date on which sums become due in accordance with these Terms.

**Final Account** is the total final sum payable by the Customer to Cubex under these Terms.

**Final Date for Payment** means 14 days after the Due Date.

**Loss and Expense** means sums incurred by or reasonably forecasted to be incurred by Cubex as a result of a Customer Delay including de-mobilisation, re-mobilisation, re-scheduling, transport, storage, packaging, labour, travel, accommodation, hire costs, plant, management, administration, design and drawings work, and any other costs reasonably incurred, all at cost plus 50% mark-up or at the rates stated in the Additional Services Costs, whichever is the higher.

**Material Delay** is a delay of 6 months or more to the Programme or agreed date for completion of the Contract caused by reasons beyond the control of Cubex and/or a failure by the Customer.

**Practical Completion** means that Cubex has completed the Contract.

**Preliminary Costs** means the greater of £1,000 per week or part week or 2.5% of the Contract Sum per week or part week.

**Product** means any physical item or system supplied and/or installed by Cubex including any materials or components to be used in conjunction with that supply and/or installation.

**Programme** means the document if any issued with the Quote which sets out the timescales for completion of the Contract subject to changes under these Terms.

**Quote** means a price, rate, cost or fee proposed by Cubex for any Products and/or Services provided during Working Hours.

**Scheduled Maintenance & Servicing ('SMS')** means the provision by Cubex of a scheduled maintenance regime for a defined period of time.

**Services** means the provision by Cubex of any installation, advice, recommendations, management, consultancy, works, design, call-outs, repairs, inspections, surveys, servicing and/or maintenance.

**Service Schedules** means the guidance and/or obligations as to the maintenance and upkeep of the Products which can be requested by the Customer from Cubex at any time.

**Site** means the location in respect of which Cubex is to complete the Contract including any location used for the storage of the Products.

**Terms** means these Terms and Conditions of Business.

**Total Duration** means the period shown on the Programme for completion of the items as stated in the Programme.

**Variation** means any additions, omissions or other changes to the Contract including the circumstances, manner or sequence in which the Contract is to be carried out.

**Working Hours** means 08:00 – 18:00 on the days of Monday to Friday inclusive, save for any public and/or bank holidays in the country where the Site is situated and excluding a 2-week Christmas holiday each year between 20 December and 5 January.

**INTERPRETATION**

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

Clause headings shall not affect the interpretation of these Terms.

Any words following the terms including, include, in particular, for example, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding or following those terms.

Both of each Cubex and the Customer are also known individually as a Party and together, the Parties.

Communications and/or notices under this Contract may be by email to the addresses stated on the Contract or as agreed by the Parties. Any reference to write, writing, and/or written includes emails.

Any typographical clerical or other error or omission in any sales literature, Quote, quotation, price list, acceptance, offer, invoice or other document or information issued by Cubex shall be subject to correction without any liability on the part of Cubex.

**1. Payment**

- 1.1 All amounts specified by Cubex are (unless otherwise stated) exclusive of VAT. Cubex may issue payment applications and/or invoices from time to time in respect of sums due. No later than 5 days after the due date the Customer may issue a Payment Notice setting out the sum it proposes to pay and the basis upon which that sum is calculated with a breakdown and backup for each item. No later than 5 days before the Final Date for Payment the Customer may issue a Pay Less Notice setting out the sum it considers is due and the basis upon which that sum is calculated with a breakdown and backup for each item. If the Customer fails to issue a valid and/or timely Payment Notice and/or Pay Less Notice then the sum claimed by Cubex shall be deemed to be agreed and payable in full.
- 1.2 All payments due under the Contract shall be made by the Customer in full and in advance of any Products and/or Services being provided by Cubex unless a credit facility for the Customer has been agreed with Cubex in writing.
- 1.3 If a credit facility is agreed between Cubex and the Customer and subsequently the value of a Customer's credit rating on Creditsafe falls to less than double the unpaid balance of the Contract Sum at that time, then the balance of the Contract Sum shall become immediately due and payable and any previously agreed credit facility will be immediately withdrawn.
- 1.4 Where a credit facility has been agreed between the Customer and Cubex sums payable to Cubex shall fall due in accordance with the stages listed below which are shown as cumulative percentages of the Contract Sum:
  - a) Where Cubex is to design, supply and install Products payment shall be due as follows:
    - i) 35% on formation of Contract;
    - ii) 65% on issue of Cubex Drawings;
    - iii) 95% on completion of manufacturing;
    - iv) 97.5% on the first planned delivery date;
    - v) 100% on Practical Completion.
  - b) Where Cubex is to supply and install Products payment shall be due as follows:
    - i) 35% on formation of Contract;
    - ii) 65% prior to commencement of manufacture;
    - iii) 95% on completion of manufacturing;
    - iv) 97.5% on the first planned delivery date;
    - v) 100% on Practical Completion.
  - c) Where Cubex is to only supply a Product with Cubex Drawings payment shall be due as follows:
    - i) 35% on formation of Contract;
    - ii) 70% on issue of Cubex Drawings;
    - iii) 100% on completion of manufacturing.
  - d) Where Cubex is to only supply a Product without Cubex Drawings payment shall be due as follows:
    - i) 70% on formation of Contract;
    - ii) 100% on completion of manufacturing.
  - e) Where Cubex is to carry out:
    - i) Scheduled Maintenance & Servicing (SMS) payment shall be due either the month before the SMS work is scheduled, or, if the SMS work is required sooner, immediately.
    - ii) Repair works payment shall be due prior to scheduling the works.
    - iii) Call-outs payment shall be due 7 days after such call-out takes place.
- 1.5 Further and in addition to the sums set out above, the Customer shall pay any further sums due under these Terms including but not limited to Variations, Loss and Expense, Additional Services Costs, Late Payments, Preliminary Costs, and/or any Cancellation fees.

- 1.6 All payments due to Cubex under these Terms shall be made by the Customer by way of Direct Debit and/or bank transfer and are to be received in cleared funds by Cubex no later than the Final Date for Payment.
- 2. Late Payments**
- 2.1 Any late payments by the Customer to Cubex will attract interest at an annual rate of 8% above the Bank of England Base Rate, plus an administrative charge of £1,250 per month (or part month) continuing until payment is received from the Customer in full. In addition to the late payment interest and administrative charges above, the Customer shall be liable for all other costs relating to the recovery of sums due, including but not limited to any legal costs and/or costs, fees and expenses associated with any debt collection and/or Adjudication or other proceedings and/or any other commercial, professional or consultancy support engaged by Cubex to resolve any late payment dispute. The Customer agrees that the above is reasonable.
- 2.2 Payment by the Customer shall not be delayed for any reason such as pending receipt by the Customer of invoices and/or credit notes and/or other paperwork or documents from Cubex.
- 3. Time and Extensions**
- 3.1 Cubex is entitled to safe, clear uninterrupted and continuous access to the Site for the full duration of the installation as shown on the Programme. Cubex is entitled to attend the Site intermittently to complete the works.
- 3.2 Cubex shall endeavour to complete the Contract within the timescales stated in the Programme if any referred to in the Contract.
- 3.3 If it becomes apparent that the Contract will not be completed in accordance with the Programme Cubex shall notify the Customer as soon as reasonably practicable and shall at its absolute discretion issue a new Programme to the Customer.
- 3.4 Where a delay occurs for reasons beyond the control of Cubex or by reason of a Variation, Customer Delay, Material Delay and/or any other breach of contract by the Customer, Cubex shall have an automatic right to a reasonable extension of time under the Contract to be determined by Cubex.
- 3.5 In the event that Cubex is entitled to an extension of time it shall also be entitled to recover from the Customer Loss and Expense and/or Preliminary Costs for the period of extension.
- 3.6 Cubex is entitled to complete the Contract in less time or in a different sequence than is stated in the Programme, or any subsequent varied Programme, and shall have no liability whatsoever in the event that this occurs.
- 4. Suspension and Cancellation**
- 4.1 In the event of a failure by the Customer to make payment in full of a sum due by the Final Date for Payment and upon the giving by Cubex of 7 days' prior notice, Cubex is entitled to suspend all or part of its Services and/or Products and to recover from the Customer all associated Loss and Expense and/or Preliminary Costs for the period of suspension.
- 4.2 Where there is a Material Delay either Party may upon 7 days' notice cancel the Contract and payment will be made to Cubex pursuant to Clause 4.9 of these Terms.
- 4.3 Without affecting any other right or remedy available to it, Cubex may cancel the Contract with immediate effect without prior notice and without reason and payment will be made to Cubex pursuant to Clause 4.9 of these Terms. It is agreed that Cubex shall not be in breach of contract when cancelling the Contract under this clause and shall not be liable for any losses that may be incurred or suffered by the Customer as a result.
- 4.4 In the event that Cubex commits a fundamental breach of these Terms the Customer may give notice of the breach and Cubex shall have 3 months (or a longer reasonable period if deemed necessary by Cubex) to remedy the same. If Cubex fails to remedy the breach within this time, then the Customer may give no less than 3 months' notice to cancel the Contract.
- 4.5 Where Cubex is providing SMS the Customer shall provide access as stated in the Contract or as otherwise agreed. In the event that a Customer fails and/or refuses to provide such access within 2 weeks of a scheduled visit by Cubex, the sum due for the scheduled visit shall become immediately payable. If the Customer fails and/or refuses to provide such access on 2 occasions Cubex shall have the right to cancel the Contract with immediate effect.
- 4.6 If Cubex identifies a safety risk on Site applicable to its Products and/or Services the Customer shall rectify the safety risk at its own cost and within a reasonable time, failing which, Cubex shall have the right to cancel the Contract. Any delay caused by the Customer rectifying a safety risk shall entitle Cubex to an extension of time and/or Loss and Expense and Preliminary Costs.
- 4.7 In the event UK inflation as measured by either the CPI or RPI increases during the Contract by more than 2% from the date of formation of the Contract, Cubex reserves the right to cancel the Contract.
- 4.8 If the Contract is cancelled by the Customer under this clause then Cubex shall have no liability whatsoever for any losses suffered as a result of the cancellation.
- 4.9 Upon cancellation of the Contract for any reason, the Customer shall pay to Cubex within 14 days without deduction, discount or set-off the following proportions of the Contract Sum:
- a) 70% if prior to commencement of any manufacture or procurement of Products or the provision of Services by Cubex, plus a further 15% should the Customer wish to retain the Cubex Drawings as completed at that date (if any); or
  - b) 95% if after commencement of manufacture or procurement of Products by Cubex; or
  - c) 100% if after manufacture of the Products has been completed and/or after an SMS Contract has commenced.
- 5. Quotes**
- 5.1 All Quotes provided by Cubex are open for acceptance by the Customer for 1 calendar month from issue.
- 5.2 Cubex reserves the right to withdraw a Quote at any time before acceptance without reason.
- 5.3 Products and/or Services not included within the Quote will not be included within the Contract. Any subsequent changes to the Contract shall be dealt with as Variations under these Terms.
- 6. Product Returns**
- 6.1 The Customer shall be able to return stock Products for a refund less a restocking charge of 25%. The refund will be payable to the Customer within 14 days of safe receipt by Cubex of the Products in an unused, uninstalled, new condition, free from any damage and in their original packaging. All packaging and delivery costs for a return will be paid by the Customer. Bespoke manufactured Products are non-returnable.
- 7. Limitation of Liability**
- 7.1 The total aggregate liability of Cubex to the Customer in respect of any loss, damage and/or breach of contract or any other duty at law in connection with the Contract, shall be limited to 5% of the original Contract Sum.
- 7.2 The following heads of loss are wholly excluded from being claimed by the Customer from Cubex
- a) Loss of profits;
  - b) Loss of sales or business;
  - c) Loss of agreements or contracts;
  - d) Loss of anticipated savings;
  - e) Loss of use or corruption of software, data or information;
  - f) Loss of or damage to goodwill;
  - g) Loss due to any hacking of any emails or electronic correspondence (cyber security breach and/or fraud);
  - h) Indirect or consequential loss or damages.
- 7.3 Nothing in this clause limits any liability which cannot legally be limited, including:
- a) Death or personal injury caused by negligence;
  - b) fraud or fraudulent misrepresentation; and
  - c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 7.4 Unless the Customer notifies Cubex that it intends to make a claim against Cubex within a reasonable period from discovery of such a right, Cubex shall have no liability for the same. It is agreed that a reasonable notice period for a claim shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 1 calendar month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 7.5 Any breach of these Terms by the Customer shall mean that Cubex will have no liability to the Customer whatsoever, save for any liability under Clause 7.3.
- 7.6 Cubex is not liable to the Customer for any delay-related contra-charges during a period of acceleration (if one is agreed by the Parties) unless Cubex is in breach of its original contractual obligations as regards delivery or installation.
- 8. Variations**
- 8.1 If the Customer proposes a change to the Contract, Cubex shall consider the same and decide within a reasonable time at its absolute discretion whether such proposals are viable. At the point when the Customer proposes a change to the Contract the Programme shall be paused unless expressly stated otherwise in writing by Cubex. The Customer shall pay Cubex for the time involved in considering such a change at the rates in the Additional Services Costs. If Cubex decides that such a proposal is viable it shall issue a Quote for the Variation to the Customer; this Quote may include a new Programme.
- 8.2 The Customer has a 7 day period from receipt of the Quote for a Variation to accept it unless Cubex expressly state in writing that the Customer has longer to accept it. If the Customer does not accept the Quote for the Variation within the allowed period, the Quote shall expire and the Variation will not be implemented. If the Variation is not to be implemented in accord with this clause Cubex will issue a new Programme. Preliminary Costs are payable by the Customer to Cubex during the time the Programme is paused.
- 8.3 If the Quote for the Variation is agreed, then Cubex shall issue an invoice and/or application for payment therefor. Upon payment in full of the Variation sum invoiced and/or applied for Cubex shall implement the Variation and complete the same within a reasonable time.

- 8.4 Cubex may also propose changes to the Contract. The Customer has 7 days to consider such proposals and if not agreed, they shall not be implemented.
- 8.5 If Cubex's proposed changes are agreed by the Customer within 7 days from issue then Cubex shall provide a Quote for the Variation within a reasonable time and clauses 8.2 and 8.3 shall apply.
- 8.6 Where any Variation reduces the Contract Sum for any reason, the Customer shall pay to Cubex within 14 days without deduction, discount or set-off the following proportions of the reduction in the Contract Sum:
- 70% if prior to commencement of any manufacture or procurement of Products or the provision of Services by Cubex, plus a further 15% should the Customer wish to retain the applicable Cubex Drawings as completed at that date (if any); or
  - 95% if after commencement of manufacture or procurement of Products by Cubex; or
  - 100% if after manufacture of the Products has been completed and/or after an SMS Contract has commenced.
- 8.7 The time spent by Cubex reviewing, reading, corresponding and discussing changes to the Contract and/or further information not in the Customer Requirements pre-Contract will be payable by the Customer to Cubex at the rates set out in the Additional Services Costs.
- 8.8 Managing or receiving updated documents or correspondence via digital portals and/or platforms such as Aconex or Business Collaborator is not included in the Contract unless stated otherwise. Should a Customer request Cubex use such a portal, this will be a Variation and charged on the basis of the Additional Services Costs. Any other costs associated with the use of such digital portals and/or platforms including but not limited to software costs shall also be payable by the Customer as a Variation.
- 8.9 Cubex reserves the right to make any changes at any time which do not materially affect the quality or performance of the Products and/or which are required to conform with any applicable Product Tests and/or Certification requirements and/or health and safety or other regulations and/or laws and/or other statutory requirements and/or industry association's or group's guidelines and recommendations and advice that were in force at the time of the Contract.
- 8.10 If there are any changes to any applicable Product Tests and/or Certification requirements and/or health and safety or other regulations and/or laws and/or other statutory requirements and/or industry association's or group's guidelines and recommendations and advice after the date of the Contract which require changes to the Products and/or Services, such changes shall be treated as a Variation.
- 8.11 Any Services provided by Cubex or its employees or agents to the Customer in respect of the application or use of the Products is followed entirely at the Customer's own risk and Cubex assumes no responsibility and has no liability in this respect.
- 8.12 Cubex does not warrant the accuracy nor will it be liable for the contents of any specification or information provided by Cubex in respect of Products unless they are designed exclusively by Cubex.
- 8.13 No Variation shall alter the Terms of the Contract.

## 9. Confidentiality and Non-Disclosure

- 9.1 Cubex shall not provide to the Customer details of its suppliers, subcontractors or the associated prices and the Customer shall fully indemnify Cubex for any losses suffered as result of a breach of this provision.
- 9.2 Cubex shall have the right to subcontract any works required for the supply of Products and/or Services under the Contract as it sees fit without consent of the Customer.
- 9.3 Neither Party shall be restricted from complying with lawfully issued government orders and/or other legal requirements to produce confidential information. However, the Customer shall promptly notify Cubex within 3 days of such an order to enable Cubex to oppose or obtain a protective order and shall grant Cubex a reasonable time for this prior to disclosure.

## 10. Final Account

- 10.1 Cubex may issue a Final Account seeking any remaining sums due under these Terms at any time after manufacture of the Products, completion of the Services, and/or upon Practical Completion or cancellation of the Contract.
- 10.2 The Final Account shall fall due upon the issue of an invoice and/or application for payment for the same from Cubex and shall be paid by the Final Date for Payment.
- 10.3 Any warranties and/or other documentation such as Technical File and/or As Built Drawings and/or O&M Manuals and/or Commissioning or Product Certificates to be given by Cubex to the Customer are only deliverable upon payment in full by the Customer of the Final Account and Contract Sum.

## 11. Design

- 11.1 To the extent that Cubex undertakes any design it shall be held to the standard of reasonable skill and care for that design.
- 11.2 Design responsibility in relation to any Cubex Drawings is limited to the manufacturing dimensions of the Products. Cubex shall not be responsible for the co-ordination or integration of the design into the Site and/or the surrounding environment. The Customer accepts responsibility for the

design of the Product upon approval of the Cubex Drawings and thereby agrees that the design fully complies with the Contract.

- 11.3 Cubex shall not be responsible for the contents of the Customer Requirements or for verifying the adequacy of any design contained within them nor any design produced pursuant to the Customer Requirements. If an inadequacy is found in the Customer Requirements, the Customer shall decide how to resolve the inadequacy. Any correction, alteration or modification of the Customer Requirements required to address an inadequacy therein shall be treated as a Variation.
- 11.4 Where there is a discrepancy or divergence within the Customer Requirements or between the Customer Requirements and the Contract, it shall be deemed that Cubex has agreed to provide and has priced the cheaper or lower specification. Any instruction from the Customer to resolve such a discrepancy or divergence in favour of a more expensive or higher specification requirement will be treated as a Variation.
- 11.5 Cubex has no obligation to commence manufacturing of any Products until the Customer approves the Cubex Drawings in writing.
- 11.6 Cubex Drawings shall be issued to the Customer for approval in accordance with the Programme and Design Submission Procedure if included with the Quote. The Customer shall approve the Cubex Drawings in accordance with the Design Submission Procedure in Schedule 1 hereto, unless stated otherwise in the Programme or Contract. Any delay by the Customer in approving the Cubex Drawings as aforesaid shall entitle Cubex to an extension of time and Loss and Expense and Preliminary Costs.
- 11.7 Cubex retains all copyright and/or intellectual property rights in relation to Cubex Drawings and other proprietary information that may be provided from time to time by Cubex.

## 12. Products and Delivery

- 12.1 In the event that Products cannot be delivered and/or installed for reasons beyond Cubex's control, Cubex may remove and/or store the Products in an alternative location and this shall be treated as a Variation. The Customer shall pay to Cubex all associated Loss & Expense and Preliminary Costs.
- 12.2 In the event that a Customer Delay prevents delivery of Products in accordance with the Programme or as agreed between the Parties, Cubex reserves the right to make delivery to the Customer's Head Office or Site or alternative storage facility as directed by the Customer 7 days prior to the scheduled delivery date. Upon delivery by Cubex under this clause the Customer shall become fully responsible and liable for the Product and any associated storage and/or insurance costs.
- 12.3 If the Customer fails to make payment in full for Products delivered then Cubex may enter the Site or location where the Products are being stored and secure and repossess the Products up to the value of monies owed by the Customer to Cubex (including costs incurred in the collection of those monies); and the Customer is to obtain any permissions required to secure such access.
- 12.4 Responsibility of risk of damage to or loss of the Products shall pass to the Customer at the time when the Customer accepts delivery to acknowledge receipt or if the Customer wrongfully fails to take delivery of the Products at the time when the Company has tendered delivery of the Products.
- 12.5 In spite of delivery having been made title to the Products shall not pass from Cubex to the Customer until the Customer has paid the price in full and until such passing of title:
- the Customer shall hold the Products on a fiduciary basis for Cubex stored (at no cost to Cubex) in a safe secure area separately from all other goods in its possession and marked in such a way that they are clearly identified as Cubex's property; and
  - Cubex is entitled to recover any and all Products supplied by Cubex up to the value of monies owed by the Customer including costs incurred in collecting those monies; and
  - the Customer shall upon request deliver up the Products to Cubex and if the Customer fails to do so Cubex may enter upon any location owned occupied or controlled by the Customer and/or where the Products are situated or believed to be situated and repossess the Products including dismantling the same from any location in which they may have been installed. The Customer shall indemnify Cubex for all loss, costs, damages, charges and expenses resultant from such necessary action; and
  - the Customer shall not sell nor pledge nor in any way charge by way of security for any indebtedness any of the Products. Without prejudice to the other rights of Cubex if the Customer does so all sums whatever owing by the Customer to Cubex shall forthwith become due and payable.
- 12.6 Upon delivery of the Products by Cubex the Customer shall inspect the same and upon being satisfied shall ask to sign a delivery note and/or equivalent document. If the Customer fails to inspect any part of the Products and/or state whether or not the Customer is satisfied with the Products in writing within 3 days of the delivery of the Products, the Products shall be deemed to have been accepted by the Customer as satisfactory.
- 12.7 Cubex's liability to the Customer for any non-delivery of a Product shall be limited to the value of the Product in the Contract excluding any installation or management costs.

### 13. Retention

13.1 Cubex does not accept retentions unless stated in the Contract.

### 14. Contra-charges

14.1 Cubex shall not be liable to the Customer for any delay related losses.

### 15. Customer Obligations

15.1 The Customer shall:

- a) provide a convenient and suitable supply of electricity and such other facilities as may be reasonably required for fulfilment of the Contract including but not limited to those as listed 'by Customer' in the Attendances Schedule included within the Quote; and
- b) provide reasonable and safe uninterrupted dedicated access to the Site, or place of delivery; and
- c) ensure that all required fixing structures for the Products and/or Services:
  - i) have adequate load bearing capability and depth;
  - ii) are plumb, level, and true;
  - iii) are of a certified performance (e.g. fire) of at least equal to that of the Products;
  - iv) are ready for installation of the Products in accordance with the Programme; and
- d) provide to Cubex marked-up drawings clearly identifying all locations and details of all services, provisions for services, reinforcement and adjacent works that may affect the installation of the Products and/or Services. Such drawings shall be issued to Cubex 4 weeks prior to the commencement of installation as shown on the Programme.
- e) remove and/or reinstate all necessary fixtures and fittings and security devices to facilitate installation of the Products.
- f) provide interim security to any openings where Cubex have included for the removal/replacement of existing products.

15.2 The Customer is liable and shall indemnify Cubex in full against any loss, costs, damages, charges, and expenses (including any consequential losses) arising from any failure to comply with Clause 15. Furthermore, any failure by the Customer in complying with Clause 15 shall entitle Cubex to an extension of time, Loss and Expense and Preliminary Costs

### 16. Insurance

16.1 Cubex shall maintain until Practical Completion the following insurances so long as they are available at reasonable commercial rates:

- a) Employers Liability Insurance £10m
- b) Public Liability Insurance £10m;
- c) Products Liability Insurance £10m;
- d) Contracts All Risks Insurance £500k; and
- e) Professional Indemnity insurance £0.

16.2 Evidence of the above insurances may be reasonably requested by the Customer but no deductions or delay to payments is permitted due to the Customer deeming the insurances to be insufficient in any way, including who the insurer is, and/or if the Customer has not received copies of the insurances.

### 17. Aborted Visits and Additional Visits

17.1 In the event of an Aborted Visit, Cubex shall not be obliged to schedule an Additional Visit unless or until the Customer pays in full the Aborted Visit costs under this clause.

17.2 An Aborted Visit shall be treated as a Variation and valued as follows:

- a) For each person required on Site for a planned or scheduled visit the sum of £1,200 per day or part thereof for the full duration that the person was planned or scheduled to be on site during the visit; and
- b) all associated Loss and Expense; and
- c) all costs plus 50% mark-up as would have been required should the visit have gone ahead (e.g. access equipment, plant hire, transport, travel, accommodation etc) whether or not these are actually incurred; and
- d) Preliminary Costs.

17.3 Any delay caused by an Aborted Visit shall entitle Cubex to a reasonable extension of time.

17.4 A minimum of 4 weeks prior notice is required by Cubex to schedule an Additional Visit following an Aborted Visit.

17.5 Cubex gives no guarantee that Additional Visits will be scheduled in accordance with the needs of the Customer and they shall instead be scheduled at the convenience of Cubex.

17.6 Any Additional Visits that do not arise out of a Aborted Visit shall be treated as a Variation and valued as follows:

- a) For each person required on Site for a planned or scheduled visit the sum of £1,200 per day or part thereof for the full duration that the person was planned or scheduled to be on site during the visit; and
- b) Any associated costs required to undertake the works.

### 18. Installation Hand-Over and Photographs

18.1 During and following installation of each individual Product and/or Service, Cubex may photograph the Product and/or Service and the surrounding area and shall own the copyright in such images.

18.2 The Customer shall inspect and sign-off as accepted and complete an

installed Product and/or completed Service within 30 minutes of it being installed and/or completed (unless agreed otherwise). Cubex shall offer free training on how to operate the Product safely within this 30-minute period. Additional training requested beyond the 30 minutes shall be a Variation.

18.3 Cubex reserves the right not to install further Products and/or provide further Services until those already installed are signed-off by the Customer in accordance with Clause 18.2. Delays in signing-off Products and/or Services shall entitle Cubex to a reasonable extension of time. If the delays result in the scheduled installation and/or works period becoming insufficient, Cubex shall reschedule continuation/completion of the Contract at its absolute discretion and shall charge to the Customer all rescheduling costs, demobilisation and remobilisation costs, plus Preliminary Costs and any others costs or losses. Protection of the Products once Cubex has installed them is the responsibility of the Customer unless stated otherwise in the Contract.

18.4 If the Product is not signed-off as stated in clause 18.2, the Customer shall give reasons in writing within 24 hours of installation of the Product. If the Customer fails to sign-off the Product or give its reason for not doing so within this timeframe it shall be deemed and agreed that the Product is signed off and fully compliant with the Contract.

18.5 In the event that Cubex disagrees in writing with the Customers reasons for refusing to sign off Products and/or Services the Customer shall nonetheless make payment in full to Cubex for those Products and/or Services unless Cubex accepts these reasons in writing within a further 24 hours. If having considered the reasons given by the Customer Cubex considers that further works and/or remedials are necessary, then Cubex shall undertake the same within a reasonable time. Cubex has the right to address any concerns raised at its absolute discretion. If Cubex considers that a Customer has unreasonably refused to sign-off a Product, Cubex shall have the right to suspend and/or cancel the Contract.

18.6 If a Customer fails or refuses to sign-off a Product and/or Service in accordance with this Clause 18 and/or if it wishes to inspect an installed Product and/or completed Service for more than 30 minutes in the presence of Cubex it shall pay to Cubex the relevant Additional Services Costs (per person per hour or part thereof) for all Cubex personnel required for the duration of failure or refusal and/or such an inspection. Cubex reserves the right to group Products together for sign-off.

18.7 The Customer shall allow Cubex reasonable access to the site within 12 months following Practical Completion for the purpose of taking further photographs of the Products and surrounding areas. Cubex shall have full unfettered right to use and shall own all intellectual property rights and copyright associated with any photographs it takes.

### 19. Health & Safety

19.1 In the event project specific Risk Assessments & Method Statements ('RAMS') (incorporating site health and safety rules) dictate the use of powered access equipment for working at height, this is to be provided by the Customer.

19.2 RAMS and lift plans if applicable are to be approved by the Customer within 2 weeks of receiving them from Cubex. Failure to do so shall result in a Customer Delay.

19.3 Cubex and the Customer shall comply with all applicable health and safety laws from time to time in force for the duration of the Contract.

19.4 Operation & Maintenance manuals ('O&Ms') will be issued by Cubex within 4 weeks of Practical Completion, subject to the Customer having made payment in full of all sums due under these Terms. No deductions by the Customer to payments shall be allowed pending issue of the O&Ms or any other information such as the Technical File if applicable.

### 20. Planning and Other Consents

20.1 If the installation of any Product requires planning permission or other statutory consents it shall be the responsibility of the Customer to obtain all such consents at no cost to Cubex in good time prior to entering into Contract for the Products with Cubex.

20.2 Cubex has no liability whatsoever for any losses howsoever arising out of the installation or retention of any Products at the Site without the necessary planning permission or other statutory consents.

### 21. Product Warranty for Supply Only

21.1 Where the Contract is for the supply of Products only it will be covered by a standard 12-month warranty as set out herein. Such warranty shall only be valid if the Customer has made all payments under the Contract on time and where there has been no suspension or cancellation and where the Products have been maintained in accordance with the Service Schedules by a qualified and competent person. Any failure by the Customer to request the Service Schedules within 1 month of delivery and/or to properly maintain the Product will also invalidate the warranty.

21.2 Subject to Clause 21.1, Cubex warrants that all Products will correspond with the Contract at the time of delivery and will be free from defect for a period of 12 months from the earliest agreed delivery date whether or not it took place or was aborted or cancelled for any reason. This warranty excludes:

- a) any defect arising from:
  - i) inadequacies in the Customer Requirements;

- ii) fair wear and tear;
  - iii) the Customer's negligence or wilful damage;
  - iv) abnormal working conditions at the Site;
  - v) any failure to follow Cubex's instructions or the Service Schedules;
  - vi) any vandalism;
  - vii) any malicious or careless use by the Customer or end user;
  - viii) use by untrained persons; and/or
  - ix) a force majeure event
- b) all electrical components and motors; and
  - c) any defects covered by insurance or any other policy.
- 21.3 If the Customer considers that a Product is defective, it shall return the Product to Cubex at its own cost and Cubex shall determine whether such a defect exists. If such a defect exists in the reasonable opinion of Cubex then it agrees to supply a repaired and/or replacement Product within a reasonable time. If the Customer requires a replacement Product whilst a purported defect is being investigated, this can be supplied to the Customer at the price in the Contract plus any reasonable increases and/or inflation and to be paid in full in advance of delivery. Cubex's liability for defective Products is limited to the cost of repair or replacement of the defective Products. Cubex shall not be liable for any consequential or indirect losses.
- 21.4 An extended warranty may be available should this be included in the Contract and the details of such shall be subservient to this clause other than the length of warranty.

## 22. Defects Liability Period for Supply and Installation

- 22.1 Where the Contract specifies that Cubex is providing installation (but not maintenance) those works will be covered by a 12-month defects liability period commencing from Practical Completion.
- 22.2 Where the Customer alleges that there is a defect relating to the Products and/or installation this shall be notified in writing to Cubex within 1 week of discovery of the same, failing which, the Customer loses the right to claim for the same. If Cubex agrees that a defect exists then it shall rectify, repair and/or replace the same within a reasonable time. Cubex shall have no liability to the Customer whether direct or indirect in relation to such defects or the rectification thereof beyond the rectification and/or replacement of the Products themselves. The Customer shall be solely liable for all other costs associated with above including any builders works and/or access costs.
- 22.3 For the avoidance of any doubt there is no warranty for Services.

## 23. Intellectual Property Rights

- 23.1 All intellectual property rights including (without limitation) copyright in all Cubex Drawings, Products, Services, material, information and photographs shall remain vested in Cubex.
- 23.2 Cubex grants to the Customer an exclusive non-transferable royalty-free licence to reproduce, copy, and use the Cubex Drawings for any purpose relating only to the Contract subject to no amendments being made to the Cubex Drawings in any way without prior written permission from Cubex.

## 24. Force Majeure

- 24.1 Cubex shall not be in breach of these Terms nor liable for any delay in performing or failure to perform, any of its obligations hereunder if such delay or failure result from events, circumstances or causes beyond its reasonable control (Force Majeure). Force Majeure shall include any epidemic or pandemic including Coronavirus. Cubex shall be entitled to a reasonable extension of the time and Loss and Expense and Preliminary Costs in respect of Force Majeure.

## 25. Severability

- 25.1 If any provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms.
- 25.2 If any of these Terms are deemed deleted under Clause 25.1, the parties shall negotiate in good faith to agree a replacement term that, to the greatest extent possible, achieves the intended commercial result of the original term.

## 26. Entire Agreement

- 26.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the Contract.
- 26.2 Each Party acknowledges that in entering into this Contract, it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms.

## 27. No Partnership or Agency

- 27.1 Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of another Party, or authorise either Party to make or enter into any commitments for or on behalf of any other Party.
- 27.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other Party.

## 28. Third Party Agreements and Rights

- 28.1 Cubex will not enter into any insurance, bond or warranty so as to create contractual relations with any third party save for any collateral warranties specified in the Contract and executed separately.
- 28.2 These Terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999.
- 28.3 Cubex does not enter into any joint deeds or insurances or bonds that bind Cubex with another party.

## 29. Priority of documents

- 29.1 In the event that there is a discrepancy or divergence between these Terms and any other document that forms part of the Contract these Terms shall prevail.
- 29.2 In the absence of, or where conflict and/or ambiguity occurs between any part of the Contract including anything referred to and/or referenced documentation and/ or drawings and/or specifications including those from the Customer in relation to the Contract then the Quote that forms the basis of the Contract shall take precedence.

## 30. Right to Adjudicate

- 30.1 If any dispute or difference arises under the Contract either party may refer it to Adjudication. The nominating body for any Adjudication shall be the TeCSA and if the Parties agree the Low Value Disputes (LVD) scheme shall apply. The Adjudication rules shall be those set out in the Scheme for Construction Contracts 1998 (as amended in 2011).

## 31. Governing law and jurisdiction

- 31.1 This Contract is governed by the law of England and Wales and the Parties irrevocably submit to the jurisdiction of the Courts of England and Wales. Where the Goods are sold under a consumer sale (as so defined) the statutory rights of the Customer are not affected by these Conditions.

## Schedule 1

### Design Submission Procedure

1. Cubex shall prepare and submit the Cubex Drawings to the Customer in accordance with the Programme, or, where the Cubex Drawings are being revised and/or are additional as a result of a Variation, within a reasonable time and/or as detailed in the Variation Quote.
2. Within 7 days from the date of receipt of any Cubex Drawings the Customer shall return one copy of the Cubex Drawings to Cubex marked status 'A' or 'B' or 'C'. Should the Customer fail to return the Cubex Drawings within this timeframe this shall be deemed a Customer Delay and entitle Cubex to an extension of time, Preliminary Costs, and Loss & Expense.
3. Where the Customer marks a Cubex Drawing status 'B' or 'C' the Customer shall identify by means of a written comment why they consider it is not in accordance with the Contract.
4. Where a Cubex Drawing is returned:
  - a) If it is marked status 'A', Cubex shall proceed with manufacture and/or supply in accordance with the Cubex Drawing; or
  - b) If it is marked status 'B', Cubex may proceed with manufacture and/or supply in accordance with the Cubex Drawing, provided that the Customer's comments are incorporated into it and those comments do not represent a Variation, and an amended copy of it is submitted by Cubex to the Customer within a reasonable time; or
  - c) If it is marked status 'C', Cubex shall take due account of the Customer's comments on it and shall either:
    - i) Submit it to the Customer in amended form from the comments in a reasonable time; or
    - ii) If Cubex disagrees with a comment of the Customer and considers that the Cubex Drawings are in accordance with the Contract, Cubex shall notify the Customer that they consider that compliance with the Customer's comments would give rise to a Variation. Such notification shall set out the reasons. Upon receipt of such a notification the Customer shall within 7 days either confirm or withdraw the comment and where the comment is confirmed, Cubex shall amend and resubmit the Cubex Drawing following the Variation provisions and within a reasonable time. Where the Customer withdraws the comment this shall be deemed a Customer Delay and entitle Cubex to an extension of time, Preliminary Costs, and Loss & Expense.
5. Upon withdrawal of a comment by the Customer the Customer shall return one copy of the Cubex Drawings to Cubex marked status 'A' or 'B' or 'C';
6. A Customer comment that gives rise to a Variation shall deem a Cubex Drawing as status 'C'.
7. Cubex shall not proceed with manufacture and/or supply in accordance with a Cubex Drawing that is status 'C'.