

# LABC Assured

Terms &  
Conditions



## LABC Assured Terms & Conditions

### What is LABC Assured?

LABC Assured is a method where certain Products and Building Systems (as defined below) are eligible for LABC Assured Status. Where a Product and/or Building System has achieved LABC Assured Status and that Product or Building System is used in a development going forward which is subject to building regulation sign off via the Building Control department of a Local Authority (and not any third party), then LABC Assured Status can be used to help streamline the building control assessment process for each future use of that Product and/or Building System without the Product and/or Building System having to be substantially re-assessed for compliance other than to ensure its suitability within a particular building or development. Accordingly LABC Assured provides a method of streamlining the building regulations application process for future developments where an LABC Assured Product and/or Building System is used multiple times across multiple developments.

### What LABC Assured is not.

LABC Assured is not a form of certification to say a particular Product and/or Building System that achieves LABC Assured Status is suitable for use within any property or development. Ultimately the Dutyholder (as defined below) and/or person applying for buildings regulations approval (and/or their subcontractors) and not LABC must always assume responsibility for ensuring that the relevant Product and/or Building System is being used within any then applicable laws, accepted guidance, regulations and/or all guidelines issued by the manufacturer of such product or the developer or provider of a relevant Product or Building System.

### THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

#### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

##### 1.1 Definitions:

**Application Form:** the application form completed by the Customer for the purposes of seeking LABC Assured Status for a particular Building System and/or Product.

**Building Regulations:** the building control regulations in force within England, Scotland and Wales from time to time setting out, inter alia, the required standards for design, construction and alternations to buildings.

**Building System:** a system developed and/or used within the construction sector which may be applicable under Building Regulations.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5 (Charges and payment).

**Commencement Date:** has the meaning given in clause 2.5.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.5.

**Contract:** the contract between LABC and the Customer for the supply of Services in accordance with these Conditions.

**Customer:** the person or firm who purchases Services from LABC and in whose name the LABC Assured Status would normally be issued in respect of a particular Product and/or Building Service.

**Customer Default:** has the meaning set out in clause 4.2.

**Dutyholder:** means any designer, architect, contractor, builder, developer or similar who is responsible for the design, construction or refurbishment of a building or other property development which is to include any Product and/or Building System.

**Initial Charges:** the charges payable by the Customer for the supply of the Verification Services in accordance with clause 5 (Charges and payment).

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Issue Date:** the date on which LABC Assured Status is issued in relation to a particular Product and/or Building System.

**LABC:** the District Surveyors Association Limited trading as LABC registered in England and Wales with company number 05531889 whose registered office is at 6th Floor, Tintagel House, 92 Albert Embankment, London, SE1 7TY.

**LABC Assured Status:** the status given to a Building System and/or Product which has passed the Verification process and in respect of which LABC issues written confirmation that LABC Assured Status has been granted.

**Logo:** means the LABC Assured Logo.

**On-going Charges:** the charges payable by the Customer for the supply of the On-going Services in accordance with clause 5 (Charges and payment).

**On-going Services:** means the on-going provision of LABC Assured Status relating to a Product and/or Building System which has achieved LABC Assured Status following Verification.

**Order:** the Customer's written acceptance of a Proposal issued by LABC, whether contained in the Customer's purchase order or otherwise.

**Product:** a product developed and/or used within the construction sector which may be applicable under Building Regulations

**Proposal:** The initial proposal issued by LABC setting out the Charges, scope of work and estimated timetable associated with Verification and, subject to such Product

and/or Building System being granted LABC Assured Status, the ongoing Charges associated with maintaining LABC Assured Status for such Product and/or Building System, where each Proposal shall be subject to these Conditions.

**Services:** the services, including the Verification Services and, if applicable, the On-going Services, supplied by LABC to the Customer as set out in the Proposal.

**Verification:** means the process of reviewing and assessing each Product and/or Building System to determine whether or not such Product and/or Building System achieves LABC Assured Status. The nature and scope of Verification is entirely at the discretion of LABC and will vary depending on the nature of the Product and/or Building System for which LABC Assured Status is sought.

**Verification Services:** means the services to be provided by LABC as part of Verification.

## 1.2 Interpretation

(a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

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

(c) A reference to **writing** or **written** includes fax and email.

## 2. Basis of contract

2.1 The Customer shall complete an Application Form and shall provide such information as LABC shall reasonably require to enable LABC to produce a Proposal relating to the Product and/or Building System in respect of which LABC Assured Status is sought. LABC shall be under no obligation to consider the application for LABC Assured Status unless and until the Application Form and all requisite supporting information is provided by the Customer to LABC.

2.2 On receipt of the Application Form and requisite supporting information requested by LABC pursuant to clause 2.1, LABC shall carry out an initial appraisal to assess the suitability of the relevant Product and/or Building Control. This is done as certain Products and/or Building Systems may be incapable from the outset of achieving LABC Assured Status.

2.3 If LABC, at its discretion, considers that the Product and/or Building System is potentially capable of achieving LABC Assured Status then LABC shall issue a Proposal. The issuing of a Proposal is not a guarantee or assurance that the relevant Product and/or Building System will following Verification achieve LABC Assured Status. Each Proposal is bespoke to the Customer and Product and/or Building System concerned based on the nature of the Product and/or Building System and anticipated time and work involved in assessing the Product and/or Building System.

- 2.4 Where the Customer wishes to proceed with the Proposal the Customer shall issue the Order to LABC, whereby the Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions and the relevant Proposal.
- 2.5 The Order shall only be deemed to be accepted when LABC issues written acceptance of the Order (**Order Acknowledgement**) and invoice at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.6 Any samples, drawings, descriptive matter or advertising issued by LABC, and any descriptions or illustrations contained in LABC's catalogues or brochures or on LABC's website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.8 Any Proposal given by LABC shall not constitute an offer, and is only valid for a period of 40 Business Days from its date of issue when it will be deemed withdrawn. Unless otherwise agreed in writing by LABC, any further request for LABC Assured Status must be the subject of a new Application Form

### 3. Supply of Services

- 3.1 LABC shall, directly or via one of its sub-contractors (a member of LABC's network of member local authority building control departments), supply the Verification Services to the Customer in accordance with the Proposal in all material respects.
- 3.2 LABC shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 LABC reserves the right to amend the Proposal if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and LABC shall notify the Customer in any such event.
- 3.4 LABC shall, where LABC Assured Status is attained in relation to a particular Product and/or Building System, provide the On-going Services to the Customer. This shall include an annual review of the Product and/or Building System concerned to be undertaken prior to each anniversary of the Issue Date to ensure that the Product and/or Building System is still compliant with Building Regulations as at each anniversary of the Issue Date. As part of the annual review process, LABC reserves the right to ask the Customer to either provide any additional information which LABC deems appropriate as part of that annual review process (including, without limitation, details of any test reports the Customer may have in connection with Product and/or Building System) and/or ask the Customer to confirm that there have been no changes to the Product and/or Building System (or any specification in connection therewith) since the Product and/or Building System was last reviewed by LABC.
- 3.5 In the event that there is any change to Building Regulations which means that a Product and/or Building System which has attained LABC Assured Status no longer

qualifies for LABC Assured Status then LABC shall put forward a proposal to the Customer regarding what additional work LABC proposes to undertake to maintain or re-grant the LABC Assured Status (if granting the LABC Assured Status is still deemed appropriate) and any associate costs payable by the Customer to LABC in connection therewith.

**3.6** LABC warrants to the Customer that the Services will be provided using reasonable care and skill.

#### **4. Customer's obligations**

**4.1** The Customer shall:

- (a) ensure that the terms of the Order and any information it provides to LABC (whether pursuant to clause 2.1 or this clause 4.1, as part of Verification or otherwise) are complete and accurate and not misleading (whether by omission of relevant information or otherwise);
- (b) co-operate with LABC in all matters relating to the Services;
- (c) provide LABC with such information and materials as LABC may reasonably require (including but not limited to that information referred to at clause 3.4 above) in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (e) comply with all applicable laws, including health and safety laws;
- (f) comply with any additional obligations as set out in the Proposal;
- (g) comply with any applicable time limits set out in these Conditions;
- (h) ensure that LABC is made aware (in a timely manner) in the event that there is any change to Building Regulations, recognised guidance or the Product and/or Building System specifications, which means that a Product and/or Building System which has previously attained LABC Assured Status may no longer qualify for LABC Assured Status or requires additional assessment;
- (i) not use or associate LABC Assured Status with any product or building system which has not achieved LABC Assured Status; and
- (j) not misrepresent or mislead users of a Product and/or Building System in its appropriateness for use or the limitations or scope surrounding its use.

**4.2** If LABC's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, LABC shall have the right to suspend performance of the Services until the Customer

remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays LABC's performance of any of its obligations;

- (b) LABC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from LABC's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse LABC on written demand for any costs or losses sustained or incurred by LABC arising directly or indirectly from the Customer Default.

## **5. Charges and payment**

- 5.1** The Initial Charges shall be set out in the Proposal. If the Product and/or Building System achieves LABC Assured Status then the Initial Charges shall include the fee for LABC Assured Status for the first 12 months from the Issue Date. In the event that the Product and/or Building System does not achieve LABC Assured Status then the Initial Charges paid up to that point by the Customer are non-refundable and will not be repayable by LABC to the Customer in such a situation.
- 5.2** LABC shall invoice the Customer the Initial Charges when it send out the Order Acknowledgement pursuant to clause 2.5 above.
- 5.3** The Customer shall pay each invoice submitted by LABC pursuant to clause 5.2:
  - (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by LABC.
- 5.4** LABC shall not be obliged to start work on the Verification Services relating to a particular Product and/or Building System until such a time as the invoice issued pursuant to clause 5.2 relating to the relevant Product and/or Building Service has been paid in full.
- 5.5** The Charges for the On-going Services (i.e. maintaining LABC Assured Status beyond the first anniversary of the Issue Date) shall be notified to the Customer approximately 6-8 weeks prior to each anniversary of the Issue Date.
- 5.6** LABC reserves the right to increase the On-going Charges relating to the maintenance of LABC Assured Status beyond the first anniversary of the Issue Date on an annual basis with effect from each anniversary of the Issue Date.
- 5.7** LABC shall invoice the Customer the On-Going Charges at least 4 weeks prior to each anniversary of the Issue Date.
- 5.8** The Customer shall pay each invoice submitted by LABC for the maintenance of LABC Assured Status in full and in cleared funds to a bank account nominated in writing by LABC by the date stated in such invoice (which will be an anniversary of the Issue Date).
- 5.9** In the event that any invoice issued pursuant to clause 5.7 above remains unpaid by the relevant due date (i.e. the relevant anniversary of the Issue Date) then LABC

reserves the right to withdraw LABC Assured Status in relation to the relevant Product and/or Building System with immediate effect.

**5.10** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by LABC to the Customer, the Customer shall, on receipt of a valid VAT invoice from LABC, pay to LABC such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

**5.11** All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **6. Intellectual property rights**

**6.1** All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) and the LABC Logo shall be owned by LABC.

**6.2** In the event that LABC Assured Status is issued in relation to a particular Product and/or Building System, then LABC may grant the Customer a non-exclusive revocable licence to use the LABC Logo in relation to the manufacture, promotion, distribution and sale of those Products and/or Building Systems which have achieved LABC Assured Status within England, Scotland and Wales (as appropriate), subject always to the Customer entering into a separate licencing agreement (**Licence Agreement**) in relation to the LABC Logo and use thereof going forward.

**6.3** The Customer grants LABC a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to LABC for the term of the Contract for the purpose of providing the Services to the Customer.

## **7. LABC Assured Status**

**7.1** The decision on whether or not to award LABC Assured Status to a particular Product and/or Building System shall be at LABC's sole discretion.

**7.2** LABC reserves the right to issue LABC Assured Status with or without any restrictions or conditions attached. By way of illustration only, LABC may impose a condition that LABC Assured Status only applies to a particular Product and/or Building System if it is used in a certain way or within a particular type of development. For the avoidance of doubt this in no way derogates from the responsibility of the Dutyholder to ensure a particular Product and/or Building System is suitable for use within a particular development or project as further detailed in Clause 8.5 below.

**7.3** In the event there is any change to Building Regulations or any other recognised guidance, LABC reserves the right to withdraw LABC Assured Status by written notice to the Customer if the change means the Product and/or Building System is no longer compliant with Building Regulations or other recognised guidance and/or had the Building Regulations or recognised guidance (as amended) been in force at the Issue Date for the relevant Product and/or Building System, such Product and/or Building System would not have achieved LABC Assured Status in the first place.



- 7.4** Whilst the Customer is allowed to use the LABC Assured Status mark and branding in accordance with clause 6 above, the Customer agrees that it shall not represent, market or sell the relevant Product and/or Building System as “approved”, “tested”, “certified” or using any similar terminology or inference by reference to the LABC Assured Status. (In this regard please see the top of this document as to what the LABC Assured Status covers and what it is not.)
- 7.5** LABC reserves the right to withdraw LABC Assured Status with immediate effect by written notice to the Customer in the following circumstances:
- (a) in the event that the Customer is in breach of the provisions of clause 6 and/or clause 7.4 above and (if such a breach is remediable) the Customer fails to remedy that breach within 10 Business Days of the Customer being notified in writing to do so by LABC;
  - (b) in the event that information provided to LABC to be used for the purposes of Verification is incorrect or non-compliant with clause 4.1(a) above or it becomes apparent to LABC that information has been omitted or withheld by the Customer which would otherwise impact on the award of LABC Assured Status for the relevant Product and/or Building System;
  - (c) the Customer fails to pay any sum due to LABC by the relevant due date;
  - (d) in accordance with clause 7.3 above;
  - (e) in circumstances where the Customer (or any third party on the Customer’s behalf) (i) misuses the LABC Logo or (ii) uses the LABC Logo on products and/or building systems which have not achieved LABC Assured Status or (iii) breaches the terms of the Licence Agreement and (if such a breach is remediable) the Customer fails to remedy that breach within 10 Business Days of the Customer being notified in writing to do so by LABC; or
  - (f) at LABC’s sole discretion where circumstances permit and the withdrawal of LABC Assured Status is deemed necessary by LABC to protect the integrity of the Product and/or Building System concerned, or the reputation of LABC or the LABC Assured Status scheme or where the Customer has done anything that could bring the LABC brand (or that of the LABC Assured Status scheme) into disrepute.
- 7.6** LABC Assured Status is non-transferable from the Customer save with the prior written consent of LABC.
- 7.7** Proof of LABC Assured Status may also include references to and/or the logos of “LABC Warranty” and/or “LABSS” (Local Authority Building Standards Scotland). LABC Warranty is a separate product offered in conjunction with LABC and relates to insurance of new developments. As at the date of these Conditions, LABC has arrangements with LABC Warranty and LABSS to the effect that if the Product and/or Building System meets the relevant criteria set out by LABC Warranty and/or LABSS, then the LABC Assured Status can be recognised by LABC Warranty and LABSS (at their discretion). LABC offers no warranty or assurance that such arrangements will continue and LABC reserves the right to re-issue any LABS Assured Status confirmation without the relevant reference to LABC Warranty and/or LABSS if such arrangements terminate.

- 7.8** If the Customer requests as part of the Application Form that they wish to seek LABSS and/or LABC Warranty endorsements alongside LABC Assured Status then the Product and/or Building System which is the subject of the Application Form will be independently tested by either or both of LABSS and LABC Warranty. If the Product and/or Building System passes the relevant assessment by LABSS and/or LABC Warranty, and also achieves LABC Assured Status, then LABC will issue the LABC Assured Status confirmation endorsed with (as appropriate) the LABSS and/or LABC Warranty endorsement. Any review by LABSS and/or LABC Warranty is done independently of LABC and LABC accepts no responsibility to the Customer or any third party in relation any review or assessment carried out by LABSS and/or LABC Warranty or any LABC Warranty or LABSS endorsement attached to any LABC Assured Status issued by LABC. In the event that LABSS and/or LABC Warranty endorsements are not issued for any reason then that shall not affect or limit the Customer's obligations to LABC as set out in these Terms and Conditions.
- 7.9** LABC reserve the right to re-issue any LABC Assured Status documentation less any LABSS and/or LABC Warranty endorsement at its discretion, including, without limitation, in the event that the arrangements between LABSS and/or LABC Warranty come to an end or LABC Warranty and/or LABSS notify LABC that the Product and/or Building System no longer complies with LABSS and/or LABC Warranty criteria.
- 7.10** The Customer shall indemnify LABC, LABC Warranty and LABSS against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by any of them arising out of or in connection with any LABC Assured Status granted (together with any LABSS and/or LABC Warranty endorsement if applicable) by LABC which is relied upon by any third party where such LABC Assured Status (together with any LABSS and/or LABC Warranty endorsement if applicable) is granted on the basis of incorrect information supplied by the Customer or where the Customer has omitted to supply information to LABC, LABSS and/or LABC Warranty which would otherwise impact on the granting of LABC Assured Status (together with any LABSS and/or LABC Warranty endorsement if applicable).
- 8. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 8.1** Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.2** Subject to clause 8.1, LABC's total liability to the Customer shall not exceed a sum equal to the Charges paid by the Customer under the Contract relating to the Products and/or Building System concerned. LABC's total liability includes liability

in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

**8.3** This clause 8.3 sets out specific heads of excluded loss and exceptions from them:

(a) Subject to clause 8.1, the types of loss listed in clause 8.3(c) are wholly excluded by the parties, but the types of loss and specific losses listed in clause 8.3(d) are not excluded.

(b) If any loss falls into one or more of the categories in clause 8.3(c) and also falls into a category, or is specified, in clause 8.3(d), then it is not excluded.

(c) The following types of loss are wholly excluded:

- (i) Loss of profits.
- (ii) Loss of sales or business.
- (iii) Loss of agreements or contracts.
- (iv) Loss of anticipated savings.
- (v) Loss of use or corruption of software, data or information.
- (vi) Loss of or damage to goodwill.
- (vii) Indirect or consequential loss.

(d) Sums paid by the Customer to LABC pursuant to the Contract, in respect of any Services not provided in accordance with the Contract are not excluded.

**8.4** LABC has given commitments as to compliance of the Services with the Proposal in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**8.5** The ultimate responsibility for whether or not a particular Product and/or Building System used within a development/building project is compliant with Building Regulations remains with the relevant Dutyholder and not LABC. The Dutyholder is ultimately responsible for ensuring that the use of the Product and/or Building System in any development/building project they are undertaking is done so in accordance with both then current Building Regulations, any recognised guidance and any restrictions, recommendations or other guidance issued by the manufacturer/distributor of the Product and/or Building System. Accordingly LABC accepts no responsibility to the Customer or any third party for any loss suffered as a result of a Product and/or Building System which has attained LABC Assured Status being used by a Dutyholder within a property and/or development.

**8.6** This clause 8 shall survive termination of the Contract.

## **9. Termination**

**9.1** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing to do so;

- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

**9.2** Without affecting any other right or remedy available to it, LABC may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

**9.3** Without affecting any other right or remedy available to it, LABC may suspend the supply of Services under the Contract or any other contract between the Customer and LABC if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 9.2(b) to clause 9.2(d), or LABC reasonably believes that the Customer is about to become subject to any of them.

## **10. Consequences of termination**

**10.1** On termination of the Contract the Customer shall immediately pay to LABC all of LABC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, LABC shall submit an invoice, which shall be payable by the Customer immediately on receipt.

**10.2** On termination or expiry of the Contract (howsoever caused) LABC Assured Status in relation to any Product and/or Building System which was the subject of the Contract shall immediately cease.

**10.3** Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

**10.4** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **11. General**

**11.1 Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

**11.2 Assignment and other dealings.**

- (a) LABC may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of LABC.

### **11.3 Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### **11.4 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**11.5 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**11.6 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or

any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**11.7 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**11.8 Notices.**

(a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Proposal (or any other e-mail address notified by one party to the other from time to time for the purposes of this clause 11.8).

(b) Any notice shall be deemed to have been received:

- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- (iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**11.9 Third party rights.**

(a) Save in relation to LABC Warranty and LABSS, and unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**11.10 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

**11.11 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.



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