



AstraZeneca UK Limited

**General Conditions of Contract
AZ 1-04b**

MINOR WORKS

This Document Comprises 34 Pages

Issued on behalf of AstraZeneca UK Limited by:

UK Head of Purchasing
Alderley House
Alderley Park
Macclesfield
Cheshire
SK10 4TF

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***These conditions are based upon the ICE Conditions of Contract
Minor Works 2nd Edition.***

Modifications to the ICE 2nd Edition are highlighted in bold.

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- 1 DEFINITIONS**
- Definitions**
- 1.1** "Works" means all the work necessary for the completion of the Contract including any variations ordered by the Engineer.
- 1.2** "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.
- 1.3** "Contract Agreement" means, where applicable, the document of that name executed by both the Employer and the Contractor and forming part of the Contract.
- 1.4** "Purchase Order" means the document of that name issued by the Employer to the Contractor and forming part of the Contract.
- 1.5** "Cost" (unless stated otherwise in the Contract) means all expenditure properly incurred or to be incurred whether on or off the Site including overhead finance and other charges (including loss of interest) properly allocable thereto but does not include any allowance for profit.
- 1.6** "Site" means the lands and other places on under in or through which the Works are to be constructed and any other lands or places provided by the Employer for the purposes of the Contract together with such other places as may be designated in the Contract or subsequently agreed by the Engineer as forming part of the Site.
- 1.7** "Engineer" means the person appointed by the Employer to act as Engineer for the purposes of the Contract and named in the Contract Agreement or, where no Contract Agreement has been executed by the parties, named elsewhere in the Contract, or such other person so appointed from time to time by the Employer and notified in writing as such to the Contractor under Clause 2.1.
- 1.8** "Engineer's Representative" means a person named in the Contract Agreement or, where no Contract Agreement has been executed by the parties, named elsewhere in the Contract, or notified as such from time to time by the Engineer under Clause 2.2.
- 1.9** "Excepted Risks" are
- (a) the use or occupation by the Employer his agents servants or other contractors (not being employed by the

Contractor) of any part of the Permanent Works;

- (b) any fault defect error or omission in the design of the Works (other than a design provided by the Contractor pursuant to his obligations under the Contract);
- (c) riot war invasion act of foreign enemies or hostilities (whether war be declared or not);
- (d) civil war rebellion revolution insurrection or military or usurped power;
- (e) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component hereof
- (f) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

1.10 “Additional Risks” are

- (a) **such amount as may be stated in the Appendix (or if no amount is stated the first £5,000 (five thousand pounds)) of each and every claim for damage to the Works or materials, plant or equipment for incorporation therein;**
- (b) **the cost of replacement, rectification or redesign rendered necessary by defective materials, workmanship or design but only insofar as such costs relate to that part of the Works immediately affected and not the cost of making good any other loss or damage resulting from the defect;**
- (c) **damage to the Works or materials, plant or equipment for incorporation therein during manufacture elsewhere than on Site;**
- (d) **damage to the Contractor’s Equipment, personal effects, or any other property of the Contractor, any sub-contractor, their servants or agents;**
- (e) **the Contractor’s liability arising out of the ownership or use by or on behalf of the Contractor of any motor vehicle, water craft or aircraft other than as stated in Clause 10.1(1)(b);**
- (f) **the Contractor’s liability to his employees and third parties other than as stated in Clause 10.1(1)(c); or**
- (g) **damage to any property of the Employer including without limitation the Works or materials, plant or equipment for incorporation therein resulting from a**

deliberate or reckless act or omission by the Contractor or his servants or agents.

- 1.11** (a) All notices and other 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.
- (b) 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 specified in the Contract or notified to the Contractor from time to time for the purpose of communications to the Employer and/or the Engineer.
- (c) Notices and communications to given or made to the Contractor by the Employer or the Engineer shall be addressed as specified from time to time by the Contractor for the purpose.
- (d) 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 if 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.
- 1.12** “Contractor’s Equipment” means all appliances or things of whatsoever nature required in or about the construction and completion of the Works but does not include materials or other things intended to form or forming part of the Works.
- 1.13** “Loaned Plant” means any plant or equipment loaned by the Employer to the Contractor in connection with the Works.
- 1.14** “Project Data” means any and all documents, designs, calculations, programmes, models, data and/or information, in whatever form or format relating to or in any way touching upon the Works.
- 1.15** “Group Company” means in relation to the Employer, another body corporate which is a Subsidiary of or a Holding Company of the Employer.

1.16 “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(a) shall be deemed to be satisfied if that other company holds more than one quarter of the voting rights in it.

1.17 “Construction Industry Scheme” is the scheme for 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.

2 ENGINEER

Engineer to be a named individual

2.1 The Employer shall appoint and notify to the Contractor in writing a named individual to act as the Engineer. If at any time the Engineer is unable to continue the duties required by the Contract the Employer shall forthwith appoint a replacement and shall so notify the Contractor in writing.

2.2 The Engineer may appoint a named **Engineer’s Representative** and/or other suitably experienced person to watch and inspect the Works and the Engineer may delegate to such person in writing any of the powers of the Engineer herein provided that prior notice in writing is given to the Contractor.

Engineer’s power to give instructions

2.3 The Engineer shall have power to give instructions for

- (a) any variation to the Works including any addition thereto or omission therefrom
- (b) carrying out any test or investigation
- (c) the suspension of the Works or any part of the Works in accordance with Clause 2.6
- (d) any change in the intended sequence of the Works
- (e) measures necessary to overcome or deal with any obstruction or condition falling within Clause 3.8
- (f) the removal and/or re-execution of any work or materials not in accordance with the Contract
- (g) the elucidation or explanation of any matter to enable the Contractor to meet his obligations under the Contract
- (h) the exclusion from the Site of any person employed thereon which power shall not be exercised unreasonably.

- 2.4** The Engineer or **Engineer's Representative** and/or other suitably experienced person who exercises any delegated power shall upon the written request of the Contractor specify in writing under which of the foregoing powers any instruction is given. If the Contractor is dissatisfied with any such instruction he shall be entitled to refer the matter to the Engineer for his decision.
- Dayworks** **2.5** The Engineer may order in writing that any work shall be executed on a daywork basis. Subject to the production of proper records the Contractor shall then be entitled to be paid in accordance with a Daywork Schedule included in the Contract or otherwise in accordance with the "Schedules of Dayworks carried out incidental to Contract Work" issued by the Federation of Civil Engineering Contractors and current at the date the work is carried out.
- Engineer may suspend the progress of the Works** **2.6** (1) The Engineer may order the suspension of the progress of the Works or any part thereof
- (a) for the proper execution of the work
 - (b) for the safety of the Works or any part thereof
 - (c) by reason of weather conditions
- and in such event may issue such instructions as may in his opinion be necessary to protect and secure the Works during the period of suspension.
- (2) If permission to resume work is not given by the Engineer within a period of 60 days from the date of the written Order of Suspension then the Contractor may serve a written notice on the Engineer requiring permission to proceed with the Works within 14 days from the receipt of such notice. Subject to the Contractor not being in default under the Contract the Engineer shall grant such permission and if such permission is not granted the Contractor may by a further written notice served on the Engineer elect to treat the suspension where it affects a part of the Works as an omission under Clause 2.3(a) or where the whole of the Works is suspended as an abandonment of the Contract by the Employer.
- Parties bound by Engineer's instructions** **2.7** Each party shall be bound by and give effect to every instruction or decision of the Engineer unless and until **it is altered or amended pursuant to Clause 11.**
- 2.8** **No approvals, comments, instructions, decisions, consents or advice from the Employer, Engineer or Engineer's Representative nor any enquiry or inspection which the Employer, Engineer or Engineer's Representative may make or have carried out for its benefit or on its behalf shall**

in any way reduce or extinguish the Contractor's obligations and liabilities under the Contract.

3 GENERAL OBLIGATIONS

Contractor to perform and complete the Works **3.1** The Contractor shall **construct, install, test, commission, complete and (where required by the Contract) design and/or repair** the Works and shall (subject to any provision in the Contract) provide all supervision labour materials plant transport and temporary works which may be necessary therefor.

Responsibility for care of the Works **3.2** (1) The Contractor shall take full responsibility for the care of the Works from the starting date until 14 days after the Engineer issues a Certificate of Practical Completion for the whole of the Works pursuant to Clause 4.5.

(2) If the Engineer issues a Certificate of Practical Completion in respect of any part of the Works before completion of the whole of the Works the Contractor shall cease to be responsible for the care of that part of the Works 14 days thereafter and the responsibility of its care shall then pass to the Employer.

(3) The Contractor shall take full responsibility for the care of any outstanding work which he has undertaken to finish during the Defects Correction Period until such outstanding work is complete.

Provided always that the Contractor shall remain responsible for any damage to completed work caused as a result of his other activities on the Site.

Contractor to repair and make good **3.3** (1) In case any damage loss or injury from any cause whatsoever (save and except the Excepted Risks) shall happen to the Works or any part thereof while the Contractor is responsible for their care the Contractor shall at his own cost repair and make good the same so that at completion the Works shall be in good order and condition and conform in every respect with the requirements of the Contract and the Engineer's instructions.

(2) To the extent that any damage loss or injury arises from any of the Excepted Risks the Contractor shall if required by the Engineer repair and make good the same at the expense of the Employer.

(3) The Contractor shall also be liable for any damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of completing outstanding work or complying with his obligations under clauses 4.7 and 5.2.

Contractor's **3.4** The Contractor shall notify the Engineer of the person duly

The information contained within this document is confidential and shall not be disclosed to third parties without the prior written consent of the Employer

**authorised
representative**

authorised to receive instructions on behalf of the Contractor.

**Setting out and 3.5
safety of site
operations**

(1) The Contractor shall take full responsibility for the setting out of the Works and for the adequacy stability and safety of his site operations and methods of construction.

In addition the Contractor shall:-

(a) comply with the operating works rules applicable to the premises where the Works are to be carried out;

(b) comply with the Employer's safe systems of working which includes permits to work and clearance notes;

(c) obtain copies of the operating works rules from the Engineer and failure by the Contractor in obtaining copies of these works rules will not relieve him of the responsibilities and obligations imposed by them;

(d) obtain from the Engineer copies of the operating works rules applicable to all Contractor's employees relevant to the particular sites and issue a copy to all personnel (including sub-contractors and agents) prior to them entering into the Employer's premises; and

(e) comply with any requirement of the Engineer to require any personnel to attend a safety induction course.

(2) The Contractor shall take full responsibility for the suitability and safety of the Contractor's Equipment used in the carrying out of the Works and no Contractor's Equipment shall be used which may be unsuitable unsafe or liable to cause damage to the Works or damage to existing buildings, plant or property.

(3) Without prejudice to the provisions of sub-clause (2) above the Contractor shall permit the Engineer to inspect the Contractor's Equipment at any time and if in the Engineer's opinion it is unsuitable it shall not be used on the Works. The additional cost (if any) incurred due to the replacement of such equipment shall be borne by the Contractor.

(4) The Contractor shall not display any advertisement on the Site or elsewhere in connection with the Works without the prior written approval of the Engineer.

(5) The Contractor shall not take photographs nor make films or video recordings of the Works or any section or

part thereof or of any property of the Employer without the prior written consent of the Engineer.

(6) The Contractor and its agents, servants or 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 the performance, variation, cancellation or termination of the Contract (either actual or projected) except with the prior written consent of the Employer.

(7) The Contractor shall do everything necessary to comply with its obligations as to confidentiality under Clause 3.6(4) and sub-clauses (4), (5) and (6) of this Clause and, if required by the Employer, the Contractor and its individual personnel shall sign a confidentiality agreement approved by the Employer.

**Engineer to
provide
necessary
information**

3.6

(1) Save in relation to the elements of the Works which have been or are being designed and/or specified by the Contractor and subject to Clause 3.5 the Engineer shall be responsible for the provision of any necessary instructions drawings or other information.

(2) (a) The property and copyright in Project Data provided by or on behalf of the Employer to the Contractor shall remain with the Employer and the Contractor is only permitted to make at his own expense such copies as are required by him for the purposes of carrying out and completing the Works under the Contract.

(b) The Contractor as beneficial owner hereby grants to the Employer an irrevocable, royalty-free, non-exclusive licence to copy and use the Project Data, whether in hard copy versions or held or stored on electronic media, which are produced by, or on behalf of, the Contractor in the course of performing its obligations under the Contract for any purpose whatsoever connected with the Works or any part or parts of the Works. The copyright licence shall include the right to reproduce the designs contained in the Project Data and the purposes for which the Project Data may be used shall include, but not be limited to, the design, construction, installation, completion, testing, commissioning, reinstatement, replacement, reconstruction, use, operation, repair, maintenance, modification, extension, demolition, disposal, advertisement, letting and/or sale of the Works and/or any part or parts thereof. The Employer shall have the right to grant sub-licences in the same terms as this licence and to transfer the licence to third parties without requiring the consent of the

Contractor. The Contractor hereby undertakes to procure the necessary rights from any sub-contractor to give effect to this sub-clause 3.6(2)(b). The Contractor will not be liable for any use of the Project Data prepared or provided by the Contractor for any purpose other than that for which it was originally prepared and such other uses as are reasonably foreseeable unless the Contractor authorises such use and confirms that the Project Data is suitable for it.

(c) The Contractor shall prepare or provide Project Data in the form and format specified by the Engineer and shall provide copies to the Engineer on demand of any and all Project Data requested by the Engineer and in any event on completion or earlier termination of the Contract.

(d) Where required by the Contract or by the Engineer the Contractor shall submit Project Data to the Engineer for approval in accordance with the programme or where the programme does not specify a date or dates for submission as soon as reasonably practicable.

(e) If in the opinion of the Engineer any Project Data prepared or provided by the Contractor does not comply with the requirements of the Contract he shall so inform the Contractor in writing giving his reasons and may withhold his approval thereof until the Contractor has re-submitted the Project Data in the required form with appropriate modifications.

(f) The Contractor shall immediately notify the Engineer if he later wishes to modify any design which the Engineer has previously approved and shall submit the modified Project Data to the Engineer for consideration and approval.

(g) Should the Engineer fail within a reasonable period following the submission or re-submission of any Project Data under this Clause to notify the Contractor either that he approves the data or that he is withholding his approval, the Engineer shall take such delay into account when determining any revision of the programme and/or claim for additional costs from the Contractor.

(3) One copy of the Contract and Project Data and all working drawings shall be kept by the Contractor on Site and the same shall be available at all reasonable times for inspection and use by the Engineer his assistants and any other person authorised by the Engineer in writing.

(4) Project Data together with all other information in

whatsoever form relating to the Works or to the Employer's business 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 purposes of the execution of the Works. The Contractor shall impose the same obligations of secrecy and confidentiality on those parties to whom the Information is passed. These obligations will continue in full force and effect notwithstanding the termination of this Contract, or the Contractor's employment under it but shall not in any event apply to 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.
- (5) (a) The Contractor shall indemnify the Employer against any claims for or in respect of infringement of patent, registered design, trademark, copyright or any other intellectual property rights arising out of or in connection with the Works or the use by the Employer of Project Data prepared/provided by the Contractor in accordance with the Contract and against all costs, losses, damages, and expenses to which the Employer may become liable in any action for such infringement or for which the Employer may become liable in any such action provided that this indemnity will not apply where the infringement arises as a result of and in relation to any Project Data provided by the Employer in circumstances where the Contractor has properly discharged its duty to warn under Clause 3.7(3).
- (b) Any inventions made or created by the Contractor or by its employees in the performance of the Works shall belong to the Employer absolutely. The Contractor shall give or procure the giving of such assistance including the execution of all necessary documents to procure the vesting of any patent (or right to apply for the same) for such inventions in the Employer as absolute owner.

**Contractor's
responsibility
for design**

3.7

- (1) To the extent required by the Contract, the Contractor will design the Works in accordance with the requirements of the Contract and the instructions of the Engineer. In so doing, the Contractor warrants to the Employer that it has exercised and will continue to exercise

in the design of the Works under the Contract all the skill, care and diligence to be expected of a properly qualified and competent contractor experienced in carrying out such design in relation to projects of similar scope, nature and complexity to the Works and that the design can and will be completed in accordance with the programme furnished in accordance with Clause 4.3.

(2) In so far as the Contractor has already designed the Works it warrants that it has carried out such design in accordance with the standards of skill, care and diligence required by the Contract and in compliance with all warranties, undertakings and other terms and conditions set out in the Contract.

(3) The Contractor shall be responsible for the sufficiency of and any discrepancies (including errors and inaccuracies) in the Project Data provided by him whether or not such Project Data has been approved by the Engineer under Clause 3.6(2)(d) and the Contractor shall make good any deficiencies and/or rectify such discrepancies as soon as possible at its own expense. The Contractor shall satisfy himself that the information provided by or on behalf of the Employer or Engineer whether contained within the Contract, Project Data or otherwise is adequate and sufficient and will not prejudice the performance of any of his obligations under the Contract. The Contractor shall inform the Engineer immediately of any inaccuracy, discrepancy or insufficiency in such information and the Engineer 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 extension of time or additional payment in respect of such clarification.

Adverse physical conditions and artificial obstructions—delay and extra cost

3.8

(1) If during the carrying out of the Works the Contractor encounters any artificial obstruction or physical condition (other than a weather condition or a condition due to weather) which obstruction or condition could not in his opinion reasonably have been foreseen by an experienced contractor the Contractor shall as early as practicable give written notice thereof to the Engineer.

(2) If in the opinion of the Engineer such obstruction or condition could not reasonably have been foreseen by an experienced contractor then the Engineer shall certify a fair and reasonable sum and the Employer shall pay such sum to cover the cost of performing any additional work or using any additional plant or equipment together with a reasonable percentage addition in respect of profit as a result of

(a) complying with any instructions which the Engineer may issue

and/or

(b) taking proper and reasonable measures to overcome or deal with the obstruction or condition in the absence of instructions from the Engineer

together with such sum as shall be agreed as the additional cost to the Contractor of the delay or disruption arising therefrom. Failing agreement of such sums the Engineer shall determine the fair and reasonable sum to be paid.

**Facilities for
other
contractors**

3.9 Possession of the Site shall not be exclusive to the Contractor who shall, as directed by the Engineer, allow others to work on the Site and afford them all reasonable access and facilities to do so.

3.10 The Contractor shall at all times throughout the performance of the Contract and at his own cost maintain the Site in a clean and tidy condition and shall remove all rubbish progressively as the Works proceed unless otherwise agreed in writing by the Engineer. All surplus materials and debris arising out of the Works shall, if so instructed by the Engineer, be removed from the Site or taken to a place nominated by the Engineer at the Contractor's cost. The Contractor shall comply with all relevant waste management and other environmental requirements. For the avoidance of doubt, compliance with such requirements is not a cause of delay under Clause 4.4.

3.11 (1) Where the Employer, for the purposes of the Contract, issues plant, equipment, goods or materials ("the Materials") to the Contractor such materials shall be and remain the property of the Employer. The Contractor shall protect and maintain the Materials in good order and condition subject, in the case of tooling, patterns and similar items, to fair wear and tear. The Contractor shall use the Materials solely in connection with the Contract. Surplus Materials shall be returned, disposed of or otherwise dealt with at the Employer's direction. Damage to or loss of Materials arising from bad workmanship by or the negligence of the Contractor shall be made good at the Contractor's expense.

(2) On receipt of Materials the Contractor shall carry out a reasonable visual examination to check that the Materials are free from defects or deficiencies and accord with the Contract. The Contractor shall notify the Employer as soon as practicable, but within seven days, where any such defects or deficiencies are discovered (whether at or subsequent to the

receipt of the Materials) and the Employer shall replace the Materials or any part of them or make good the deficiencies within a reasonable time of such notice. Any additional costs incurred by the Contractor caused by the failure of the Employer so to do shall be paid by the Employer provided that the Employer shall be under no liability to pay such extra costs if the defect or deficiency was not so notified or arose out of the Contractor's failure to maintain the Materials in good order and condition.

(3) The Contractor shall provide secure storage for the Materials while they are in the Contractor's possession.

3.12 (1) Where Loaned Plant is operated by a servant or agent of the Employer:

(a) The operator shall not become the servant of the Contractor but shall carry out with the Loaned Plant such work as he may be directed to do by the Contractor.

(b) The Contractor shall be liable for any damage to the Loaned Plant caused by misdirection or mis-use of it due to negligence on the part of the Contractor, his servants or agents.

(c) The Employer shall be liable for any damage to the Loaned Plant caused by a defect in or faulty operation of the Loaned Plant.

(2) Where Loaned Plant is operated by a servant of the Contractor or an independent contractor, the Contractor shall be liable for all damage to the Loaned Plant unless he can show that it was caused by a defect present therein at the commencement of the loan and he shall be liable for any loss (including loss by theft) of the Loaned Plant.

(3) The Employer shall have the right, upon giving reasonable notice to the Contractor, to withdraw Loaned Plant at any time and shall be under no liability whatever in connection with failing to lend plant at any time.

3.13 Where the Works include any repair of the Employer's plant, machinery, or other equipment used by the Employer in the conduct of its business (the "Employer's Equipment"), the Contractor shall immediately notify the Engineer if at any time the Contractor reasonably considers that the Employer's Equipment is beyond economic repair for reasons either beyond the control of the Contractor or which would not have been reasonably apparent to the Contractor at the time of tender. If the Engineer agrees with the Contractor's assessment, he shall issue instructions on the matter to the Contractor in accordance

with Clause 2.3. Alternatively, the Employer may terminate the Contract in accordance with Clause 15.

4 STARTING AND COMPLETION

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| Starting date to be notified in writing | 4.1 | The starting date shall be the date specified in the Contract or if no date is specified a date to be notified by the Engineer in writing being within a reasonable time and in any event within 28 days after the date of acceptance of the Tender. the Contractor shall begin the Works at or as soon as reasonably possible after the starting date. |
| Period for completion | 4.2 | The period or periods for completion shall be as stated in the Contract or such extended time as may be granted under Clause 4.4 and shall commence on the starting date. |
| Contractor's programme | 4.3 | The Contractor shall within 14 days after the starting date if so required provide a programme of his intended activities. The Contractor shall at all times proceed with the Works with due expedition and reasonably in accordance with his programme or any modification thereof which he may provide or which the Engineer may request. |
| Extension of period for completion | 4.4 | <p>If the progress of the Works or any part thereof is delayed for any of the following reasons</p> <ul style="list-style-type: none">(a) an instruction given under Clause 2.3(a)(c) or (d)(b) an instruction given under Clause 2.3(b) where the test or investigation fails to disclose non-compliance with the Contract(c) encountering an obstruction or condition falling within Clause 3.8 and/or an instruction given under Clause 2.3(e)(d) delay in receipt by the Contractor of necessary instructions drawings or other information(e) failure by the Employer to give adequate access to the Works or possession of land required to perform the Works(f) delay in receipt by the Contractor of Materials to be provided by the Employer under the Contract(g) exceptional adverse weather(h) any delay impediment prevention or default by the Employer(j) other special circumstances of any kind whatsoever outside the control of the Contractor |

then provided that the Contractor has taken all reasonable steps to avoid or minimise the delay the Engineer shall upon a written request by the Contractor promptly by notice in writing grant such extension of the period for completion of the whole or part of the Works as may in his opinion be reasonable. The extended period or periods for completion shall be subject to regular review provided that no such review shall result in a decrease in any extension of time already granted by the Engineer.

Certificate of Practical Completion of Works or part of Works

4.5

(1) Practical completion of the whole of the Works shall occur when the Works reach a state when notwithstanding any defect or outstanding items therein they are taken or are fit to be taken into use or possession by the Employer **provided that practical completion shall not occur until the Contractor has complied with its obligations under 4.5(4).**

(2) Similarly practical completion of part of the Works may also occur but only if it is fit for such part to be taken into use or possession independently of the remainder.

(3) The Engineer shall upon the Contractor's request promptly certify in writing the date on which the Works or any part thereof has reached practical completion or otherwise advise the Contractor in writing of the work necessary to achieve such completion.

(4) Within 14 days of a request by the Engineer so to do, and in any event prior to practical completion, the Contractor will submit to the Engineer one set of operation and maintenance manuals together with as constructed record drawings and sufficient details to enable the Employer to operate, maintain, dismantle, reassemble and adjust all or any relevant part of the Works. Subject to compliance with Clause 7.10, the Employer shall be entitled to withhold any payments due to the Contractor (either accrued or future) until such time as the Contractor complies with the requirements of this Clause to the satisfaction of the Engineer.

Liquidated damages

4.6

If by the end of the period or extended period or periods for completion the Works have not reached practical completion the Contractor shall be liable to the Employer in the sum stated in the **Contract** as liquidated damages for every week (or pro rata for part of a week) during which the Works so remain uncompleted up to the limit stated in the **Contract**. Similarly where part or parts of the Works so remain uncompleted the Contractor shall be liable to the Employer in the sum stated in the **Contract** reduced in proportion to the value of those parts which have been certified as complete provided that the said limit shall not be reduced.

Provided that if after liquidated damages have become payable in respect of any part of the Works the Engineer issues a

variation order under Clause 2.3(a) or an artificial obstruction or physical condition within the meaning of Clause 3.8 is encountered or any other situation outside the Contractor's control arises any of which in the opinion of the Engineer results in further delay to that part of the Works

(a) the Engineer shall so inform the Contractor and the Employer in writing
and

(b) the Employer's further entitlement to liquidated damages in respect of that part of the Works shall be suspended until the Engineer notifies the Contractor and the Employer in writing that the further delay has come to an end.

Such suspension shall not invalidate any entitlement to liquidated damages which accrued before the period of delay started to run and any monies deducted or paid in accordance with this Clause may be retained by the Employer without incurring interest thereon under Clause 7.8.

Should the Contract not include a statement as to sums payable in respect of liquidated damages, the Employer's rights and remedies in respect of the recovery of damages for delay shall be preserved.

Rectification of defects 4.7

The Contractor shall rectify any defects and complete any outstanding items in the Works or any part thereof which reach practical completion promptly thereafter or in such a manner and/or time as may be agreed or otherwise accepted by the Engineer. The Contractor shall maintain any parts which reach practical completion in the condition required by the Contract until practical completion of the whole of the Works fair wear and tear excepted.

5 DEFECTS

Definition of Defects Correction Period 5.1

"Defects Correction Period" means the period of twelve months from the date certified as practical completion of the whole of the Works or the last period thereof or such other period as is stated in the Contract.

Cost of remedying defects 5.2

If any defects appear in the Works during the Defects Correction Period which are due to the use of materials or workmanship not in accordance with the Contract the Engineer shall give written notice thereof and the Contractor shall make good the same at his own cost.

Remedy for Contractor's 5.3

If any such defects are not corrected within a reasonable time by the Contractor the Employer may after giving 14 days written notice to the Contractor employ others to correct the same and

failure to correct defects the cost thereof shall be payable by the Contractor to the Employer.

Engineer to certify completion **5.4** Upon the expiry of the Defects Correction Period and when any outstanding work notified to the Contractor under Clause 5.2 has been made good the Engineer shall upon the written request of the Contractor certify the date on which the Contractor completed his obligations under the Contract to the Engineer's satisfaction.

Unfulfilled obligations **5.5** Nothing in Clause 5 shall affect the rights of either party in respect of defects appearing after the Defects Correction Period.

6 ADDITIONAL PAYMENTS

Engineer to determine additional sums and deductions **6.1** If the Contractor carries out additional works or incurs additional cost including any cost arising from delay or disruption to the progress of the Works as a result of any of the matters referred to in paragraphs (a) (b) (d) (e) or (f) of Clause 4.4 the Engineer shall certify and the Employer shall pay to the Contractor such additional sum as the Engineer after consultation with the Contractor considers fair and reasonable. Likewise the Engineer shall determine a fair and reasonable deduction to be made in respect of any omission of work.

Valuation of additional work **6.2** In determining a fair and reasonable sum under Clause 6.1 for additional work the Engineer shall have regard to the prices contained in the Contract.

7 PAYMENT

Valuation of the Works **7.1** The Works shall be valued as provided for in the Contract.

Monthly Statements **7.2** Unless otherwise agreed the Contractor shall submit to the Engineer at intervals of not less than one month commencing within one month after the stating date of the Works a statement showing the estimated value of the Works executed up to the end of that period together with a list of any goods or materials delivered to the Site and their value and any other items which the Contractor considers should be included in an interim certificate.

Interim Payments **7.3** Within **14** days of the delivery of such statement the Engineer shall certify to the Contractor such sum as **he** considers is properly due less retention at the rate of **5% or such other rate as is stated in the Contract** and up to **any** limit set out in the **Contract**. Until practical completion of the whole of the Works the Engineer shall not be required to certify any payment less

than **any sum that may be** stated in the **Contract** as the minimum amount of interim certificate. The Engineer may by any certificate delete correct or modify any sum previously certified by him. **The Contractor shall submit an invoice dated no earlier than the end of the month in which the monthly statement was submitted and which agrees in all respects with the Engineer's certificate.**

The payments become due on certification. **It is agreed by the parties that the final date for payment shall be the date calculated in accordance with Clause 7.12.**

Payment of retention money

7.4

One half of the retention money shall be certified by the Engineer within 14 days after the date on which the Engineer issues a Certificate of Practical Completion of the whole of the Works. **The payment will become due on certification. It is agreed by the parties that the final date for payment shall be the date calculated in accordance with Clause 7.12.**

7.5

The remainder of the retention money **shall be certified by the Engineer within** 14 days after the issue of the Engineer's certificate under Clause 5.4. **The payment will become due on certification. It is agreed by the parties that the final date for payment shall be the date calculated in accordance with Clause 7.12.**

Contractor to submit final Account

7.6

Not later than 28 days after the date of the Certificate of Practical Completion of the Works the Contractor shall submit to the Engineer a statement and supporting documentation showing in detail the value in accordance with the Contract of the work done in accordance with the Contract together with all further sums which the Contractor considers to be due to him under the Contract. Within two months after receipt of the said statement and of all information reasonably required for its verification (or in default of such statement and information not later than 6 months after the date of the Engineer's certificate under Clause 5.4) the Engineer shall issue a certificate stating the amount which in his opinion is due under the Contract up to the date of the Certificate of Practical Completion (after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled under the Contract) and the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer as the case may be. The Contractor shall not be entitled to claim and the Employer shall have no liability in respect of anything arising under the Contract which was not included in the said statement (or in default of the said statement not included in the said Engineer's certificate) save in respect of the rights and obligation of the parties to be observed and performed during the Defects Correction Period and thereafter.

All payments to be made under this Clause 7.6 shall become due on certification. In the event of any balance owing from the Contractor to the Employer the final date for payment by the Contractor shall be the first working day after the end of the month following the month in which the Engineer's certificate is dated.

In the event of any balance owing from the Employer to the Contractor, then the Contractor shall submit an invoice which agrees in all respects with the Engineer's certificate. It is agreed by the parties that the final date for payment shall be the date calculated in accordance with Clause 7.12.

- 7.7** The final certificate shall save in the case of fraud or dishonesty relating to or affecting any matter dealt with in the certificate be conclusive evidence as to the sum due to the Contractor under or arising out of the Contract (subject only to Clause 7.11) unless either party has within 28 days after the issue of the final certificate given notice under Clause 11.3 or Clause 11.7.
- Interest on overdue payments** **7.8** In the event of failure by the Engineer to certify or the Employer to make payment in accordance with the Contract or any finding of an arbitrator to such effect the Employer shall pay to the Contractor interest compounded monthly on the amount which should have been certified or paid on a daily basis at a rate equivalent to ½% per annum above the **London Interbank Overnight Lending Rate**.
- Certificates and payment notices** **7.9** Every certificate issued by the Engineer pursuant to this Clause shall be sent to the Employer and on the Employer's behalf to the Contractor. By this certificate 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.
- Notice of intention to withhold payment** **7.10** Where a payment under Clause 7.3 or 7.6 is to differ from that certified 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 payment or if there is more than one ground each ground and the amount attributable to it.
- Value Added Tax** **7.11** (1) The Contractor shall be deemed not to have allowed in his tender for the tax payable by him as a taxable person to the Commissioners of Customs and Excise being tax chargeable on any taxable supplies to the Employer which are to be made under the Contract.
- (2) All certificates issued by the Engineer under Clauses 7.3 to 7.7 shall be net of Value Added Tax.
- (3) In addition to the payments due under such certificates the Employer shall separately identify and pay to the Contractor

any Value Added Tax properly chargeable by the Commissioners of Customs and Excise on the supply to the Employer of any goods and/or services by the Contractor under the Contract.

Final date for payment **7.12** **The final date for payment of any payment to be made under this Clause 7 shall be whichever is the later of the following**

(a) the first working day after the end of the month following the month in which the Contractor's invoice is dated or

(b) 14 days after the requirements of the Construction Industry Scheme have been complied with by the Contractor to the satisfaction of the Employer.

8 ASSIGNMENT AND SUB-CONTRACTING

Assignment **8.1** **(1) The Employer shall be entitled to assign the benefit of the Contract to another Group Company without the consent of the Contractor.**

(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 thereon or thereunder without the prior written consent of the Employer.

(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.

No sub-contracting without Engineer's consent **8.2** **The Contractor shall not sub-contract the whole of the Works. The Contractor shall not sub-contract any part of the Works without the consent of the Engineer which consent shall not unreasonably be withheld.**

Contractor responsible for sub-contractors **8.3** **The Contractor shall be responsible for any acts defaults or neglects of any sub-contractor his agents servants or workmen in the execution of the Works or any part thereof as if they were the acts defaults or neglects of the Contractor.**

9 STATUTORY OBLIGATIONS

Contractor to **9.1** **The Contractor shall subject to Clause 9.3 comply with and give all notices required by any statute statutory instrument rule or**

comply with statutory requirements

order or any regulation or by-law applicable to the construction of the Works (hereinafter called "the statutory requirements") and shall pay all fees and charges which are payable in respect thereof.

Employer to obtain consents

9.2

Unless otherwise stated in the Contract the Employer shall be responsible for obtaining in due time any consent approval licence or permission but only to the extent that the same may be necessary for the Works in their permanent form.

Contractor's exemption from liability to comply with statutes

9.3

The Contractor shall not be liable for any failure to comply with the statutory requirements where and to the extent that such failure results from the Contractor having carried out the Works in accordance with the Contract or with any instruction of the Engineer.

10

LIABILITIES AND INSURANCE

Insurance of the Works

10.1

For the purposes of this Clause 10 the following expressions shall have the following meanings:

"damage" means actual physical damage or loss to property and any pecuniary losses resulting therefrom.

"Associated Company" means any subsidiary company or any holding company of the Employer or any subsidiary company of such holding company from time to time as these terms are defined in section 736 of the Companies Act 1985 or any statutory modification or re-enactment of that section.

(1) The Employer shall without limiting the Contractor's obligations and responsibilities under Clause 3.2 insure to protect the Contractor and all his sub-contractors against their legal liabilities

(a) to make good any damage to the Works or materials, plant or equipment for incorporation therein whilst on the Site;

(b) to make good any damage to the Works or materials, plant or equipment for incorporation therein which may arise whilst they are in transit;

(c) arising from damage to any other property belonging to the Employer or his Associated Companies in excess of the amounts specified under Clause 10.6 to their full value against all loss or damage from whatever cause arising (other than the Excepted Risks).

(2) Such insurance shall be effected in such a manner that the Employer and Contractor are covered for the period stipulated in Clause 3.2 and are also covered for loss or

damage arising during the Defects Correction Period from such cause occurring prior to the commencement of the Defects Correction Period and for any loss or damage occasioned by the Contractor in the course of any operation carried out by him for the purpose of complying with his obligations under Clauses 4.7 and 5.2.

(3) The Contractor **and/or the Employer** shall not be liable to insure against the necessity for the repair or reconstruction of any work constructed with materials or workmanship not in accordance with the requirements of the Contract.

(4) Any amounts not insured or not recovered from insurers whether as excesses carried under the policy or otherwise shall be borne by the Contractor or the Employer in accordance with their respective responsibilities under Clauses 3.2 and 3.3.

(5) (a) **The Contractor shall give notice as soon as possible and in any event by the next working day following the occurrence of an incident likely to form the subject of a claim under the Employer's insurance and shall give all the information and assistance in respect thereof that the Employer's insurers may require and shall not negotiate pay settle or admit or repudiate any claim without such insurers' written consent and shall permit the insurers to take proceedings in the name of the Contractor to recover compensation or secure an indemnity from any third party in respect of any matters covered by the said insurance.**

(b) **Any notice to be given under sub-clause (a) above shall be sent to AstraZeneca Risk and Insurance Services, 1 Adam Street, London WC2N 6AW; Telephone 0171-930-9766; Telefax 0171-839-7479 and to the Employer.**

Contractor to indemnify the Employer

10.2 The Contractor shall indemnify and keep the Employer indemnified against all losses and claims for injury or damage to any person or property whatsoever (save for the matters for which the Contractor is responsible under Clause 3.2) which may arise out of or in consequence of the Works and against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto subject to Clauses 10.3 and 10.4.

10.3 The liability of the Contractor to indemnify the Employer under Clause 10.2 shall be reduced proportionately to the extent that the act or neglect of the Engineer or the Employer his servants his agents or other contractors not employed by the Contractor may have contributed to the said loss injury or damage.

10.4 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

(a) damage to crops being on the Site (save in so far as possession has not been given to the Contractor)

(b) the use or occupation of land (which has been provided by the Employer) by the Works or any part thereof or for the purpose of constructing completing and maintaining the Works (including consequent loss of crops) or interference whether temporary or permanent with any right of way light air or water or other easement or quasi easement which are the unavoidable result of the construction of the Works in accordance with the Contract

(c) the right of the Employer to construct the Works or any part thereof on over under in or through any land

(d) damage which is the unavoidable result of the construction of the Works in accordance with the Contract

(e) 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 Engineer or 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.

Employer to indemnify Contractor

10.5 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 Clause 10.4. Provided always that the Employer's liability to indemnify the Contractor under paragraph (e) of Clause 10.4 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.

Employer to approve insurance

10.6 The Contractor shall throughout the execution of the Works maintain insurance against damage loss or injury for which he is liable under Clause 10.2 subject to the exceptions provided by Clauses 10.3 and 10.4 **together with insurance of equipment used by the Contractor to its full value in respect of any accidental loss or damage and so far as insurance is obtainable, insurance for the Additional Risks.** Such insurance shall be effected with an insurer and in terms approved by the Employer (which approval shall not be unreasonably withheld) for at least the amount stated in the Appendix **or if no amount is stated £2,000,000 (two million pounds) sterling for each and every incident.** The terms of such insurance shall include a provision whereby in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Employer the insurer will indemnify the Employer against any such claims and any costs charges and expenses in respect thereof.

- Contractor to produce policies of insurance**
- 10.7** Both the Employer and the Contractor shall comply with the terms of any policy issued in connection with the Contract and shall whenever required produce to the Employer the policy or policies of insurance and the receipts for the payment of the current premiums.
- 10.8** **The Contractor shall use its best endeavours to maintain, with reputable insurers carrying on business in the United Kingdom, from the date hereof and for a period expiring no earlier than twelve years after the date of the Contract design indemnity insurance in the amount of £500,000 (five hundred thousand pounds) for each and every claim arising out of any one event in respect of any negligence omission of default on the part of the Contractor provided that such insurance is generally available to contractors carrying out work of a similar nature to the Works. The Contractor shall notify the Employer in writing from time to time of any change in its professional indemnity insurance arrangements and, within 7 days of the Employer's request at any time, the Contractor shall produce for inspection documentary evidence as to its compliance with this Clause.**
- 11 DISPUTES**
- Settlement of disputes**
- 11.1** If any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Works (excluding a dispute under Clause 7.11 but including a dispute as to any act or omission of the Engineer) whether arising during the progress of the Works or after their completion it shall be settled according to the following provisions.
- Avoidance of disputes**
- 11.2** In order to overcome where possible the causes of disputes and in those cases where disputes are likely still to arise to facilitate their clear definition and early resolution (whether by agreement or otherwise) the following procedure shall apply for the avoidance and settlement of disputes.
- Matters of dissatisfaction**
- 11.3** If at any time
- (a) the Contractor is dissatisfied with any act or instruction of the **Engineer's Representative** or any other person responsible to the Engineer or
- (b) the Employer or the Contractor is dissatisfied with any decision opinion instruction direction certificate or valuation of the Engineer or with any other matter arising under or in connection with the Contract or the carrying out of the Works
- the matter of dissatisfaction **may** be referred to the Engineer who shall notify his written decision to the Employer and the Contractor within one month of the reference to him.

Disputes

11.4 The Employer and the Contractor agree that no matter shall constitute nor be said to give rise to a dispute **capable of reference to conciliation or arbitration under Clause 11.6 or Clause 11.10 respectively** unless and until in respect of that matter

(a) **the matter has been referred to the Engineer under Clause 11.3 and** the time for the giving of a decision by the Engineer has expired or the decision given is unacceptable or has not been implemented and in consequence the Employer or the Contractor has served on the other and on the Engineer a notice in writing (hereinafter called the Notice of Dispute) or

(b) an adjudicator has given a decision on a dispute under **Clause 11.5** and the Employer or the Contractor **is not satisfied with the decision**, and in consequence the other has served on him and the Engineer a Notice of Dispute

and the dispute shall be that stated in the Notice of Dispute.

11.5 (a) Notwithstanding the existence of a dispute following the service of a Notice **of Dispute** and unless the Contract has already been **terminated** or abandoned the Employer and the Contractor shall continue to perform their obligations.

(b) The Employer and the Contractor shall give effect forthwith to every decision of

(i) the Engineer on a matter of dissatisfaction given under **Clause 11.3** and

(ii) **an** adjudicator on a dispute given under **Clause 11.7**

unless and until that decision is revised by agreement of the Employer and Contractor or pursuant to this **Clause 11.**

Conciliation

11.6 (a) The Employer or the Contractor may at any time before service of a Notice to Refer to arbitration under Clause **11.10** by notice in writing seek the agreement of the other for the dispute to be considered under the Institution of Civil Engineers' Conciliation Procedure (1994) or any amendment or modification thereof being in force at the date of such notice.

(b) If the other party agrees to this procedure any recommendation of the conciliator shall be deemed to have been accepted as finally determining the dispute by agreement so that the matter is no longer in dispute unless a Notice of Adjudication under Clause **11.7** or a Notice to Refer to arbitration under Clause **11.10** has been served in respect of that dispute not later than 1

month after receipt of the recommendation by the dissenting party. **Provided always that if the Notice of Dispute was served in respect of an adjudicator's decision then no Notice of Adjudication under Clause 11.7 may be given.**

Adjudication 11.7

(a) The Employer and the Contractor each has the right to refer any 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 his intention so to do. The adjudication shall be conducted under the Institution of Civil Engineers' Adjudication Procedure (1997) (**the "Procedure"**) 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 **in accordance with the procedures for appointing an adjudicator set out in paragraphs 3.1 to 3.5 of the Procedure** 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.

11.8 The decision of the adjudicator shall be binding until the dispute is finally determined by arbitration or by agreement.

11.9 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.

Arbitration 11.10

(a) All disputes arising under or in connection with the Contract or the carrying out of the Works 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 Clause **11.7** 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.

Appointment of arbitrator 11.11

(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 Clause the said functions shall be exercised on his behalf by a Vice-President for the time being of the said Institution.

Arbitration – procedure and powers 11.12

(a) Any reference to arbitration under this Clause 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 certificate or valuation of the Engineer or an adjudicator.

(b) Neither party shall be limited in the arbitration to the evidence or arguments put to the Engineer or to any adjudicator pursuant to Clause 11.3 or Clause 11.7 respectively.

(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 Works are not then complete or alleged to be complete.

Witnesses **11.13** (a) No decision opinion instruction direction certificate or valuation given by the Engineer shall disqualify him from being called as a witness and giving evidence before a conciliator adjudicator or arbitrator on any matter whatsoever relevant to the dispute.

(b) All matters and information placed before a conciliator pursuant to a reference under Clause **11.6** shall be deemed to be submitted to him without prejudice and the conciliator shall not be called as a witness by the parties or anyone claiming through them in connection with any adjudication arbitration or other legal proceedings arising out of or connected with any matter so referred to him.

12 JURISDICTION

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

13 CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 1994

Definitions **13.1** In this Clause

(a) "the Regulations" means the Construction (Design and Management) Regulations 1994 or any statutory re-enactment or amendment thereof for the time being in force

(b) "Planning Supervisor" and "Principal Contractor" mean the persons so described in regulation 2(1) of the Regulations

(c) "Health and Safety Plan" means the plan prepared by virtue of regulation 15 of the Regulations.

Action to be taken **13.2** Where and to the extent that the Regulations apply to the Works and

(a) the Engineer is appointed Planning Supervisor

and/or

(b) the Contractor is appointed Principal Contractor

then in taking any action as such they shall state in writing that the action is being taken under the Regulations.

13.3 (1) Any action under the Regulations taken by either the Planning Supervisor or the Principal Contractor and in particular any alteration or amendment to the Health and Safety Plan shall be deemed to be an Engineer's instruction pursuant to Clause 2.3. Provided that the Contractor shall in no event be entitled to any additional payment and/or extension of time in respect of

any such action to the extent that it results from any action lack of action or default on the part of the Contractor.

(2) If any such action of either the Planning Supervisor or the Principal Contractor could not in the Contractor's opinion reasonably have been foreseen by an experienced contractor the Contractor shall as early as practicable give written notice thereof to the Engineer.

14 CODE OF CONDUCT

14.1 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).

14.2 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)*.

14.3 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.

14.4 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 15.

15 TERMINATION

- 15.1** 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.
- 15.2** 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 its employment under the Contract.
- 15.3** 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 the Contract forthwith by notice to the Contractor or any person in whom the Contract may have become vested. For the purposes of the Contract, any termination under this Clause 15.3 shall be deemed to be a breach by the Contractor of its obligations under the Contract.
- 15.4** The Employer may by notice in writing suspend all or any of the Contractor's duties and obligations under the Contract. If the Employer has not within 6 (six) months of the notice requested the Contractor to resume performance of its duties and obligations 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.
- 15.5** Upon any termination under this Clause 15 and subject to any set-off or deduction which the Employer may be entitled to make under Clause 15.6, the Employer shall pay any sums in accordance with Clause 7 to the Contractor which have accrued due prior to the date of such termination, together with a fair and reasonable proportion of the next following instalment of payment for the Works which the Contractor has properly performed up to the date of such termination, less any amounts previously paid by the Employer to the Contractor. The Contractor shall not be entitled to any further sums in respect of loss of anticipated profit or otherwise.
- 15.6** Where the Contractor's employment under the Contract has been terminated under this Clause 15 due to a breach by the Contractor of its obligations under the Contract the Employer may itself complete the Works or arrange for their completion by a third party and no further payments shall

become due to the Contractor until the Works have 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 the Works incurred by the Employer, provided the Employer gives notice in accordance with Clause 7.10 and the Engineer shall issue a certificate as to the amount of those costs. Payment shall become due on certification. The final date for payment of the sums due (if any) to the Contractor under this Clause 15.6 shall be 28 days following receipt from the Contractor of a VAT invoice which corresponds in all respects with the amount of the Engineer's certificate 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.

15.7 Termination of the Contractor's employment under 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.

15.8 Following any termination of the Contractor's employment under the Contract the Contractor shall:

(a) immediately take all necessary steps to end the provision by it of the Works in a safe and orderly manner such steps to be taken with all reasonable speed and economy; and

(b) deliver to the Employer copies in such form as the Employer may reasonably require of all Project Data (whether in the course of preparation or completed) which the Contractor holds in connection with the Works together with the originals and any copies which the Contractor may hold of all Project Data prepared and/or provided to it by the Employer or by others in connection with the Works; and

(c) if requested by the Employer immediately assign any contract with any sub-contractor to the Employer and take such steps as are necessary to enable a legal assignment to take place and effect.