

RADIUS PLUS LIMITED

TERMS AND CONDITIONS OF SUPPLY

These are the terms and conditions of supply of Products and/or Works (as defined below) of RadiusPLUS Limited and these terms and conditions, together with any Special Conditions (as defined below), will apply to any orders for the Products and Works placed by you. Your attention is drawn, in particular, to the provisions of clause 12 below.

1 INTERPRETATION

- 1.1 In addition to the other terms defined within the body of these Conditions, the definitions set out in clause 15 shall apply to these Conditions.
- 1.2 In these Conditions, the following rules apply:
 - (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - (b) a reference to a party includes its successors or permitted assigns;
 - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
 - (e) a reference to **writing** or **written** includes faxes; and
 - (f) a reference to the singular includes a reference to the plural and vice versa.

2 BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Products and/or Works in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (**Order Acknowledgement**) or delivers Products and/or Works to the Delivery Location, whichever is earlier at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Products or illustrations or descriptions of the Works contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Works and/or Products described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 28 Days from its date of issue.
- 2.7 All of these Conditions shall apply to the supply of both Products and Works except where application to one or the other is specified.
- 2.8 Where the Supplier has notified any Special Conditions to the Customer, those Special Conditions shall form part of the Contract. If there is any conflict and/or inconsistency between these Conditions and the Special Conditions, the Special Conditions shall prevail.

3 PRODUCTS

- 3.1 The Products are described in the quotation, Order Acknowledgement and/or a Product drawing signed by the Supplier.

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- 3.2 If the Products are to be manufactured or any process is to be applied to the Products by the Supplier in accordance with a specification submitted by the Customer, the Customer shall indemnify the Supplier against all loss, damages, costs and expenses incurred by the Supplier in connection with any claim in any jurisdiction for infringement of any patent, copyright, design, trade mark or other Intellectual Property Rights.
- 3.3 The Supplier reserves the right to amend the Products Specification without notice if required by any applicable statutory or regulatory requirements.

4 DELIVERY

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Products is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier order and reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Products remaining to be delivered; and
 - (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 Unless otherwise agreed in writing by the Supplier, the Supplier shall deliver the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Products are ready.
- 4.3 Unless otherwise agreed in writing by the Supplier:
- (a) the Supplier shall only deliver the Products within the United Kingdom;
 - (b) the Supplier may deliver the Products prior to the date of delivery only if agreed with the Customer in writing;
 - (c) the Customer shall be charged a reasonable fee for any abortive deliveries resulting from delivery instructions provided by the Customer to the Supplier;
 - (d) the Customer shall, when they place an Order, provide the Supplier with written notice of any access or vehicle restrictions at the Delivery Location;
 - (e) the Customer shall ensure the Supplier has suitable access to the Delivery Location at all reasonable times; and
 - (f) the Works will be delivered according to the Works Specification.
- 4.4 Unless otherwise agreed in writing by the Supplier, delivery of the Products shall be completed on the completion of unloading of the Products at the Delivery Location.
- 4.5 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. Without prejudice to the foregoing, the Supplier shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.6 If the Supplier fails to deliver the Products, its liability (whether in contract, tort, negligence or otherwise and howsoever arising) shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products. The Supplier shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions for the Products or any relevant instruction related to the supply of the Products.

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- 4.7 If 5 Business Days after the Supplier tendered delivery or notified the Customer that the Products were ready for delivery the Customer has not accepted or taken delivery of them, delivery of the Products shall be deemed to have been completed at 9.00am on the second Business Day following the day on which the Supplier notified the Customer that the Goods were ready, and the Supplier may:
- (a) store the Products until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and redelivery and/or sell the Products at the best price readily obtainable; and
 - (b) (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
- 4.8 The Supplier may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9 The Supplier shall use its reasonable endeavours to meet any performance dates for the Works specified in any quotation, Order, and/or the Works Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Works.
- 4.10 The Supplier shall have the right to make any changes to the Works which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Works, and the Supplier shall notify the Customer in any such event.

5 QUALITY

- 5.1 The Supplier warrants that on delivery, and, unless specified otherwise in the Quotation and/or the Order Acknowledgment for a period of 12 months from the date of delivery (**Warranty Period**), the Products and/or Works shall:
- (a) conform in all material respects with their description and any applicable Products Specification or Works Specification; and
 - (b) be free from material defects in design, material and workmanship.
- 5.2 The Supplier warrants to the Customer that the Works will be provided using reasonable care and skill.
- 5.3 Subject to clause 5.5, if:
- (a) the Customer gives notice in writing during the Warranty Period within seven days of delivery, or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time of discovery of the defect or failure that some or all of the Products or Works do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Products; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Supplier's cost,
- the Supplier shall, at its option, repair or replace the defective Products (or the part in question), or re-supply the relevant Works (or the part in question), or refund the price of the defective Products or Works (or the part of the price in question).
- 5.4 The Supplier shall be entitled to retain any defective materials that are removed from the Products or replaced, for the purposes of testing and/or any further investigations that may be required. Where the defective materials are replaced by the Customer on the Supplier's behalf any defective materials should be made available for collection by the Supplier in their complete form as removed from the Products.
- 5.5 The Supplier shall not be liable (whether in contract, tort, negligence or otherwise and howsoever arising) for the Products' failure to comply with the warranty in clause 5.1 if:

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- (a) the Customer makes any further use of such Products after giving notice in accordance with clause 5.3;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
 - (c) the defect arises as a result of the Supplier following any drawing, design or Products Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Products without the prior written consent of the Supplier;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - (f) the defect arises as a result of any act or use of the Products or Works by a third party;
 - (g) the Products differ from their description or the Products Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.6 Except as provided in this clause 5, the Supplier shall have no liability (whether in contract, tort, negligence or otherwise and howsoever arising) to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.1 or the Works' failure to comply with the warranty set out in clause 5.2.
- 5.7 The terms of these Conditions shall apply to any repaired or replacement Products supplied by the Supplier under clause 5.3.

6 TITLE AND RISK

- 6.1 The risk in the Products shall pass to the Customer on completion of delivery.
- 6.2 Title to the Products shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- (a) the Products; and
 - (b) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Products has passed to the Customer, the Customer shall:
- (a) hold the Products on a fiduciary basis as the Supplier's bailee;
 - (b) store the Products separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - (d) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1;
 - (f) give the Supplier such information relating to the Products as the Supplier may require from time to time, and
 - (g) not be entitled to dispose of the Products.
- 6.4 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

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7 CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Products Specification or Works Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Products and/or Works;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Delivery Location as reasonably required by the Supplier to provide the Works;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Products and/or the Works, and ensure that such information is accurate in all material respects;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Products and/or the Works before the date on which the Products are delivered and/or the Works are to start;
- (g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (h) make available, free of charge, such support and preparation requirements as may be necessary to enable the Supplier to carry out the Works in accordance with the Works Specification, including but not limited to enabling works, facilities and ensuring a safe construction environment.

7.2 If the Supplier's performance of any of its obligations in respect of the Works is prevented or delayed by any act or omission by the Customer (and/or any customer, sub-contractor or other third party appointed by the Customer) to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of all or part of the Works until the Customer remedies (or procures the remedy of) the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable (whether in contract, tort, negligence or otherwise and howsoever arising) for any costs or losses sustained or incurred by the Customer (and/or any customer of the Customer) arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8 CHARGES AND PAYMENT

8.1 The price for Products shall be the price set out in the Order Acknowledgement (the **Price**). The Price of the Products is EXW (as defined by the International Chamber of Commerce's Incoterms 2010) and exclusive of any sales tax or duty applicable from time to time which shall be paid by the Customer, together with the Supplier's charges for transport, packaging and insurance, when it pays for the Products.

8.2 The Supplier reserves the right to:

- (a) charge an additional amount in for any extra work, requirement or modification in relation to the Works agreed between the Customer and Supplier; and
- (b) increase the price of the Products, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products to the Supplier that is due to:

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- (i) any factor beyond the control of the Supplier (including increases in the cost of delivery, foreign exchange fluctuations, labelling costs, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the Products Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Products or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Products.
- 8.3 The Supplier may in its absolute discretion provide the Customer with a credit facility. The Supplier may, at any time and for any reason, alter or revoke such credit facility and require payment from the Customer as otherwise provided in these Conditions.
- 8.4 The Supplier may invoice the Customer at any time for the Price of the Products and/or Works or part of it or them and, without limitation, may invoice the Customer in respect of any instalment of an order and, for the avoidance of doubt, where the time anticipated for manufacture and delivery of the Products and/or for performance of the Works exceeds 45 days, then the Supplier shall be entitled to periodic payments and may issue multiple invoices at will. Payment of any invoice shall become due (the **Due Date**) on the final day of the month in which the invoice is dated. The parties acknowledge and agree that an invoice shall be a payment notice as required by the Act and such invoice shall specify the Price that the Supplier considers to be due on the Due Date in respect of the payment and the basis on which that sum is calculated.
- 8.5 The Customer shall pay the Price due in each invoice submitted by the Supplier:
 - (a) unless otherwise agreed in writing, within 30 days of the Due Date (the **Final Date for Payment**); and
 - (b) in full and in cleared funds (without deduction, counter-claim, withholding or set-off) to a bank account nominated in writing by the Supplier, and
 - (c) time for payment shall be of the essence of the Contract.
- 8.6 The Price payable by the Customer under the Contract is exclusive of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Works or Products at the same time and on the same terms as payment is due for the supply of the Works or Products.
- 8.7 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the Final Date for Payment, the Supplier shall have the right to charge interest on the overdue amount at the rate of 8 per cent per annum above the base rate from time to time of the Bank of England accruing on a daily basis from the Final Date for Payment until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly. The Supplier may also, if the Customer fails to make any payment due to the Supplier under the Contract by the Final Date for Payment, exercise its right to suspend performance of all or any of its obligations under the Contract as referred to in clause 7.2, on the giving to the Customer of at least 7 days' notice of its intention to so suspend, stating the ground or grounds on which it intends to so suspend. Such right to suspend shall cease on the Customer making payment in full as required by the Contract. Where the Supplier exercises its right to so suspend, the Customer shall be liable to pay to the Supplier a reasonable amount in respect of costs and expenses reasonably incurred by the Supplier as a result of the exercise of the right. Furthermore, any period during which performance is suspended in pursuance of, or in consequence of the exercise of, the right conferred by this clause shall be disregarded in computing for the purposes of any contractual time limit the time taken, by the Supplier to complete any work directly or indirectly affected by the exercise of the right.
- 8.8 The Customer shall pay the Price due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or

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counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Products and/or Works, including any Specifications and technical documents, shall be owned by the Supplier.
- 9.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Works, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 9.3 All Supplier Materials are the exclusive property of the Supplier.

10 CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 10 shall survive termination of the Contract.

11 LIMITATION OF LIABILITY

- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, fraud or fraudulent misrepresentation or any other matter which by law cannot be limited or excluded.
- 11.2 Subject to clause 11.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort, negligence, breach of statutory duty, or otherwise (and howsoever arising), for any loss of profit, loss of revenue, or any indirect, special or consequential loss arising under or in connection with the Contract (including, without limitation, loss of goodwill, loss of reputation, loss of data and loss of opportunity); and
 - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort, negligence, breach of statutory duty, or otherwise (and howsoever arising), shall in no circumstances exceed the total aggregate sum paid to the Supplier by the Customer for the Products and/or Works which are the subject of the claim in question by the Customer.
- 11.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4 Save to the extent that the Supplier is liable under the Contract, the Customer shall indemnify the Supplier against all proceedings, claims or demands by any person in respect of death, personal injury, loss, damage, destruction, nuisance or trespass arising from any actual or alleged:
- (a) breach by the Customer or the Customer's servants or agents of any of the Customer's obligations under or in connection with the Contract (including without limitation any statutory duty);
 - (b) pollution, contamination, noise, vibration, shift or movement in the course or in consequence of the Products and/or Works either on the Delivery Location or suffered by any land, structures, property premises or interest; and

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- (c) the carrying out of the Products and/or Works and/or the design, materials or workmanship used in the Products and/or Works.
- 11.5 If the Products are to be manufactured or any process is to be applied to the Products by the Supplier in accordance with a specification submitted by the Customer, the Customer shall indemnify the Supplier against all loss, damages, costs and expenses incurred by the Supplier in connection with any claim in any jurisdiction for infringement of any patent, copyright, design, trade mark or other Intellectual Property Rights.
- 11.6 This clause 11 shall survive termination of the Contract.

12 TERMINATION

- 12.1 Without prejudice to any other right or remedy available to the Supplier, the Supplier may cancel the Contract or suspend any further deliveries without any liability to the Customer, if:
- (a) The Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
 - (b) the Customer becomes insolvent or bankrupt or goes into liquidation, receivership or administration or is wound up or enters into a composition or arrangement with its creditors;
 - (c) the Customer is unable to pay its debts, makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation;
 - (d) an encumbrancer takes possession of, or a receiver is appointed to, any of the property or assets of the Customer;
 - (e) the Customer ceases, or threatens to cease, to carry on business;
 - (f) the Supplier reasonably believes that any of the foregoing events is about to occur in relation to the Customer and notifies the Customer accordingly;
 - (g) in relation to Conditions 12.1(a) to 12.1(e), the Customer suffers any similar or analogous event in any jurisdiction; or
 - (h) the Customer encumbers or in any way charges any of the Products.
- 12.2 If the Products and/or Works have been delivered but not paid for and the Supplier cancels the Contract under this condition 12, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 12.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Works or all further deliveries of Products under the Contract or any other contract between the Customer and the Supplier if:
- (a) the Customer fails to make pay any amount due under this Contract by the Final Date for Payment in accordance with clause 8.8; or
 - (b) the Supplier has reasonable grounds for believing that the Customer will not make any payment by the Final Date for Payment;
 - (c) the Customer fails to meet any requirements under this Contract; or
 - (d) the Customer becomes subject to any of the events listed in Conditions 12.1(a) to 12.1(e), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

13 CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Works supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer in accordance with the

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Contract but with the Final Date for Payment being immediately on receipt and time for payment shall be of the essence of the Contract;

- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Delivery Location and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14 GENERAL

14.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, earthquake, fire, flood, storm, acts or omissions of third parties or default of suppliers or subcontractors.
- (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Products and/or Works for more than 30 days, either party shall have the right to terminate this Contract immediately by giving written notice to the other party.

14.2 Assignment and subcontracting:

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of the Supplier (not to be unreasonably withheld), assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.3 The Supplier may perform any of its obligations or exercise any of its rights under this Contract through any other member of its group companies.

14.4 Notices: Any notice given or made under or in connection with the Contract will be in Writing and given to the Company Secretary of the relevant party, either personally, by prepaid first class post (or registered carrier if the address for service is outside the United Kingdom) or facsimile. Notices will be deemed to have been duly given or made:

- 14.4.1 if delivered by hand, upon delivery at the registered office address of the relevant party;
- 14.4.2 if sent by prepaid first class post, 2 Working Days after posting (or if sent by registered carrier if the address for service is outside the United Kingdom, 5 Working Days after posting);
- 14.4.3 if sent by facsimile, at the time of transmission, (provided a confirmatory letter is sent by prepaid first class post or registered carrier if the address for service is outside the United Kingdom).

14.5 Waiver and cumulative remedies: No failure or delay by the Supplier in exercising any of its rights under this Contract shall be deemed to be a waiver of that right, and no waiver by the Supplier of any breach

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of this Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

- 14.6 Severance: If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 14.7 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 14.8 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 14.9 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.
- 14.10 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales or to adjudication.
- 14.11 Where either the Client or the Customer requires that a dispute or difference be referred to adjudication:
- 14.11.1 it shall be determined pursuant to section 108 of the Act. Part I of the Scheme is hereby incorporated into the terms and conditions of the Contract and shall apply as if it were written here; and
- 14.11.2 the adjudicator to decide the dispute or difference shall either be a person agreed by the parties, or, on the application of the party who is seeking the appointment of the adjudicator and the referral of the dispute to adjudication, the adjudicator shall be a person nominated by the President or Vice-President of the Institution of Civil Engineers.

15 DEFINITIONS

The defined terms referred to in clause 1.1 are as follows: **Act** means the Housing Grants, Construction and Regeneration Act 1996; **Business Day**: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business; **Commencement Date**: has the meaning set out in clause 2.2; **Conditions**: these terms and conditions as amended from time to time in accordance with clause 14.9 and including any Special Conditions; **Contract**: the contract between the Supplier and the Customer for the supply of Products and/or Works in accordance with these Conditions, any Special Conditions, the Quotation, the Order, the Order Acknowledgement and the Specification; **Customer**: the person or firm who purchases the Products and/or Works from the Supplier; **Deliverables**: the deliverables set out in the Order and/or the Works Specification; **Delivery Location**: has the meaning set out in clause 4.2; **Due Date**: has the meaning set out in clause 8.5; **Final Date for Payment**: has the meaning set out in clause 8.6; **Force Majeure Event**: has the meaning given to it in clause 14.1; **Intellectual Property Rights**: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world; **Order**: the Customer's order for the supply of Products and/or Works, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's Quotation, or overleaf, as the case may be completed by the Customer using one of the Supplier's pro-forma order forms; **Scheme** means the Scheme for Construction Contracts (England and Wales) Regulations (1998/649) (as amended or re-enacted);

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TERMS AND CONDITIONS OF SUPPLY (continued)

Products: the products (or any part of them) set out in the Order; **Products Specification:** any specification for the Products, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier; ; **Special Conditions:** the special conditions (if any) notified by RadiusPLUS Limited to the Customer in writing relating to the supply of the Products and/or the Works; **Supplier:** RadiusPLUS Limited (registered in England and Wales with company number 01147475 and whose registered office is at Radius House, Berristow Lane, South Normanton, Alfreton, Derbyshire DE55 2JJ); **Supplier Materials:** has the meaning set out in clause 8.1(g); **Works:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Work Specification; **Work Specification:** the description or specification for the Works provided in writing by the Supplier to the Customer.