



**AstraZeneca UK Limited**

**General Conditions of Contract  
AZ 3-01b**

**HIRE AND/OR ERECTION OF  
SCAFFOLDING**

**This Document Comprises 25 Pages**

**Issued on behalf of AstraZeneca UK Limited by:**

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# **Index**

1. Definitions and Interpretation
2. General Obligations
3. Design of Scaffolding
4. Commencement and Site Responsibilities
5. Hire Period
6. Inclusions in the Hire Rate
7. Contractor's Conditions
8. Assignment and Sub-Contracting
9. Site Regulations and Safety
10. Payment
11. Indemnity
12. Insurances
13. Identification
14. Protection of the Contractor's Rights
15. Confidentiality
16. Termination or Insolvency
17. Force Majeure
18. Limitation of Contractor's Liability
19. Notices
20. Dispute Resolution
21. Code of Conduct
22. Law

## 1 Definitions and Interpretation

1(1) For the purposes of the Contract (as defined in this sub-clause 1(1)) the following words and expressions shall, unless the context otherwise requires, have the following meanings :

- (a) “Adjudicator” means any person or persons from time to time appointed to act as an adjudicator in accordance with the procedures for appointing an adjudicator set out in paragraphs 3.1 to 3.5 of the Institution of Civil Engineers’ Adjudication Procedure (1997), or any amendment or modification thereof being current at the time of appointment, in connection with a dispute arising under the Contract.
- (b) “CDM Regulations” means the Construction (Design and Management) Regulations 1994 and “Planning Supervisor”, “Principal Contractor” and “Designer” shall have the meanings assigned to them therein.
- (c) “Construction Industry Scheme” is the scheme for the taxation of sub-contractors in the construction industry in the United Kingdom pursuant to sections 559 to 567 of the Income and Corporation Taxes Act 1988 and the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1993 S.I. No. 743, as amended by the Income Tax (Sub-Contractors in the Construction Industry) (Amendment) Regulations 1998 S.I. No. 2622 or any statutory re-enactment or amendment to the same that is made from time to time.
- (d) “Contract” means the legally binding agreement entered into by the Employer and the Contractor comprising the Contract Agreement and the documents listed therein, or, where a Contract Agreement has not been executed by the parties, the Purchase Order and the documents listed therein. In the event of a discrepancy between the documents listed in the Contract Agreement or, where applicable, the Purchase Order, the said documents shall take precedence in the order in which they are listed.
- (e) “Contract Agreement” means, where applicable, the document of that name executed by both the Employer and the Contractor and forming part of the Contract.

- (f) “Contractor” means the person, firm or company so named in the Contract.
- (g) “Day” means a calendar day.
- (h) “Employer” means the Company so named in the Contract, its successors in title and, subject to sub-clause 8(1), its assigns.
- (i) “Employer’s Representative” means the person identified in the Contract Agreement, or, where no Contract Agreement has been executed by the parties, the person identified elsewhere in the Contract, who is authorised by the Employer to accept the Scaffolding and give directions and instructions to the Contractor.
- (j) “Force Majeure” means acts of God such as earthquake, storm, tempest, lightning and/or flood; acts of government or state; war, civil war, riot, civil commotion and/or insurrection; fire, explosion, protestor action and/or any other prevention from or material hindrance in obtaining essential raw materials, energy or other supplies; labour dispute (other than one solely confined to the Contractor’s own employees, servants, agents and/or sub-contractors); and/or any other reason or cause entirely beyond the control or influence of either party and which does not arise out of particular circumstances which are or should have been in the contemplation of the party relying upon the event of Force Majeure at the time of entering into the Contract. Shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances which are themselves Force Majeure.
- (k) “Group Company” means in relation to the Employer, another body corporate which is a Subsidiary of or a Holding Company of the Employer.
- (l) “Hire Period” means the period as defined in Clause 5.
- (m) “Holding Company” and “Subsidiary” shall have the meanings ascribed to those expressions by Section 736 of the Companies Act 1985 (as amended) save that the condition in Section 736(1)(a) shall be deemed to be satisfied if that other company holds more than one quarter of the voting rights in it.
- (n) “provide” shall have the meaning set out in sub-clause 2(1) which shall apply equally to “provision”, “providing” and “provided”.

- (o) "Purchase Order" means the document of that name issued by the Employer to the Contractor and forming part of the Contract.
  - (p) "Scaffolding" means both the scaffolding and the associated materials that are the subject of the Contract.
  - (q) "Site" means the location or locations at which the Scaffolding is to be erected pursuant to the Contract.
  - (r) "Week" means a calendar week commencing each Monday and ending the following Sunday.
- 1(2) Words importing the singular also include the plural and vice versa where the context requires.
- 1(3) "Person" includes firms, companies and any other entities having legal capacity in English Law.
- 1(4) Any terms importing gender shall include any other gender.
- 1(5) Any reference to a Clause, sub-clause, part, schedule or appendix is, unless stated to the contrary, a reference to a Clause, sub-clause, part, schedule or appendix of or to this Contract.
- 1(6) The headings in these conditions shall not be deemed to be part thereof or to be taken into consideration in the interpretation or construction thereof or of the Contract.

## **2 General Obligations**

- 2(1) The Contractor shall provide the Scaffolding in accordance with the requirements of the Contract and the instructions of the Employer's Representative. For the avoidance of doubt and for the purposes of this Contract, "provide" shall include, but not be limited to, the erection, maintenance, alteration, adjustment, modification and dismantling of the Scaffolding. The Contractor shall, with due expedition and safety, provide the Scaffolding to the reasonable satisfaction of the Employer's Representative. In discharging its obligations under the Contract, the Contractor shall use the reasonable skill, care and diligence expected of a properly qualified and competent contractor experienced in providing scaffolding of similar scope, nature and complexity to the Scaffolding. To achieve the objectives of this Contract, the Contractor shall, without prejudice to the requirements of Clauses 4 and 9:

- (a) ensure that the Scaffolding is of satisfactory quality and reasonably fit for its intended purpose;
  - (b) ensure that the Scaffolding is free from defects in design, materials and workmanship;
  - (c) comply with the reasonable instructions of the Employer which instructions shall include, but not be limited to, any variation, addition or omission to the Contractor's obligations under the Contract;
  - (d) guarantee the availability of any materials that may be required for maintaining the Scaffolding during the duration of the Contract;
  - (e) provide all labour, plant, equipment and materials necessary for the performance of its obligations; and
  - (f) provide all items necessary to ensure compliance with sub-clauses 2(3), 9(1) and 9(2)(c).
- 2(2) To enable the Contractor to fulfil his obligations above, the Employer shall:
- (a) allow the Contractor full access to the Scaffolding at all reasonable times at the request of the Contractor; and
  - (b) provide suitable working space and such other facilities as have been agreed and set out in the Schedule.
- 2(3) The Contractor shall ascertain and conform in all respects with the provisions of any general or local Act of Parliament and the Regulations and Bye-laws of any local or other statutory authority which may be applicable to the provision of the Scaffolding and with such rules and regulations of public bodies and companies whose property or rights are or may be affected in any way thereby and shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Act, Regulation or Bye-law. Provided always that:
- (a) the Contractor shall not be required to indemnify the Employer against the consequences of any such breach which is the unavoidable result of complying with the Contract or the instructions of the Employer; and
  - (b) if the Contract or instructions of the Employer shall at any time be found not to be in conformity with any such Act, Regulation or Bye-law the Employer shall issue such instructions as may be

necessary to ensure conformity with such Act, Regulation or By-law.

- 2(4) Unless otherwise stated in the Contract, the Contractor is appointed as the Planning Supervisor and the Principal Contractor for the purposes of the CDM Regulations. The Contractor warrants that it is competent to fulfil its roles under this Clause and will devote adequate resources to discharging its obligations.

### **3 Design of Scaffolding**

- 3(1) Unless the Employer specifies to the contrary, the Scaffolding shall be designed and provided by the Contractor for the purposes of access, platforms and work areas in connection with construction, building and maintenance work.
- 3(2) The Contractor shall, if requested by the Employer, provide Scaffolding designed for purposes other than for those defined in sub-clause 3(1) and shall ensure that such Scaffolding shall be safe and of adequate strength to support the loading and fulfil the purpose specified by the Employer.
- 3(3) The Contractor shall retain all drawings and design calculations relating to the Scaffolding in its Site office and shall produce the same to the Employer on request. All records shall be retained during the period of the Contract or until the closure of any proceedings resulting from any accident, whichever shall be the later.
- 3(4) Tarpaulin sheets (or other windsails) must not be fixed to the Scaffolding unless it has been specifically designed to take them.

### **4 Commencement and Site Responsibilities**

- 4(1) Delivery of materials and erection of Scaffolding shall commence upon the date stated in the Contract or on such other date notified in writing by the Employer.
- 4(2) The Contractor shall make prior arrangements for and subsequently effect the off-loading and adequate storage of all plant, materials and equipment delivered to the Site, unless otherwise agreed and stated in the Contract.
- 4(3) On completion of erection of the Scaffolding the Contractor's notice of acceptance will be signed by the Employer's Representative. The Hire Period will commence from the date and time of the notice of acceptance.



Acceptance will not relieve the Contractor of any of its obligations under Clause 2.

- 4(4) The Contractor is deemed to have understood the nature and extent of the Scaffolding to be provided pursuant to the Contract and to have visited the Site and shall make no claim founded on its failure so to do. The Employer shall, at the request of the Contractor, grant such access to the Site as may be reasonable for this purpose.
- 4(5) The Contractor shall satisfy itself that the information provided by the Employer whether contained within the Contract or otherwise provided by the Employer is accurate and sufficient and will not prejudice the performance of any of the Contractor's obligations under the Contract. The Contractor shall inform the Employer immediately of any inaccuracy, discrepancy or insufficiency in such information and the Employer shall reconcile such inaccuracy or discrepancy and/or provide further information/data to the reasonable satisfaction of the Contractor within a reasonable time of being requested so to do. The Contractor shall not be entitled to any additional time or payment in respect of such clarification.
- 4(6) The Contractor shall, before employing hourly-paid labour on the Site, agree with the Employer the hours to be worked (including overtime), basic wages, bonus and other conditions of employment. Such matters shall not be changed without the Employer's written consent. Notice shall be given to the Employer of any changes in national agreements affecting such matters.
- 4(7) The Contractor shall carry out its obligations so as not to interfere unnecessarily or improperly with the convenience of the public or with any other activities of the Employer, its contractors, servants or agents on the Site.
- 4(8) The Contractor shall ensure that a competent and qualified supervisor is in attendance at the Site at all times during erection, maintenance, alteration, adjustment, modification or dismantling of the Scaffolding.

## **5. Hire Period**

- 5(1) The Hire Period shall commence as provided for in sub-clause 4(3).

- 5(2) If the design of the Scaffolding permits, the Employer may take over any part of the Scaffolding in accordance with sub-clause 4(3) in advance of the whole.
- 5(3) Subject to sub-clauses 5(4) and 5(5) the Hire Period shall be the fixed, or indeterminate, period as set out in the Contract.
- 5(4) The Hire Period may be reduced or extended by the Employer giving notice in writing to the Contractor. The period of notice to be given shall be as agreed and set out in the Contract. If no notice period has been specified then the Employer shall give such notice to the Contractor as is reasonable in all the circumstances and in any event, no less than 24 hours notice shall be given.
- 5(5) The Hire Period shall end either at the expiry of the Hire Period set out in the Contract, at the time specified by a notice under sub-clause 5(4), or may be terminated at any time by the operation of Clause 16 or sub-clause 17(5).
- 5(6) At the end of the Hire Period, the Contractor shall be responsible for dismantling and removing the Scaffolding from the Site. If the Contractor fails to remove the Scaffolding within a reasonable time the Employer shall have the right, after giving written notice of his intention so to do, to dismantle the Scaffolding and return it to the Contractor's premises during normal business hours. All costs associated with the dismantling and removal of the Scaffolding by the Employer shall be recoverable from the Contractor as a debt.

## **6 Inclusions in the hire rate**

The Contractor shall carry out all operations and provide all services and materials necessary to carry out its obligations under the Contract to the reasonable satisfaction of the Employer. The hire rates shall include for, but not be limited to:

- 6(1) The cost of providing the Scaffolding.
- 6(2) The maintenance on the Site of an adequate labour force at the level necessary to comply with the obligations of the Contractor including costs arising from overtime, bonus, inclement weather, protective clothing and equipment, travelling, lodging, holidays, National Insurance, and other statutory requirements.

- 6(3) Canteen and welfare facilities required by statute with associated services, supplies and equipment.
- 6(4) Preparation of the Site for the Contractor's huts and areas for materials handling and storage.
- 6(5) Connections and other things required for the use of utilities to be provided by the Employer.
- 6(6) Provision of utilities required which are not to be provided by the Employer under the Contract.
- 6(7) Provision of storage facilities, workshops and all associated services, supplies and equipment.
- 6(8) Keeping the Site and access roads free from fouling or obstruction (where such fouling or obstruction is caused by the Contractor) and at the end of the Hire Period, removing all plant, materials, equipment, temporary foundations and rubbish to the satisfaction of the Employer's Representative.
- 6(9) Allowances for increases in the costs not otherwise provided for in the Contract for labour, materials, plant and transport.
- 6(10) Compliance with the Employer's work rules.
- 6(11) Costs incurred by the Contractor in complying with sub-clauses 2(3), 2(4) and 9.
- 6(12) Protecting the Scaffolding from loss and deterioration until acceptance by the Employer under the provisions of sub-clause 4(3) and after the end of the Hire Period until removal from the Site.
- 6(13) Maintenance of the Scaffolding during the Hire Period.
- 6(14) Shortfalls in materials on dismantling the Scaffolding.

## **7 Contractor's Conditions**

No general or printed conditions submitted with or referred to in the Contractor's tender, estimate or quotation, or submitted or referred to at any other time shall form part of the Contract unless expressly agreed to in writing by the Employer.

## **8 Assignment and Sub-Contracting**

- 8(1) The Employer shall be entitled to assign the benefit of the Contract to another Group Company without the consent of the Contractor.

- 8(2) The Contractor shall not assign or charge or purport to assign or charge the Contract or any part or parts thereof or any benefit or interest therein or thereunder without the prior written consent of the Employer.
- 8(3) This Contract is for the sole benefit of the parties to the Contract. Terms which make reference to third parties are not to be construed as terms purporting to confer a benefit upon such third parties. It is not the intention of the parties to this Contract that any term hereof should be enforceable by anyone other than the parties to the Contract.
- 8(4) The Contractor shall not sub-contract any part of its obligations under the Contract without the prior written consent of the Employer, such consent not to be unreasonably withheld or delayed.

## **9 Site Regulations and Safety**

- 9(1) The Contractor shall have proper regard to the safety of all persons and comply with all applicable laws in the provision of the Scaffolding.
- 9(2) Without prejudice to its general obligations under sub-clause 9(1) above, the Contractor shall:
- (a) comply with the operating works rules applicable to the Site;
  - (b) comply with the Employer's safe systems of working which includes permits to work and clearance notes;
  - (c) obtain any consents necessary to permit the Scaffolding to encroach upon public highways or elsewhere and fix and maintain any warning lights or signs that may be necessary;
  - (d) obtain copies of the operating works rules from the Employer. Failure by the Contractor in obtaining copies of these works rules will not relieve him of the responsibilities and obligations imposed by them;
  - (e) issue a copy of the operating works rules to all employees, servants, sub-contractors and agents prior to them entering onto the Site;
  - (f) comply with any requirements of the Employer to require any person to attend a safety induction course; and
  - (g) comply with any requirements of the Employer to co-ordinate its works with other contractors on the Site.

- 9(3) The Contractor shall be responsible for the suitability and safety of the Scaffolding. No Scaffolding shall be provided which may be unsuitable, unsafe or liable to cause damage or injury. Without lessening the responsibility of the Contractor in regard to the Scaffolding, if in the Employer's opinion it is unsuitable, unsafe or liable to cause damage or injury, it shall not be used and it shall be replaced or adjusted with the minimum of delay at the Contractor's cost.
- 9(4) The Employer shall have the right, at any time, to alter, adjust or modify the Scaffolding where the Employer considers it necessary so to do. On the request of the Employer, the Contractor shall examine such alteration, adjustment or modification and, having carried out any further alteration, adjustment or modification necessary, certify in writing that it is safe. The Employer shall pay to the Contractor such expenses reasonably incurred by the Contractor in connection with such work unless the alteration, adjustment or modification was necessary as a result of the default or neglect of the Contractor.
- 9(5) In addition to its obligations under sub-clause 2(3), the Contractor, in conjunction with the Employer, shall agree a form of register in which the Contractor shall record the date of completion of erection of the Scaffolding (or any part of the Scaffolding taken over in advance of the whole), its type, description, location, date of the statutory inspections, condition at the time of the statutory inspections and the date of its dismantling.
- 9(6) The Contractor shall ensure that its employees, servants, sub-contractors and agents shall comply with all applicable rules and regulations when attending the Site.
- 9(7) The Employer shall have the right at any time to require the removal of any person and for an immediate replacement to be provided.

## **10 Payment**

- 10(1) The Contractor shall be paid for the provision of the Scaffolding at the rates set out in the Contract. Where no such basis is set out in the Contract the Contractor shall be remunerated on the basis of a fair and reasonable rate having regard to any previous course of dealings between

- the parties and/or rates quoted by the Contractor and other contractors periodically employed by the Employer.
- 10(2) Where any part of the Scaffolding has been accepted by the Employer in advance of the whole, the applicable hire rate for that part shall be as set out in the Contract or shall be established on a pro-rata basis.
- 10(3) The Contractor shall submit to the Employer, at monthly intervals, an invoice (in such form, if any, as may be prescribed by the Employer) showing the value of the Scaffolding provided since the previous statement (or in the case of the first such monthly statement, the date of the commencement of the Hire Period) together with such supporting documentation as the Employer may reasonably require.
- 10(4) Within 14 days of the date of delivery of the Contractor's invoice to the Employer, or the provision by the Contractor of supporting documentation requested by the Employer in accordance with sub-clause 10(3), whichever is the later, the Employer shall give notice to the Contractor specifying the amount (if any) of the payment proposed to be made and the basis on which it was calculated. The notice requirements of this sub-clause 10(4) shall be satisfied by the Employer amending and countersigning the Contractor's invoice and delivering a copy to the Contractor.
- 10(5) Payments to the Contractor become due on the date of the Employer's notice under sub-clause 10(4) above.
- 10(6) It is agreed by the parties that the final date for payment shall be whichever is the latest of the following:
- (a) the first working day after the end of the month following the end of the month in which the Contractor's invoice submitted under sub-clause 10(3) is dated; or
  - (b) 14 days after submission of a VAT invoice which accords with the Employer's notice under sub-clause 10(4) in circumstances where the amount for payment in the Employer's notice differs from that on the invoice submitted under sub-clause 10(3); or
  - (c) 14 days after the requirements of the Construction Industry Scheme have been complied with by the Contractor to the satisfaction of the Employer.

- 10(7) Where a payment under this Clause is to differ from the amount notified to the Contractor or the Employer is to withhold payment after the final date for payment of the sum due under the Contract, the Employer shall notify the Contractor in writing not less than one day before the final date for payment specifying the amount proposed to be withheld and the ground for withholding the payment or, if there is more than one ground, each ground and the amount attributable to it.
- 10(8) If in complying with its obligations in respect of instructions under sub-clause 2(1)(c) or any other matter arising under the Contract, the Contractor reasonably considers that it will incur additional costs due to such instructions or matters it shall immediately notify the Employer in writing. If the Employer agrees with the Contractor's opinion, it shall request the Contractor to provide a statement of the additional costs together with such supporting documentation as the Employer shall reasonably require. The Contractor's statement shall be valued and paid in accordance with sub-clause 10(1) provided that the Contractor will have no right to payment under this sub-clause 10(8) if the instruction or other matter was necessary or arose due to the act, default or omission of the Contractor or any of its employees, sub-contractors, servants or agents.
- 10(9) Daywork and overtime rates shall only apply where specifically instructed in writing by the Employer's Representative prior to the carrying out of additional work.
- 10(10) During the Hire Period and following the dismantling of any of the Scaffolding, the Employer's Representative is to be notified of any items found to be damaged. The damaged items are to be retained for 7 days to enable the Employer's Representative to inspect the same. The Employer shall not be liable to make any payment in respect of damaged items unless the Contractor has given written notification in accordance with this sub-clause and the Employer's Representative is satisfied that the damage is the Employer's responsibility. Any such payment shall be based on the replacement value of the item concerned less a percentage to be agreed between the Contractor and the Employer in respect of previous wear and tear.

## 11 Indemnity

- 11(1) For the purposes of Clauses 11 and 12 the following expressions shall have the following meanings:
- “damage” shall mean actual physical damage or loss to property and any pecuniary losses resulting therefrom;
- “injury” shall mean any bodily or mental injury to persons including sickness and disease;
- “Employer’s Liability Insurance” shall mean insurance required pursuant to the Employer’s Liability/Compulsory Insurance Act 1969 or any statutory amendment or re-enactment thereof in force from time to time.
- 11(2) The Contractor shall indemnify and keep the Employer indemnified against all losses and claims for death or injury to persons or loss of or damage to any property whatsoever which may arise out of or in consequence of the use of the Scaffolding and against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto subject to sub-clauses 11(3) and 11(4).
- 11(3) The liability of the Contractor to indemnify the Employer under sub-clause 11(2) shall be reduced proportionately to the extent that the act or neglect of the Employer his servants his agents or other contractors not employed by the Contractor may have contributed to the said loss injury or damage.
- 11(4) The Contractor shall not be liable for or in respect of or to indemnify the Employer against any compensation or damage for or with respect to death or injury to persons or loss of or damage to property resulting from any act or neglect or breach of statutory duty done or committed by the Employer his agents servants or other contractors (not being employed by the Contractor) or for or in respect of any claims demands proceedings damages costs charges and expenses in respect thereof or in relation thereto.
- 11(5) The Employer shall save harmless and indemnify the Contractor from and against all claims demands proceedings damages costs charges and expenses in respect of the matters referred to in sub-clause 11(4). Provided always that the Employer's liability to indemnify the Contractor under sub-clause 11(4) shall be reduced proportionately to the extent that the act or neglect of the Contractor or his sub-contractors servants or agents may have contributed to the said injury or damage.



## 12 Insurances

- 12(1) The Contractor shall have in force and shall require any sub-contractor employed by it to have in force the following insurances at all times :
- (a) Insurance against damage loss or injury for which it is liable under sub-clause 12(2). Such insurance shall be for such amount as the Employer deems necessary, but in any event for at least £2,000,000 (two million pounds sterling) for each and every incident.
  - (b) Employer's Liability Insurance as defined in Clause 11.
- 12(2) Subject to sub-clause 12(3) the Employer agrees not to claim and will procure that its insurers and any Group Company and their insurers will not claim, against the Contractor in respect of loss or damage to any property belonging to the Employer or any Group Company arising out of the execution of the Contract in excess of the amount for which the Contractor is required to have insurance in force pursuant to sub-clause 12(1).
- 12(3) Sub-clause 12(2) shall not apply to the extent that any loss or damage:
- (a) arises out of the ownership or use by or on behalf of the Contractor of any motor vehicle, water craft or aircraft: or
  - (b) results from a deliberate or reckless act or omission by the Contractor, its sub-contractors, servants or agents.
- 12(4) Upon request the Contractor shall provide satisfactory evidence to the Employer that the insurances required under the Contract have been effected and shall if so required produce the insurance policies for inspection. The terms of all such insurances shall be subject to the prior approval of the Employer (which approval shall not be unreasonably withheld). The Contractor shall upon request produce to the Employer receipts for the payment of current insurance premiums.
- 12(5) If the Contractor shall fail upon request to produce to the Employer satisfactory evidence that there is in force any of the insurances required under the Contract then and in any such case the Employer may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time, subject to sub-clause 10(7) deduct the amount so paid from any monies due or

which may become due to the Contractor or recover the same as a debt due from the Contractor.

- 12(6) The Contractor shall comply with all conditions laid down in the insurance policies. In the event that the Contractor fails to comply with any condition imposed by the insurance policies effected pursuant to the Contract, the Contractor shall indemnify the Employer against all losses damages and expenses arising from such failure.

### **13 Identification**

The Scaffolding shall at all times remain the property of the Contractor who shall mark it in such a manner as to make it or any part thereof easily identifiable. Such identification shall not be removed, defaced or covered up by the Employer.

### **14 Protection of the Contractor's Rights**

The Employer shall not rehire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Scaffolding and shall protect the same against all damage, costs, charges or expenses which may be occasioned by any failure to observe this Clause.

### **15 Confidentiality**

- 15(1) All information in whatsoever form relating to the Contract or to the Employer's business (whether provided under the Contract or otherwise) which comes into the Contractor's possession (the "Information") shall be regarded as secret and confidential and shall not be disclosed by the Contractor except to the extent that it becomes necessary to furnish Information to others solely for the purpose of the provision of the Scaffolding. The Contractor shall impose the same obligations of secrecy and confidentiality upon any authorised third party to whom the Information is passed. These obligations will continue in full force and effect notwithstanding the termination of the Contract, but shall not in any event apply to any part of the Information which the Contractor can show:
- (a) was already in the Contractor's possession prior to its disclosure by the Employer; or
  - (b) was lawfully acquired by the Contractor at any time from a third party who holds such information free of any obligation of confidentiality; or

- (c) is or comes into the public domain otherwise than through the fault of the Contractor.
- 15(2) The Contractor and its agents, servants and workmen shall keep secret and shall not disclose to any third party (except sub-contractors accepting like obligations as to secrecy and then only to the extent necessary for the performance of the sub-contract in question) any matters relating to the existence or to the performance, variation, cancellation or termination of the Contract (either actual or projected) except with the prior written consent of the Employer.
- 15(3) The Contractor shall not take photographs nor make films or video recordings of the Scaffolding or any section or part thereof or of any property of the Employer without the written consent of the Employer's Representative.

## **16 Termination or Insolvency**

- 16(1) The Employer may, in addition to any other rights and remedies which it may have, by notice in writing at any time forthwith terminate the Contractor's employment under the Contract.
- 16(2) If the Employer is in material and persistent breach of its obligations under the Contract and shall fail to remedy the same after receiving a 30 day notice from the Contractor specifying the breach and requiring its remedy then the Contractor shall be entitled forthwith by written notice to terminate the Contract.
- 16(3) If the Contractor becomes insolvent or makes an arrangement with its creditors or has a receiver appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction), the Employer may, without prejudice to any other of his rights, terminate this Contract forthwith by notice to the Contractor or any person in whom this Contract may have become vested. For the purposes of the Contract, any termination under this sub-clause 16(3) shall be deemed to be a breach by the Contractor of its obligations under the Contract.
- 16(4) The Employer may, by notice in writing, suspend all or any of the Contractor's obligations under the Contract. If the Employer has not within 6 (six) months of the notice requested the Contractor to resume the obligations suspended, the Contractor may serve 30 days' notice on the

Employer requiring it to end the suspension. If the Employer does not notify the Contractor within the 30 day period that the suspension is ended the Contractor may forthwith by written notice to the Employer terminate the Contract.

- 16(5) Upon any termination under sub-clause 17(5) or this Clause 16 or any reduction or extension of the Hire Period under sub-clause 5(4), the Employer shall pay any sums due and which become due to the Contractor in respect of the provision of the Scaffolding. The Contractor shall not be entitled to any further sums in respect of loss of anticipated profit or otherwise.
- 16(6) Where the Contract has been terminated under this Clause 16 due to a breach by the Contractor of its obligations under the Contract the Employer may itself complete the Scaffolding or arrange for completion by a third party and no further payments shall become due to the Contractor until the provision of the Scaffolding has been completed in accordance with the requirements of the Contract. The Employer shall be entitled to set off or deduct from monies due to the Contractor any additional costs with respect to completion of provision of the Scaffolding incurred by the Employer, provided the Employer gives notice in accordance with sub-clause 10(7). Payment shall become due on the giving of the notice. The final date for payment of the sums due (if any) to the Contractor under this sub-clause 16(6) shall be 28 days following receipt from the Contractor of a VAT invoice which corresponds in all respects with the amount of the Employer's notice provided that if the total cost to the Employer exceeds the amount due to the Contractor, the balance shall be recoverable from the Contractor by the Employer as a debt.
- 16(7) Termination of the Contract shall be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other prior to such termination and the continuing operation of sub-clauses 8(2), 11(2), 12(1), 16(6), 16(7) and 16(8) and Clauses 15, 18, 19, 20 and 21.
- 16(8) Following any termination of the Contractor's engagement the Contractor shall immediately take all necessary steps to remove the Scaffolding from the Site. If the Contractor fails, within a reasonable time, to remove the Scaffolding, the Employer shall have the right to dismantle the Scaffolding

and return it to the Contractor's premises during normal business hours. All costs associated with the dismantling and removal of the Scaffolding by the Employer shall be recoverable from the Contractor as a debt.

## **17 Force Majeure**

- 17(1) Neither party shall be liable for any failure to perform its duties, obligations and/or responsibilities hereunder or any failure to provide the other party with the opportunity to comply with its duties, obligations and/or responsibilities hereunder if and to the extent that such failure arises as a direct and unavoidable consequence of Force Majeure.
- 17(2) In the event that either party seeks to rely upon the relief granted by sub-clause 17(1), it shall submit to the other party written notice of the happening of the event of Force Majeure together with reasonable proof of the nature of the event and of its effect upon the performance of the party's obligations under the Contract.
- 17(3) The parties shall use all reasonable endeavours to prevent and mitigate the effects of any delay occasioned by, or other consequence of, any event of Force Majeure.
- 17(4) Should one event of Force Majeure last continuously for more than 3 months then the parties shall endeavour to agree any modifications to the Contract which may be equitable having regard to the nature of the event.
- 17(5) If the parties have failed to reach agreement as described in sub-clause 17(4) within 6 months of the commencement of the event in question, either party may at any time thereafter, and provided the event still subsists, by notice to the other terminate the Contract. The provisions of Clause 16 will apply to any such termination.

## **18 Limitation of Contractor's Liability**

The Contractor shall not be liable to the Employer by reason of any breach of the Contract for:

- 18(1) any loss of production or of any contract that may be suffered by the Employer; or
- 18(2) any wastage, loss or contamination during its use in any plant of any process consumable which shall be deemed to include feed stocks, chemicals, biochemicals, catalysts and utilities; or

18(3) any loss or damage arising from any design or information which the Employer has specifically instructed the Contractor to use; except to the extent that recoveries in respect thereof are obtained under insurance effected pursuant to Clause 12 (Insurance).

## **19 Notices**

19(1) All notices and communications to be given or made under this Contract shall be given or made in writing and delivered either by hand, by post in a pre-paid letter, or by facsimile transmission confirmed by post in a pre-paid letter, addressed to the other party.

19(2) Notices to be given to the Employer by the Contractor shall be addressed to the AstraZeneca UK Engineering Purchasing Manager, Alderley House, Alderley Park, Macclesfield, Cheshire SK10 4TF. Other communications shall be addressed as for notices or to such other address as is from time to time specified by the Employer for the purpose of communications.

19(3) Notices and communications to be given or made to the Contractor by the Employer shall be addressed as specified from time to time by the Contractor for the purpose.

19(4) The notices or other communications shall be deemed to be duly made or given on the day of delivery if delivered by hand, after two days for a letter or after four hours for a facsimile transmission, save that if a letter is returned as being undelivered within seven days of its despatch, or a facsimile is reported as being received in incomplete or illegible form within two hours of transmission during normal office hours, that notice or communication shall not be deemed to have been made.

## **20 Dispute Resolution**

20(1) The Employer and the Contractor shall give effect forthwith to every decision of the Adjudicator on a dispute given under sub-clause 20(2) unless and until that decision is revised by agreement of the Employer and Contractor or pursuant to this Clause 20.

20(2) (a) The Employer and the Contractor each has the right to refer a dispute as to a matter under the Contract for adjudication and either party may give notice in writing (hereinafter called the "Notice of Adjudication") to the other at any time of its intention so to do.

- The adjudication shall be conducted in accordance with the Institution of Civil Engineers' Adjudication Procedure (1997) or any amendment or modification thereof being in force at the time of the said Notice.
- (b) Unless the Adjudicator has already been appointed he is to be appointed by a timetable with the object of securing his appointment and referral of the dispute to him within 7 days of such notice.
  - (c) The Adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred.
  - (d) The Adjudicator may extend the period of 28 days by up to 14 days with the consent of the party by whom the dispute was referred.
  - (e) The Adjudicator shall act impartially.
  - (f) The Adjudicator may take the initiative in ascertaining the facts and the law.
- 20(3) The decision of the Adjudicator shall be binding until the dispute is finally determined by legal proceedings or by arbitration (if the Contract provides for arbitration or the parties otherwise agree to arbitration) or by agreement.
- 20(4) The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the Adjudicator is similarly not liable.
- 20(5) (a) All disputes arising under or in connection with the Contract other than failure to give effect to a decision of an Adjudicator shall be finally determined by reference to arbitration. The party seeking arbitration shall serve on the other party a notice in writing (called the "Notice to Refer") to refer the dispute to arbitration.
- (b) Where an Adjudicator has given a decision under sub-clause 20(2) in respect of the particular dispute the Notice to Refer must be served within three months of the giving of the decision otherwise it shall be final as well as binding.
- 20(6) (a) The arbitrator shall be a person appointed by agreement of the parties.

- (b) If the parties fail to appoint an arbitrator within one month of either party serving on the other party a notice in writing (hereinafter called the "Notice to Concur") to concur in the appointment of an arbitrator the dispute shall be referred to a person to be appointed on the application of either party by the President for the time being of the Institution of Civil Engineers.
  - (c) If an arbitrator declines the appointment or after appointment is removed by order of a competent court or is incapable of acting or dies and the parties do not within one month of the vacancy arising fill the vacancy then either party may apply to the President for the time being of the Institution of Civil Engineers to appoint another arbitrator to fill the vacancy.
  - (d) In any case where the President for the time being of the Institution of Civil Engineers is not able to exercise the functions conferred on him by this sub-clause 20(6) the said functions shall be exercised on his behalf by a vice-president for the time being of the said Institution.
- 20(7) (a) Any reference to arbitration under this Clause 20 shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or amendment thereof for the time being in force. The reference shall be conducted in accordance with the Institution of Civil Engineers' Arbitration Procedure (1997) or any amendment or modification thereof being in force at the time of the appointment of the arbitrator. Such arbitrator shall have full power to open up review and revise any decision opinion instruction direction or valuation of the Employer or the Adjudicator.
- (b) Neither party shall be limited in the arbitration to the evidence or arguments put to any Adjudicator pursuant to sub-clause 20(2).
  - (c) The award of the arbitrator shall be binding on all parties.
  - (d) Unless the parties otherwise agree in writing any reference to arbitration may proceed notwithstanding that the provision of the Scaffolding has not been completed or terminated.



- 21(1) Supplier recognises AstraZeneca's commitment to working only with suppliers who embrace standards of ethical behaviour that are consistent with AstraZeneca's *Code of Conduct* (<http://www.astrazeneca.com/responsibility>), as described in AstraZeneca's document *Responsible Procurement Supplier Expectation (v0.3May09)* (a part of the AstraZeneca Global Standard –Responsible Procurement).
- 21(2) Supplier represents and warrants and undertakes that it:
- (a) shall perform this Agreement and operate its business in compliance with all applicable laws and regulations;
  - (b) has received and read AstraZeneca's *Code of Conduct* and AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*; and
  - (c) shall perform this Agreement and operate its business to ethical standards consistent with those set out in AstraZeneca's *Code of Conduct* and as described in AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*, and
  - (d) cause its suppliers and sub-contractors to operate their business in compliance with all applicable laws and regulations and in a manner consistent with AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*.
- 21(3) In the event that Supplier fails to meet or maintain such ethical standards, the Parties shall agree upon what measures should be taken by Supplier to improve Supplier's performance (the "Improvement Plan"). If the Parties are unable to agree upon an Improvement Plan or Supplier does not implement the Improvement Plan within an agreed reasonable timescale (which shall in any event not be in excess of twelve (12) calendar months) AstraZeneca shall be entitled to terminate this Agreement with immediate effect, to be relieved of any obligations and to seek compensation from Supplier.

21(4) Supplier agrees that any material breach or violation by Supplier of the above representations, warranties and undertakings shall give AstraZeneca the right to terminate this Agreement according to Article 16.

**22 Law**

The construction validity and performance of the Contract shall be governed by the Law of England.