



7 Tunstall Road Ind Estate, Knypersley,
Stoke on Trent, ST8 7BD, England
Tel: 01782-510051 Fax: 01782-510052
sales@emsgb.com
Company registered in England
Reg no. GB 3063438
VAT Reg no. 68790348

TERMS AND CONDITIONS FOR SALE OF GOODS AND SUPPLY OF SERVICES

1. EXISTENCE AND SCOPE OF CONTRACT

1.1 These terms and conditions together with EMS 's Quotation set out all the rights and obligations of the parties each to the other and no other terms or conditions shall be implied save to the extent that such terms and conditions are implied by statute.

1.2 Unless otherwise expressly agreed, collection or acceptance of Goods or acceptance of Services by the Customer shall signify acceptance of these terms and conditions. For the avoidance of doubt EMS does not intend to enter into contract on any terms and conditions other than those set out herein.

1.3 All quotations by EMS shall be open for acceptance for 60 days unless expressly stated otherwise or unless withdrawn or revised by EMS.

1.4 All quotations for the sale of Goods are conditional on availability of the said Goods to EMS.

2. DEFINITIONS

2.1 The following terms shall have the following meanings.

2.1.1 '**EMS**' means EMS Industries Ltd its successors and assigns.

2.1.2 The '**Customer**' means the Customer of EMS to whom this document is addressed and includes successors or others for whom the said Customer is responsible.

2.1.3 The '**Goods**' means the Goods supplied by EMS, as described in EMS 's Quotation.

2.1.4 '**Services**' means Services provided by EMS, as described in EMS 's Quotation.



2.1.5 '**Contract Works**' means Goods and Services where both are provided under the Contract.

2

2.1.6 '**Variation**' means any change or addition to, or omission from the specification of any Goods or Services, or any change in the manner or time in which such Goods or Services are to be carried out.

2.1.7 '**Site**' means the area within which the Goods are to be installed together with any other area which EMS shall be permitted to use in connection with the Contract Works.

2.1.8 '**Defect**' and '**Defective**' means Goods or Services supplied not in accordance with the Contract. For the avoidance of doubt 'Defect' and 'Defective' does not include deterioration resulting from fair or excessive use, damage however caused, improper use, lack of proper maintenance.

2.1.9 '**Contract Price**' means the sum stated in EMS quotation as the price payable to EMS for performance of the Contract Works.

3. SALE OF GOODS – DELIVERY AND ACCEPTANCE

3.1 This Clause 3 shall apply in all cases where the Contract is for the supply of Goods and no installation Services at the Site are provided by EMS under the Contract notwithstanding other Services may be provided by EMS in connection with the Goods.

3.2 Delivery.

3.2.1 The Goods are delivered to the Customer when EMS makes them available to the Customer or its agent (a carrier shall be the Customers' agent whoever pays its charges) at EMS's premises or other place of delivery agreed by EMS.

3.2.2 Risk in the Goods passes when they are delivered to the Customer.

3.2.3 EMS may at its discretion deliver the Goods by instalments in any sequence.

3.2.4 When the Goods are delivered by instalments no default or failure by EMS in respect of any one or more instalments shall vitiate the contract in respect of the Goods previously delivered or which remain undelivered.

3.2.5 Any dates quoted by EMS for the delivery of the Goods or if applicable for the provision or completion of the Services are approximate only and shall not form part of the contract and the Customer acknowledges that in the performance expected of EMS no regard has been paid to any quoted delivery dates.

3.2.6 If the Customer fails to take delivery of the Goods or any part of them on the due date or to provide any instructions or documents required to enable the Goods to be delivered on the due date. EMS may on giving written notice to the Customer store or arrange for the storage of the Goods and on the service of the notice risk in the Goods shall pass to the Customer. Delivery of the Goods shall be deemed to have taken place and the Customer shall pay to EMS all costs and expenses including storage and insurance charges arising from failure.

3.2.7 EMS shall not be liable for any penalty loss injury damage or expense arising from delay through any cause at all, nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance or to repudiate the contract.

3.3 Acceptance and Notice of Complaint

3.3.1 The Customer shall be deemed to be satisfied with and have accepted the Goods on delivery UNLESS it shall have complied with the provisions of this **Clause 3**.

3.3.2 Any claim that the Goods or any part of them have been delivered damaged or are not of the correct quantity or do not comply with their description shall be notified by the Customer to EMS by written endorsement on the delivery note in respect of such Goods and in writing to EMS within 48 hours of their delivery.

3.3.3 Any claim that the Goods or any part of them have been lost in transit or are defective or in the case of Services of a defect in workmanship shall be notified by the Customer to EMS within 7 days of delivery of the Goods or completion of the Services.

3.3.4 Any claim under this condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective Goods or part thereof.

3.3.5 EMS shall be afforded reasonable opportunity and facilities to investigate any claims made under this Condition and the Customer shall if so requested in writing by EMS promptly return any of the Goods the subject of any claim and any packing materials securely packed and carriage paid to EMS for examination.

3.3.6 EMS shall have no liability with regard to any claim in respect of which the Customer has complied to with the claims procedures in these conditions.

4. SUPPLY OF GOODS AND SERVICES – TIME, ACCEPTANCE, AND DEFECTS

4.1 This **Clause 4** shall apply in all cases where the Contract is for supply of Goods and Services including installation Services by EMS at the Site.

4.2 The Customer shall allow access to the Site to enable AS to carry out and complete the Contract Works.

4.3 Any dates quoted by EMS for delivery of Goods or completion of any service are approximate only and shall not form part of the Contract and the Customer paid to any such dates.

4.4 EMS shall not be liable for any penalty loss injury charge or expense arising from its failure to meet any dates referred to in **Clause 4.3**. nor shall any such failure entitle the Customer to refuse performance or to repudiate the Contract.

4.5 When EMS considers it has completed supply of Goods and installation Services including testing and initial commissioning where appropriate EMS shall notify the Customer that the Contract Works are complete.

4.6 On receipt of notice by EMS under **Clause 4.5** the Customer shall forthwith inspect the work on Site and the Customer shall be deemed to be satisfied with and have accepted the Contract Work UNLESS it immediately notifies EMS of its dissatisfaction in writing giving reasons.

4.7 In the event that EMS does not agree with the Customer that the work on Site is not complete either party may refer the matter to adjudication as provided in this Contract.

4.8 If any defect appears or becomes apparent within 24 months following acceptance of the works the Customer shall immediately notify EMS and afford EMS reasonable opportunity to inspect, to investigate the cause.

5. VARIATIONS

5.1 All variations shall be in writing signed by both parties or shall be requested in writing by the Customer and accepted expressly as a variation by EMS.

5.2 No Variation shall vitiate the Contract.

5.3 EMS may require the basis of charging any Variation to be agreed in writing before any Goods or Services comprising a Variation are provided to the Customer.

5

5.4 In the event that the basis of charging a Variation is not agreed EMS may at its absolute discretion refuse to accept the Variation or may require the subject of the proposed Variation to be supplied under a separate contract.

5.5 If EMS accepts a Variation without first having agreed the basis of charging then the Variation shall be valued on a fair and reasonable basis.

6. INFORMATION PROVIDED BY CUSTOMER AND ASSUMPTIONS

6.1 Information Provided by Customer.

6.1.1 Where in EMS quotation any information or document is identified as provided by the Customer, EMS shall be entitled to rely on such information or document for the purpose of discharging its obligations under the Contract.

6.2 Assumptions made by EMS

6.2.1 Where in EMS quotation it is stated that an assumption has been made, the Goods and/or Services specified and the prices therefore included in the Contract Price are based on such assumption being correct.

6.2.2 If at any time any said assumption is found to be incorrect and correction would affect the performance of the Contract Works in any way whatsoever, any resulting effect on the Contract Works shall be carried out by EMS and treated as though it were a Variation.

7. PRICES

7.1 The Contract Price is based on prices and rates, terms and duties applying at the time of EMS quotation.

7.2 If after the date of EMS quotation EMS costs are increased by any increase in the prices or rates to EMS of materials, plant, equipment, transport, labour and any part of EMS overhead costs, or if there is any imposition of a tax or duty, or any increase in the rate of any existing tax or duty, EMS shall be entitled to be reimbursed by the Customer the amount of its said increased costs.

7.3 The Contract Price and all prices contained in EMS quotation are net and no provision is made for the Customer to be allowed discount.

8. PAYMENT AND SET OFF

8.1 If the Contract does not include installation of the Goods by EMS at the Site

8.1.1 EMS may invoice for Goods supplied immediately after delivery. If the contract provides for delivery in instalments, EMS may invoice for the relevant Goods immediately after delivery of each instalment.

8.1.2 All invoices for the price of the Goods and services are payable without discount of any kind in pounds sterling within 30 days of date of invoice at EMS 's premises stated on the invoice and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason at all.

8.2 Payment (Supply and Installation)

8.2.1 If the Contract includes installation of the Goods by EMS at the Site payment shall be made in the following manner:

8.2.1.1 EMS may submit its invoice for Goods supplied Services provided and/or Variations provided under the Contract or for any other amounts due from the Customer to EMS under the Contract immediately after installation.

8.2.1.2 Payment of the proper amount payable shall be made within a period of 25 days starting 5 days after date of invoice.

8.2.1.3 The Customer shall raise any dispute relating to the invoice no later than 12 days following the date of the invoice.

8.2.2 Should the Customer default in making full payment against any invoice in accordance with the foregoing provision:

8.2.2.1 all outstanding invoices whether due or not shall become immediately payable. Furthermore in the event of late or non-payment in accordance with these terms and conditions (or any other terms so agreed and in writing), EMS reserves the right to rely on the Late Payment of Commercial Debts (Interest) Act 1998, and charge, at a daily rate, until payment, interest upon the debt then due at the prevailing at the date of default (currently 8% above the prevailing Bank of England base rate) together with the late payment charges set out in the Act, until payment or sooner settlement.

8.2.2.2 EMS may immediately suspend performance of its obligations under the Contract.

8.2.2.3 EMS may continue suspension of its performance hereof until 3 days after the Customer makes full payment of the amount due.

7

8.2.2.4 In respect of suspension of its performance EMS shall be entitled to appropriate relief from any of its obligation under the Contract connected with time limits.

8.2.2.5 AS shall have a lien on all the Customer's property in the possession of EMS for all amounts due at any time from the Customer, and it may use sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such amounts on 14 days notice in writing to the Customer. On accounting to the Customer for any balance remaining after payment of any amounts due to EMS and the costs of sale or disposal EMS shall be discharged of any liability in respect of the Customer's property.

8.3 The Customer indemnifies EMS against all direct legal and other costs including but not limited to the cost of EMS employees incurred in the recovery of any sum save which becomes overdue for payment. This includes any loss and/or expense suffered by EMS resulting from action taken in accordance with the provisions contained in **Clause 8.2.**

8.4 Counter Claims and Set Off

8.4.1 Under no circumstance shall monies owed by EMS to the Customer under this or any other contract between the parties be set off against monies properly due to EMS under this contract.

9. TITLE

9.1 Notwithstanding the earlier passing of risk, title to and property in the Goods shall pass to the Customer when the amount due under the invoice for the Goods (including interest and costs) has been paid in full, and until such payment the Customer shall hold the Goods in a fiduciary capacity as bailee for EMS and shall store or mark them so that they can at all times be identified as the property of EMS.

9.2 EMS may at any time before title passes and without any liability to the Customer repossess and dismantle and use or sell any of the Goods and by doing so terminate the Customer's right to sell or otherwise deal in them and for the purpose of determining what if any of the Goods are held by the Customer and inspecting them enter any premises of or occupied by the Customer.

9.3 Until title to the Goods passes to the Customer the entire proceeds of sale of the Goods shall be held in trust for EMS and shall be held in a separate designated account and not mingled with any other monies or paid

into any overdrawn bank account and shall be at all times identifiable as EMS 's money.

8

9.4 EMS may maintain an action for the price of the Goods notwithstanding that title in them has not passed to the Customer.

9.5 The Customer grants EMS and its agents an irrevocable licence to enter at any time any vehicles or premises owned or occupied by the Customer or in its possession for the purpose of repossessing and removing any such Goods the property in which has remained in EMS under **Clause 9.1** hereof. EMS shall not be responsible for and the customer shall indemnify EMS against liability in respect of damage caused to such vehicle or premises in such repossession and removal being damage it was not reasonably practicable to avoid.

9.6 The Customer must ensure that if the Goods are or become affixed to any land or building they shall be capable of being identified as the property of EMS and removed without material injury to such land or building and to take all necessary steps to prevent title of the Goods from passing to the landlord of such land or building. The Customer warrants to repair and make good any damage caused by the affixation of the Goods or their removal from any land or building and to indemnify EMS against all loss damage and liability it may incur or sustain as a result of such affixation or removal.

9.7 If the Goods are affixed by EMS to any land or building in performance of the Contract, EMS rights to repossess the Goods and any obligations in respect thereof shall be the same as if the said Goods were affixed by the Customer, save that EMS shall mark the Goods so affixed as the property of EMS in such a manner that such mark shall not damage the Goods and may be removed by the Customer when title to and property in the Goods has passed to it.

9.8 The Customer's right to possession of the Goods shall cease if it does anything or fails to do anything that would entitle an administrator or administrative receiver to take possession of any assets or would entitle any person to present a petition for winding up.

10. EXTENT OF LIABILITY

10.1 Unless otherwise provided in these Terms and Conditions under no circumstances shall EMS have any liability of whatever kind for:

10.1.1 Any fault or imperfection resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions of EMS or the manufacturer of any of the Goods, or neglect, or from any instructions, design specification, or materials provided

or made by the Customer, or for any of the Goods which have been adjusted modified or repaired except by EMS.

9

10.1.2 The suitability of any of the Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions was known by or communicated to EMS.

10.1.3 Any substitution by EMS of any materials or components not forming part of any specification of the Goods agreed in writing by EMS.

10.1.4 Any descriptions, illustrations, specification, figures as to performance, or any other information submitted by EMS contained in EMS 's catalogues, sales literature, price lists, or elsewhere since they are merely intended to represent a general impression of the Goods and not to form part of the contract or be treated as representations.

10.1.5 Any technical information recommendation statements or advice furnished by EMS its servants or agents before the contract is made.

10.1.6 Any variations in the quantities or dimensions or specification of any of the Goods or substitution of any materials or components if the variation or substitution does not materially affect the characteristics of the Goods and the substituted materials or components are of a quality equal or superior to those originally specified.

10.2 Except as expressly provided elsewhere, EMS shall have no liability to the Customer for the loss or damage of any nature arising from any breach of the contract or any negligence, breach of statutory or other duty on the part of EMS, except for death or personal injury resulting from the negligence of EMS.

10.3 If the Customer establishes that any of the Goods have not been delivered, have been delivered damaged are not of the correct quantity or do not comply with their description EMS shall at its option replace with similar Goods any of the Goods which are missing lost or damaged or do not comply with their description, and shall allow the Customer credit for their invoice value or repair any of the Goods which are damaged.

10.4 If the Customer establishes that any of the Goods are defective, EMS shall at its option replace with similar Goods or repair any defective Goods or rectify any defective workmanship or at the Customers request allow the Customer credit, or to the extent that the Goods are not of EMS's manufacture assign to the Customer (so far as EMS is able to do so) any warranties given by the manufacturer of the Goods to EMS.

10.5 **Clause 10.4** shall not apply unless:

10.5.1 If so required by EMS all defective Goods are first returned to EMS 's premises carriage paid by the Customer, and

10

10.5.2 The Goods have not been altered in any way whatsoever nor have they been subjected to misuse or unauthorised repair.

10.5.3 The Goods have been properly and correctly stored or installed or connected (unless EMS carried out such installation and connection) and used by the Customer in accordance with the manufacturer's instructions, and

10.5.4 In the case of Goods requiring service or maintenance the Customer has entered into a contract for their maintenance with EMS.

10.6 **Clause 10.4** shall not apply to plumbing work or repair of faults caused by failure or stoppage in power supply or defects or blockage in drainage systems or defects in water supply or scale formation resulting in pipework blockage unless any of the foregoing was installed by EMS.

10.7 The delivery of any repaired or replacement Goods shall be at EMS's premises or other delivery point specified for the original Goods.

10.8 EMS shall not be liable where any of the Goods the price of which does not include carriage are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such loss or damaged Goods will if available be supplied by EMS at the prices ruling at the time of dispatch and shall be a Variation.

10.9 In no circumstances shall the liability of EMS to the Customer under this condition exceed the invoice value of the Goods or Services.

10.10 Except as expressly provided elsewhere in the Contract EMS shall not be liable for any claims in respect of economic loss, loss of production, loss of profit, loss of opportunity loss of bargain or other indirect or consequential injury loss or damage caused directly or indirectly by any breach of the contract or any negligence on the part of EMS including any damage arising as a result of installing the Goods at the Customer or a third party properly or as a result of connecting the Goods to other equipment owned by a Customer or third party or on the part of any of its employees agents or others from whom it is responsible in connection with or arising out of the supply of the Goods or the Services or the installation repair or maintenance of the Goods in connection with any statement given or made, or failure to give advice or warning by or on behalf of EMS except that such exclusion shall not apply to any implied term as to quality or fitness for any general or particular purpose where the Customer deals as a Consumer as defined in Section 12 of the Unfair Contract Terms Act 1977.

10.11 Design

10.11.1 To the extent that AS carries out design or chooses equipment EMS shall supply such Services using reasonable professional care and skill, and EMS does not warrant that the Contract Works as described in its quotation or its incorporation within the work of others will satisfy the Customers requirements.

11. TERMINATION

11.1 Without prejudice to and in addition to any other right or remedy it possesses under the Contract, EMS may at its discretion terminate the supply of the Goods or the Services if the Customer fails to make any payment when and as due, or otherwise defaults in any of its obligation under the contract or becomes insolvent, has an Administrative Receiver appointed of its business, or is compulsorily or voluntarily wound up, or EMS bona fide believes that any of these events may occur. In the case of termination any deposit paid by the Customer to EMS shall be forfeited.

12.SERVICES

12.1 This Clause shall apply if the Contract is for supply of Goods and Services including installation Services by EMS at the Site.

12.2 EMS shall be entitled to carry out the Services during normal working hours. If the Customer requests EMS to perform Services outside normal working hours such request shall be a Variation.

12.3 Unless otherwise provided expressly in EMS's Quotation the Services shall exclude the following:-

12.3.1 All electrical mains power supplies and cables necessary for the Services, suitably rated fused switch isolator between the incoming mains distribution board and EMS's tools plant and equipment.

12.3.2 Any specialist builders' work of a structural nature including but not limited to drilling of holes through reinforced walls, special support slabs, walls, and cutting and weatherproofing of roofs, painting, redecorating and making good the premises after EMS installation work, removal and re-fixing of interlock design ceiling tiles, and all remedial work necessitated by accidental damage of any of the foregoing or by accidental breakage of glass during the carrying out of the Services.

12.3.3 All necessary Planning Approvals or other consents required for the performance of the Services.

12.3.4 Any craneage, hoisting gear, scaffold, ladders and moveable platforms.

12

12.4 Goods delivered to Site which remain unfixed and Goods installed and work carried out in connection therewith shall at all times be at the sole risk of the Customer and if any part thereof is lost, damaged or destroyed through any cause whatsoever EMS shall be entitled to treat and charge for the cost of restoration of any Goods or Services so lost damaged or destroyed as a Variation. The Customer shall insure and keep insured in the joint names with such reputable insurers as EMS shall approve the full value of the Goods and/or the Services, including EMS's tools plant and equipment on site and the cost of any relevant professional fees or Services against every kind of loss damage or destruction. The Customer shall produce to EMS on demand the policy or policies under which such insurance is effected together with the latest premiums receipts. If the Customer shall default in effecting insurance EMS may effect the same on behalf of the Customer and the cost thereof shall be reimbursed by the Customer to EMS on demand.

12.5 If the Services are to be performed at the premises of the Customer or at its request at the premises of any other person then the Customer warrants and undertakes to EMS throughout the term of the contract as follows:

12.5.1 That the Customer has full power and authority to enter into the contract and to permit EMS to perform the Services and that all necessary Planning Approvals or other Consents authorising the Services have been obtained.

12.5.2 To grant to EMS's employees agents and contractors full and unrestricted safe access to the site as EMS shall from time to time require in order to discharge its obligations under the contract.

12.5.3 To make available free of charge at the Site such facilities as EMS shall reasonably require to enable the Services to be performed safely expeditiously and without any interruption by any activity of the Customer including but without limitation adequate and safe working space, storage, office furniture equipment and all electrical mains power water and/or other fuel supplies and cables necessary for the Services, suitably rated fused switch isolator between incoming mains distribution board and EMS's tools plant and equipment, any craneage hoisting and/or lowering gear specialist lifting tackle scaffolding ladders and moveable platforms.

12.5.4 To provide adequate protection of all the Goods tools plant and equipment and materials on site.

12.5.5 To provide prior to commencement of installation and at the Customer's cost all builder's work including but without limitation foundations, drilling of holes through reinforced walls, special support slabs, cutting and weathering of roofs, cutting away and making good as required and ready availability of all plant and equipment so as to ensure that premises are in a fit state for the Contract Works.

12.5.6 Without prejudice to any other right or remedy it possesses under the Contract, EMS may claim the amount of any loss and/or expense incurred by it resulting from any or each by the Customer of its obligations under **Clause 12.1 to 12.5**.

13. CONFIDENTIALITY

13.1 The Customer shall not any time whether before or after completion or termination of the contract divulge or use any unpublished technical information deriving from EMS or any other confidential information in relation to EMS 's affairs or business.

14. CANCELLATION BY CUSTOMER

14.1 Orders for Goods which have to be made specially for the Customer and/or for which EMS has placed an order with a manufacturer will be charged in full unless written notice of cancellation is received not less than 8 weeks before the delivery date notified to the Customer, and providing manufacture of such Goods or any components has not commenced at the date of that notice. Orders for stock items may be cancelled by written notice at any time before the Goods are allocated or set aside for the contract by EMS, but if cancellation is received after such Goods or components have been so allocated or set aside by EMS then a reasonable packing and handling charge will be payable by the Customer.

15. STATUTORY COMPLIANCE

15.1 The Customer shall obtain every necessary licence or permit or approval required and give every necessary notice or declaration and/or comply with any legal requirement for or relating to the use or installation of the Contract Works.

16. FORCE MAJEURE

16.1 EMS shall not be liable for any failure in performance of any of its obligations under the contract caused by factors outside its control.

14

17. NOTICES

17.1 To be served effectively, any notice or communication in writing shall in the case of a notice or communication to EMS be sent to its address stated on EMS's Quotation and shall in the case of a notice or communication to the Customer be sent to the Customer at its registered office or to the address of the Customer last known to EMS. Any such notice or communication may be given by registered or recorded delivery post or facsimile transmission. To prove service in the case of a notice given by facsimile transmission shall be sufficient to show that it was dispatched to the correct facsimile number. Service shall be deemed to have been effected 24 hours after dispatch by post or facsimile transmission.

18. GENERAL

18.1 EMS may subcontract the performance of the contract in whole or in part.

18.2 The Customer shall not assign or sublet the contract in whole or in part, without first obtaining EMS's written consent which consent shall not be unreasonably withheld.

18.3 All tools patterns materials drawings specifications and other data provided by EMS shall remain its property and all technical information patentable or un-patentable copyright and registered design arising out of or in connection with its performance of the Contract, shall be the property of EMS, save to the extent that the Contract Works described on EMS's quotation expressly provides otherwise.

18.4 If any provisions contained in these Conditions shall be deemed to be invalid for any reason the condition shall be read as if the invalid provision had to that extent been deleted there from and the validity of the remaining provisions of these Conditions shall be affected thereby.

19. SETTLEMENT OF DISPUTES

19.1 Should any dispute or difference arise between the parties under the contract at any time including after its completion and whether before or after the termination, abandonment or breach of the contract then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. Nothing in this clause shall be

construed to deprive either party of its rights to commence proceedings in the Courts.

15

19.2 If any such dispute or difference arises then one party ("the Applicant") may serve upon the other ("the Respondent") a notice in writing ("the Notice") which shall state sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.

19.3 The Notice under **Clause 19.2** shall also be served forthwith by the Applicant on the Adjudicator either upon his identity being agreed or upon him being appointed under **Clause 19.4** below as the case may be.

19.4 The parties shall within four days of the Notice being served upon the Respondent agree upon a suitable Adjudicator Failure agreement the Applicant shall and the Respondent may apply for an appointment to the Academy of Construction Adjudicators (whilst at the same time serving a copy of the application on the other party) whose written notification of an appointment of an Adjudicator shall be served on both parties and shall be binding on both parties.

20. ADJUDICATION

20.1 The Adjudication is to be carried out with the object of securing the appointment of and the referral of the dispute to the Adjudicator within seven days and requiring a Decision by him within twenty- eight days of such referral.

21. LAW

21.1 The Contract shall be governed by English law and the Customer consents to the exclusive jurisdiction of the English courts in matters regarding the contract except to the extent that EMS invokes the jurisdiction of the Courts outside the jurisdiction of the English courts.