

EMH – Terms and Conditions of Contract for Goods

1 Interpretation

1.1 In these terms and conditions:

Agreement	means the contract between (i) EMH and (ii) the Supplier constituted by the Supplier's countersignature or written acceptance of the Form of Contract (or, if earlier, Delivery of the Goods) and includes the Form of Contract and its schedules, annexures, enclosures and attachments (if any);
Bribery Act	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
Charges	means the charges for the Goods as specified in the Form of Contract;
Confidential Information	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
Date of Delivery	means that date by which the Goods must be Delivered to EMH, as specified in the Form of Contract.
Deliver	means hand over the Goods to EMH at the address and on the date specified in the Form of Contract, which shall include unloading and any other specific arrangements agreed in accordance with Clause 6. Delivered and Delivery shall be construed accordingly.
Data Protection Legislation	means the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, and all applicable laws and regulations relating to the processing of personal data and privacy, including any amending or replacement legislation in force from time to time and including where applicable the guidance and codes of practice issued by the Information Commissioner;
EIRs	means the Environmental Information Regulations 2004;
EMH	means the person identified in (or shown on the letterhead or footer) of the Form of Contract or (if no person is so identified) East Midlands Housing Group Limited, an exempt charity and a society with FCA registration number 30476R, whose registered address is at Memorial House, Stenson Road, Whitwick Business Park, Coalville, Leicester, LE67 4JP;
Form of Contract	of means the overarching form of contract, the purchase order, the award letter, or the email (as the case may be) issued by EMH to the Supplier relating to the Goods and specifying the Charges and indicating that these terms and conditions apply;
Goods	means the goods to be supplied by the Supplier to EMH under the Agreement;
Mandatory Policies	means EMH's mandatory policies for contracts as set out in the Form of Contract or as may otherwise be notified by EMH to the Supplier from time to time prior to entering into the Agreement and as may be subsequently reasonably amended by notification to the Supplier;

MSA	means the Modern Slavery Act 2015;
Party	the Supplier or EMH (as appropriate) and “ Parties ” shall mean both of them;
PCRs	means the Public Contracts Regulations 2015;
Purchase Order Number	means EMH’s unique number relating to the order for Goods to be supplied by the Supplier to EMH in accordance with the terms of the Agreement;
Regulations	means the standards, codes of practice and any guidance or policies issued by the Regulator which apply to EMH from time to time and (where EMH is a registered provider of social housing) any other regulations and guidance that apply from time to time to registered providers of social housing;
Regulator	means the Regulator of Social Housing or any replacement regulator from time to time;
Request for Information	has the meaning set out in the Environmental Information Regulations 2004 (where the meaning set out for the term “ request ” shall apply);
Specification	means the specification for the Goods to be supplied by the Supplier to EMH (including as to quantity, description and quality) as specified in the Form of Contract and any key performance indicators;
Staff	means all directors, officers, partners, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
Staff Vetting Procedures	means vetting procedures that accord with good industry practice or, where applicable, EMH’s procedures for the vetting of personnel as provided to the Supplier from time to time;
Supplier	means the person named as Supplier in the Form of Contract;
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
Working Day	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘**including**’ shall be understood as meaning ‘**including without limitation**’.

2 Basis of Agreement

- 2.1 The Form of Contract constitutes an offer by EMH to purchase the Goods subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Form of Contract shall be deemed to be accepted by the Supplier on receipt by EMH of a copy of the Form of Contract countersigned by the Supplier within 7 days of the date of the Form of Contract.

3 Supply of Goods

- 3.1 In consideration of EMH's agreement to pay the Charges, the Supplier shall supply the Goods to EMH subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Goods, the Supplier shall co-operate with EMH in all matters relating to the supply of Goods and comply with all EMH's instructions.
- 3.3 The Supplier shall supply the Goods in accordance with the Specification. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under the Agreement shall:
 - 3.3.1 be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after Delivery;
 - 3.3.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
 - 3.3.3 conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
 - 3.3.4 be free from design defects;
 - 3.3.5 be fit for any purpose held out by the Supplier or made known to the Supplier by EMH expressly or by implication, and in this respect EMH relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by EMH of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause; and
 - 3.3.6 and the Supplier itself shall, comply with the Mandatory Policies and all applicable laws, including the Data Protection Legislation, the Regulations, the MSA, the PCR, and the Bribery Act.

4 Charges, Payment and Recovery of Sums Due

- 4.1 The Charges for the Goods shall be as set out in the Form of Contract and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods. Unless otherwise agreed in writing by EMH, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Goods, including but not limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage.
- 4.2 Unless otherwise expressly stated in the Form of Contract, all amounts stated are exclusive of VAT which shall be charged at the prevailing rate. EMH shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Goods.

- 4.3 Following Delivery of the Goods, the Supplier shall invoice EMH as specified in the Agreement. Each invoice shall include such supporting information required by EMH to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Goods supplied in the invoice period.
- 4.4 In consideration of the supply of the Goods by the Supplier, EMH shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number.
- 4.5 If EMH fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 4.4 after a reasonable time has passed.
- 4.6 If there is a dispute between the Parties as to the amount invoiced, EMH shall pay the undisputed amount. The Supplier shall not suspend the supply of the Goods unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 17.3. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.
- 4.7 If a payment of an undisputed amount is not made by EMH by the due date, then EMH shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.8 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
 - 4.8.1 provisions having the same effects as clauses 4.3 to 4.7 of this Agreement; and
 - 4.8.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effects as 4.3 to 4.8 of this Agreement.
 - 4.8.3 In this clause 4.8, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from EMH in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 4.9 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to EMH in respect of any breach of the Agreement), that sum may be deducted unilaterally by EMH from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with EMH. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against EMH in order to justify withholding payment of any such amount in whole or in part.

5 Cancellation

- 5.1 EMH shall have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been Delivered to EMH. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, EMH shall pay such Charges or that part of the Charges for Goods which have been Delivered to EMH or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt EMH shall not be liable for any loss of anticipated profits or any consequential loss.

6 Delivery

- 6.1 The Supplier shall Deliver the Goods to EMH on or by the Date of Delivery. Unless otherwise agreed in writing by EMH, Delivery shall be on the date and to the address specified in the Form of Contract. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and EMH has signed for the Delivery.
- 6.2 Any access to EMH's premises and any labour and equipment that may be provided by EMH in connection with Delivery of the Goods shall be provided without acceptance by EMH of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of EMH or its servant or agent. The Supplier shall indemnify EMH in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which EMH may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.
- 6.3 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.
- 6.4 Unless otherwise stipulated by EMH in the Form of Contract, Deliveries shall only be accepted by EMH on Working Days and during normal business hours.
- 6.5 Where (i) the Supplier fails to Deliver the Goods or part of the Goods or (ii) the Goods or part of the Goods do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies implied by statute or common law, EMH shall be entitled:
 - 6.5.1 to terminate the Agreement;
 - 6.5.2 request the Supplier, free of charge, to deliver substitute Goods within the timescales specified by EMH;
 - 6.5.3 to require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 6.5.4 to reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and EMH shall be entitled to a full refund on those Goods or part of Goods duly returned;
 - 6.5.5 to buy the same or similar Goods from another supplier and
 - 6.5.6 to recover any expenses incurred in respect of buying the goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

7 Property and Guarantee of Title

- 7.1 Without prejudice to any other rights or remedies of EMH, title and risk in the Goods shall pass to EMH when Delivery of the Goods is complete (including off-loading and stacking)
- 7.2 The Supplier warrants that:
 - 7.2.1 it has full clear and unencumbered title to all the Goods;
 - 7.2.2 at the date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to EMH. On Delivery EMH shall acquire a valid and unencumbered title to the Goods.

8 Staff

- 8.1 If EMH reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
- 8.1.1 refuse admission to the relevant person(s) to EMH's premises;
 - 8.1.2 direct the Supplier to end the involvement in the provision of the Goods of the relevant person(s); and/or
 - 8.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by EMH to the person removed is surrendered,
- and the Supplier shall comply with any such notice.
- 8.2 The Supplier shall:
- 8.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures and (where relevant) any applicable Mandatory Policies and if requested, comply with EMH's Staff Vetting Procedures and Mandatory Policies as supplied from time to time;
 - 8.2.2 if requested, provide EMH with a list of the names and addresses (and any other relevant information) of all persons who may require admission to EMH's premises in connection with the Agreement; and
 - 8.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by EMH (including the Data Protection Legislation, the Regulations, the MSA, the Bribery Act and the PCRs).

9 Assignment and Sub-Contracting

- 9.1 The Supplier shall not without the written consent of EMH assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. EMH may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 9.2 Where EMH has consented to the placing of sub-contracts, the Supplier shall, at the request of EMH, send copies of each sub-contract, to EMH as soon as is reasonably practicable.
- 9.3 EMH may assign, novate, or otherwise dispose of its rights and obligations under the Agreement to any member of its group (as defined in the Companies Act 2006) without the consent of the Supplier or, provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement, to any other entity.

10 Intellectual Property and Indemnity

- 10.1 The Supplier grants EMH a perpetual, royalty-free, irrevocable, non-exclusive licence (with the right to sub-licence) to use all intellectual property rights in the Goods or in any materials accompanying the Goods to the extent that it is necessary to fulfil its obligations under this Agreement.
- 10.2 The Supplier shall indemnify, and keep indemnified, EMH in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or

incurred or paid by EMH as a result of or in connection with any claim made against EMH for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

- 10.3 EMH shall promptly notify the Supplier of any infringement claim made against it relating to any Goods and, subject to any statutory obligation requiring EMH to respond, shall permit the Supplier to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. EMH shall give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

11 Governance and Records

11.1 The Supplier shall:

11.1.1 attend progress meetings with EMH at the frequency and times specified by EMH and shall ensure that its representatives are suitably qualified to attend such meetings; and

11.1.2 submit progress reports to EMH at the times and in the format specified by EMH.

- 11.2 Subject to the requirements of the Data Protection Legislation, the Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Goods supplied under it, and all payments made by EMH. The Supplier shall on request afford EMH or EMH's representatives such access to those records as may be reasonably requested by EMH in connection with the Agreement.

12 Confidentiality, Transparency and Publicity

12.1 Subject to clause 12.2, each Party shall:

12.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

12.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

- 12.2 Notwithstanding clause 12.1, a Party may disclose Confidential Information which it receives from the other Party:

12.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

12.2.2 to its auditors or for the purposes of regulatory requirements;

12.2.3 on a confidential basis, to its professional advisers;

12.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act;

12.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 12.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

12.2.6 where the receiving Party is EMH:

- (a) on a confidential basis to the employees, agents, consultants and contractors of EMH;
- (b) on a confidential basis to any other member of its group (as defined in the Companies Act 2006), or any company to which EMH transfers or proposes to transfer all or any part of its business;
- (c) to the extent that EMH (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 13,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on EMH under this clause 12.

12.3 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the EIRs, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for EMH to publish the Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the EIRs redacted) including any changes to the Agreement agreed from time to time. EMH may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the EIRs.

12.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of EMH.

13 Environmental Information Regulations

13.1 The Supplier acknowledges that EMH is subject to the requirements of the EIRs and shall:

13.1.1 provide all necessary assistance and cooperation as reasonably requested by EMH to enable EMH to comply with its obligations under the EIRs;

13.1.2 transfer to EMH all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

13.1.3 provide EMH with a copy of all information belonging to EMH requested in the Request for information which is in its possession or control in the form that EMH requires within 5 Working Days (or such other period as EMH may reasonably specify) of EMH's request for such information; and

13.1.4 not respond directly to a Request for Information unless authorised in writing to do so by EMH.

13.2 The Supplier acknowledges that EMH may be required under the EIRs to disclose Information concerning the Supplier or the Goods (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances EMH shall, in accordance with any relevant guidance issued under the EIRs, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

13.3 Notwithstanding any other provision in the Agreement, EMH shall be responsible for determining in its absolute discretion whether any information relating to the Supplier or the Goods is exempt from disclosure in accordance with the EIRs.

14 Protection and Security of Data

14.1 Terms defined in the Data Protection Legislation shall have the same meanings in this clause 14.

14.2 The Parties shall comply with their respective obligations under the Data Protection Legislation when processing any personal data in connection with the Agreement (**Shared Data**) including (without limitation) the provision of suitable privacy notices to affected data subjects.

14.3 Where the Supplier processes Shared Data as a data processor:

14.3.1 it shall do so only to the minimum extent necessary to comply with its legal obligations and for the purposes of Delivering the Goods and its other obligations under the Agreement (**Agreed Purpose**);

14.3.2 it shall not process the Shared Data for any purpose other than the Agreed Purpose without the prior written instructions or agreement of EMH;

14.3.3 save where otherwise required by virtue of a legal obligation to retain the Shared Data for a longer period, it shall cease processing the Shared Data once the Agreed Purpose has been achieved;

14.3.4 it shall forward any complaints, requests or similar communications from data subjects regarding the Shared Data to EMH within 2 Working Days of receipt; and

14.3.5 it shall not transfer the Shared Data to any third party without the prior written permission of EMH. Any permission granted under this clause 14.3.5 shall be subject to the Supplier entering into a written agreement with the third party with data protection requirements that are not less onerous than this clause 14.

14.4 In respect of the Shared Data, the parties shall co-operate with each other in meeting their respective obligations under the Data Protection Legislation including (without limitation) compliance with data subject requests.

14.5 The Supplier shall adhere to the data protection policy and procedures of EMH as notified to it from time to time or with its own data protection policy and procedures provided that these have been approved by EMH.

14.6 The Supplier shall maintain appropriate technical and organisational data security measures including (without limitation) ensuring that all Staff carry out data protection training.

14.7 The Supplier shall indemnify, and keep indemnified, EMH in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by EMH as a result of or in connection with any breach of this clause 14.

15 Liability

15.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by EMH if and to the extent that it is caused by the negligence or wilful misconduct of EMH or by breach by EMH of its obligations under the Agreement.

15.2 Subject always to clause 15.3

15.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

15.2.2 except in the case of claims arising under clauses 10.1.2, 14.7, 18.4 and 19.3, in no event shall either Party be liable to the other Party for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

15.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

15.3.1 death or personal injury caused by its negligence or that of its Staff;

15.3.2 fraud or fraudulent misrepresentation by it or that of its Staff;

15.3.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

15.3.4 any other matter which, by law, may not be excluded or limited.

15.4 The Supplier's liability under the indemnity in clauses 10.2, 14.7, 18.4 and 19.3 shall be unlimited.

16 Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 30 days, either Party may terminate the Agreement by written notice to the other Party.

17 Termination

17.1 Without prejudice to any other right or remedy it might have, EMH may terminate the Agreement in whole or in part before Delivery or after Delivery (where only part of Goods have been Delivered) by written notice to the Supplier with immediate effect if the Supplier:

17.1.1 (without prejudice to clause 17.1.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

17.1.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms

and conditions of the Agreement;

- 17.1.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
 - 17.1.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
 - 17.1.5 breaches the provisions of clauses 8.2, 12, 13, 14 and 18;
 - 17.1.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.1.6) in consequence of debt in any jurisdiction; or
 - 17.1.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 17.2 The Supplier shall notify EMH as soon as practicable of any change of control as referred to in clause 17.1.4 or any potential such change of control.
- 17.3 In addition to the Supplier's statutory rights, the Supplier may terminate the Agreement by written notice to EMH if EMH has not paid any undisputed amounts within 90 days of them falling due.
- 17.4 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under clauses 2, 3.2, 3.3, 8, 10, 11.2, 12, 13, 14, 15, 17.5, 18.4, 19.3, 20 and 21.7 and any other term or condition of the Agreement that either expressly or by implication has effect after termination.
- 17.5 EMH may terminate the Agreement by written notice to the Supplier with immediate effect where it is in its reasonable opinion required to do so by the PCRs.
- 17.6 Upon termination or expiry of the Agreement, the Supplier shall:
- 17.6.1 give all reasonable assistance to EMH and any incoming supplier of Goods; and
 - 17.6.2 return all requested documents, information and data to EMH as soon as reasonably practicable.

18 Compliance

- 18.1 The Supplier shall promptly notify EMH of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. EMH shall promptly notify the Supplier of any health and safety hazards which may exist or arise at EMH's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 18.2 The Supplier shall:
- 18.2.1 comply with the reasonable requirements of EMH's security arrangements;
 - 18.2.2 comply with all EMH's health and safety measures;
 - 18.2.3 notify EMH immediately in the event of any incident occurring in the performance of its obligations under the Agreement on EMH's premises where that incident causes any personal injury or damage to property which could

- give rise to personal injury;
 - 18.2.4 perform its obligations under the Agreement in accordance with all applicable equality Law and EMH's equality and diversity policy as provided to the Supplier from time to time;
 - 18.2.5 take all reasonable steps to secure the observance of clause 18.2.4 by all Staff;
 - 18.2.6 supply the Goods and any packaging in accordance with EMH's environmental policy as provided from time to time;
 - 18.2.7 comply with the PCRs; and
 - 18.2.8 comply with the MSA.
- 18.3 The Goods shall be packed and marked in a proper manner and in accordance with any instructions specified in the Form of Contract, any statutory requirements and any requirements of the carriers. All packaging materials shall be considered non-returnable. The Supplier shall indemnify EMH against all actions, suits, claims, demands, losses, charges, costs and expenses which EMH may suffer or incur as a result of, or in connection with, any breach of this clause 18.3.
- 18.4 The Supplier shall comply with, and shall ensure that its Staff shall comply with:
- 18.4.1 the Mandatory Policies; and
 - 18.4.2 the Regulations.
- The Supplier shall indemnify, and keep indemnified, EMH in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by EMH as a result of or in connection with any breach of this clause 18.4.

19 Prevention of Fraud and Corruption

- 19.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 19.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify EMH immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3 If the Supplier or the Staff engages in conduct prohibited by clause 19.1 or commits fraud in relation to the Agreement or any other contract with any member of EMH's group (including EMH) EMH may:
- 19.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by EMH resulting from the termination, including the cost reasonably incurred by EMH of making other arrangements for the supply of the Goods and any additional expenditure incurred by EMH throughout the remainder of the Agreement; or
 - 19.3.2 recover in full from the Supplier any other loss sustained by EMH in consequence of any breach of this clause.

20 Dispute Resolution

- 20.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 20.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 20.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 20.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

21 General

- 21.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 21.2 Save for permitted assignees of EMH, a person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 21.3 The Agreement cannot be varied except in writing signed by the duly authorised representatives of both Parties.
- 21.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 21.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 21.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 21.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 21.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

22 Notices

- 22.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 22.3, e-mail to the address of the relevant Party set out in the Form of Contract, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 22.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 22.3 Notices under clauses 16 (Force Majeure) and 17 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 22.1.

23 Governing Law and Jurisdiction

- 23.1 The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.