

Domestic Sub-Contract Conditions

DOMESTIC SUB-CONTRACT CONDITIONS

These are the Domestic Sub-Contract Conditions referred to by the Articles of Agreement to which they are attached. In the event that these Domestic Sub-Contract Conditions are not attached to the Articles of Agreement then they shall be deemed to be incorporated by reference.

Definitions and General

- 1 In these Domestic Sub-Contract Conditions the following expressions and terms shall have the meanings given below:
 - 1.1 Appendix to the Articles of Agreement means the appendix attached to the Domestic Sub-Contract;
 - 1.2 Articles of Agreement means the Articles of Agreement engrossed by the parties in respect of the Domestic Sub-Contract Works;
 - 1.3 Completion means when the Domestic Sub-Contractor has done all the work which the Domestic Sub-Contract requires it to do, corrected all known defects which would prevent the Imtech and/or the Employer and/or any end user from using the Domestic Sub-Contract Works or any part of the Project dependant on the Domestic Sub-Contract Works, and supplied to Imtech all manuals, health and safety documentation, records, drawings and the like required by this Domestic Sub-Contract and/or the Main Contract;
 - 1.4 Designated Offsite Storage Area means any storage area not on the Site which is designated by Imtech to store plant, equipment and materials for the Project Works but which is not owned, hired or operated by the Domestic Sub-Contractor;
 - 1.5 Domestic Sub-Contract means the contract entered into between Imtech and the Domestic Sub-Contractor;
 - 1.6 Domestic Sub-Contract Sum shall be the price stated in the Articles of Agreement or in the event that the Articles of Agreement have not been completed then at item 2.3.2 of the Pre-Start Meeting Minutes or in the event that neither the Articles of Agreement or the Pre-Start Meeting Minutes have been completed then the amount stated on the Imtech Purchase Order issued to the Domestic Sub-Contractor;
 - 1.7 Domestic Sub-Contract Works shall mean those works described within the Enquiry Document F9/7 and more specifically at the Appendices to this Domestic Sub-Contract and any amendments thereto recorded in the Pre-Start Meeting Minutes or other Numbered Documents;

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- 1.8 Domestic Sub-Contractor shall mean the party appointed to carry out the Domestic Sub-Contract Works;
- 1.9 Employer shall mean the party which has employed Imtech to construct the Main Contract Works;
- 1.10 Imtech means the operating subsidiary named in the Articles of Agreement and which company is a party to the Domestic Sub-Contract.
- 1.11 Main Contract means the contract entered into between Imtech and the Employer and shall be deemed to incorporate any other contract or agreement stepped down into the Main Contract or incorporated therein by reference or other means;
- 1.12 Main Contract Works means the works being undertaken by Imtech for the Employer under the Main Contract (where Imtech are employed as a main contractor the Main Contract Works will be the same as the Project Works);
- 1.13 Numbered Documents are the documents listed at Appendix M to this Domestic Sub-Contract;
- 1.14 Payment Notice is a notice issued by Imtech pursuant to the payment provisions and headed 'Payment Notice' by Imtech subject to the issue of a Pay Less Notice (no other form of valuation, assessment or communication relating to the amount to be paid will constitute a Payment Notice);
- 1.15 Pre-Start Meeting Minutes are the minutes of the Pre-Start Meeting held between Imtech and the Domestic Sub-Contractor as Appendix N to this Domestic Sub-Contract;
- 1.16 Project Works shall mean those works described within the Enquiry Document F9/7 and specifically Appendix A, to be carried out by Imtech (including all its Domestic Sub-Contractors and other suppliers);
- 1.17 Schedule of Valuation Dates is the list of dates at Appendix K to this Domestic Sub-Contract;
- 1.18 Site means the area within which the Project Works is being carried out together with any related storage areas immediately to that area but excluding the Domestic Sub-Contractor's offices, yards, workshops, stores and the like;
- 1.19 Valid Statement means a statement submitted by the Domestic Sub-Contractor as an application for interim payment which complies with the requirements of Appendix C.
- 2 Any terms and conditions, whether arising out of the Domestic Sub-Contractor's quotations, correspondence or otherwise shall be null and void unless specifically and categorically accepted in writing by an authorised representative of Imtech, or

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as recorded in the Pre-Start Meeting Minutes, at the time of agreement of the Domestic Sub-Contract.

- 3 Where this Domestic Sub-Contract does not specifically state the manner of service of any notice or other document required by this Domestic Sub-Contract such notice or other document shall be given or be served by any effective means to the address of the receiving party stated in the Articles of Agreement. An effective means of delivery shall be either by being addressed, pre-paid and delivered by post to the agreed address or by being sent by facsimile to the number notified by the parties to each other.
- 4 The Domestic Sub-Contractor shall provide to Imtech such bonds, guarantee's and warranties at the times and in the form(s) acceptable to Imtech as are required under the Main Contract and are identified as being required in the Appendix to the Articles of Agreement or have been previously agreed between the parties.
- 5 Where under this Domestic Sub-Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded.
- 6 This Domestic Sub-Contract shall be governed by the laws of England save that any judgement or order of those courts may be enforced by means of legal proceedings in any jurisdiction.

The Domestic Sub-Contractor's Main Responsibilities

- 7 The Domestic Sub-Contractor shall:-
 - 7.1 execute complete and maintain the Domestic Sub-Contract Works in accordance with the Conditions of this Domestic Sub-Contract;
 - 7.2 be deemed to have full knowledge of the provisions of the Main Contract including any documents incorporated therein by reference or otherwise and save where the provisions of the Domestic Sub-Contract otherwise require the Domestic Sub-Contractor shall so execute complete and maintain the Domestic Sub-Contract Works so that no act or omission of the Domestic Sub-Contractor in relation thereto shall constitute cause or contribute to any breach by Imtech of any of its obligations under the Main Contract and the Domestic Sub-Contractor shall save as aforesaid assume and perform hereunder all the obligations and liabilities of Imtech under the Main Contract in relation to the Domestic Sub-Contract Works;
 - 7.3 comply with all requirements and restrictions included in the General Project Requirements (Appendix C) and any Trade Specific Requirements identified at Appendix D.
 - 7.4 comply with all statutes, statutory instruments, regulations, rules, codes of practice, byelaws, guideline or other laws or conditions including any law, rule regulation or directive promulgated by the European Union or any organ

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thereof which are from time to time in force and which affect or relate to the Domestic Sub-Contract Works and shall provide Imtech with such evidence of compliance or such information in connection that Imtech shall reasonably require; and

- 7.5 without prejudice to its obligations under clause 7.4 the Domestic Sub-Contractor shall comply with and ensure that its servants and agents comply with all rules and directions regulating Health and Safety matters and or the protection the natural environment as shall be made and brought into force from time to time by any of Imtech, the Employer, any relevant Local Authority or Government Authority in respect of the Domestic Sub-Contract Works (see especially Appendix C) and/or the site thereof and its immediate surroundings, including the air and the waters flowing in any water course. In the event of any divergence or discrepancy in or between any one of the said rules or directions, the Domestic Sub-Contractor shall forthwith notify Imtech of such divergence or discrepancy and Imtech shall issue an instruction resolving such discrepancy or divergence with which instruction the Domestic Sub-Contractor shall comply with at no additional cost to Imtech and without entitlement to any extension of the time for carrying out the Domestic Sub-Contract Works.
- 8 The Domestic Sub-Contract Works shall be carried out to the satisfaction of Imtech and shall be commenced and completed within the dates specified in the Appendix to the Articles of Agreement (including reference to any requirements to complete the Domestic Sub-Contract Works in Sections as identified) and as detailed in Appendix G, or in accordance with the requirements of the programme for the execution and completion of the Project Works as set out or referred to in the Main Contract as the same may from time to time be amended in accordance with the provisions of the Main Contract, or if no dates are stated and/or there is no such programme then in accordance with such dates and manner as Imtech may from time to time direct.
- 9 The Domestic Sub-Contractor shall be responsible for the protection of the Domestic Sub-Contract Works until the date of practical completion of the Project Works or the acceptance in writing by Imtech that the Domestic Sub-Contract Works are practically complete, whichever is the earlier.
- 10 Should there be a conflict or discrepancy between the documents in this Domestic Sub-Contract then this must be brought to the attention of Imtech by the Domestic Sub-Contractor as soon as it is identified. Imtech shall then instruct the Domestic Sub-Contractor as to the resolution of the conflict or discrepancy. In such circumstances the Domestic Sub-Contractor shall have no right to claim any variation or additional cost or time.

Design

- 11 Where the Domestic Sub-Contractor designs or is responsible for the design of any part or all of the Domestic Sub-Contract Works (including all associated or related works whether permanent or temporary in nature) the Domestic Sub-Contractor

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warrants to Imtech that the following matters will be in compliance with the requirements of the Main Contract:-

- 11.1 the design of the Domestic Sub-Contract Works; and
- 11.2 the co-ordination and integration of the Domestic Sub-Contractor's design with the remainder of the Project Works and any design by others.

Variations

- 12 Imtech may issue any reasonable direction to the Domestic Sub-Contractor in regard of the Domestic Sub-Contract Works (including the ordering of any variations). The Domestic Sub-Contractor shall immediately comply with any direction issued by Imtech.
- 13 Any variation to the Domestic Sub-Contractor works must be authorised in writing by Imtech.
- 14 Unless otherwise agreed by Imtech and the Domestic Sub-Contractor or where a quotation has been formally accepted, in writing, by Imtech, a valuation shall be made by Imtech of all authorised variations in accordance with clause 15.
- 15 The valuation of any variations instructed by Imtech in writing shall be carried out strictly in accordance with the following provisions which shall constitute an order of precedence as to the method of valuation:
 - 15.1 where the analysis of the Domestic Sub-Contract Sum includes a bill of quantities or schedule of rates and the varied work is of similar character, executed under similar conditions, then the varied work shall be measured and valued at the rates and prices contained in the said bill of quantities or schedule of rates;
 - 15.2 where the analysis of the Domestic Sub-Contract Sum includes a bill of quantities or schedule of rates and the varied work is of similar character but not executed under similar circumstances then the varied shall be measured and valued using the rates and contained in the said bill of quantities or schedule of rates as the basis for the valuation by making an appropriate adjustment to take account of the differing circumstances;
 - 15.3 where the varied work is not of similar character to work included in any bill of quantities or schedule of rates, the varied work shall be measured and valued at fair rates and prices;
 - 15.4 where the varied work cannot be properly measured it shall be valued on a daywork basis.
- 16 In the case of any item of work to be carried out on a daywork basis, the Domestic Sub-Contractor shall only be entitled to payment if work on this basis has been specifically authorised in writing by Imtech before such work is carried out and the Domestic Sub-Contractor shall submit records of labour, materials and plant used,

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to Imtech for verification not later than the Monday of the week following the week in which any such work is carried out.

- 17 The submission of costs by the Domestic Sub-Contractor for each variation and/or the subsequent valuation of that variation shall include for any preliminary costs and for any loss and/or expense directly associated with that variation.
- 18 The Domestic Sub-Contractor shall send to Imtech all documents necessary, as required by Appendix C, for the valuation of each variation to the Domestic Sub-Contract Works no later than three working days before Imtech are obliged to submit all such documents and/or information under the Main Contract. In any event the submission of all such documents by the Domestic Sub-Contractor shall be no later than two weeks after being requested to do so by Imtech.
- 19 In the event that the Domestic Sub-Contractor does not comply with the provisions of clause 18 within the time stated therein Imtech shall be entitled to carry out the valuation of the variation based on the information in its possession, which computation shall be conclusive as to the value of that variation.
- 20 Effect shall be given in the computation of the final account for the Sub-Contract Works to each agreement reached by Imtech and the Domestic Sub-Contractor in accordance with Clause 14, the valuation of each variation by Imtech carried out pursuant to clause 15 and each quotation accepted in writing by Imtech.

Sub-Contracting and Assignment

- 21 The Domestic Sub-Contractor shall not sub-let the Domestic Sub-Contract Works or any part thereof without the prior written consent of Imtech, which consent shall not be unreasonably withheld.
- 22 The Domestic Sub-Contractor shall not assign the Domestic Sub-Contract or any right or benefit arising under or in relation to, without the prior consent of Imtech, which consent shall not be unreasonably withheld.

Progress, Completion and Maintenance

- 23 If in the opinion of Imtech reasonable progress in the performance of the Domestic Sub-Contract Works is not being maintained then Imtech, upon giving written notice to the Domestic Sub-Contractor, may (without prejudice to his right to terminate the Domestic Sub-Contract Works under clause 70 hereof) accelerate the progress of the Domestic Sub-Contract Works by the employment of its own labour or that of other domestic sub-contractors and any additional costs and expenses incurred by Imtech shall be paid to Imtech by the Domestic Sub-Contractor or be otherwise recoverable from the Domestic Sub-Contractor as a debt.
- 24 The Domestic Sub-Contractor shall notify Imtech in writing of the date when in its opinion the Domestic Sub-Contract Works as a whole or such works in a Section, as Clause 8 of this Domestic Sub-Contract, are complete having fully satisfied the requirements for Completion. If Imtech agrees it shall confirm to the Domestic Sub-Contractor that Completion has been achieved. Otherwise Imtech shall inform the

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- Domestic Sub-Contractor of the date when it considers that the Domestic Sub-Contract Works have achieved Completion.
- 25 On Completion of the Domestic Sub-Contract Works the Domestic Sub-Contractor shall remove all its plant, tools, surplus materials and debris arising from its work and leave the Site clean and tidy.
- 26 The Domestic Sub-Contractor shall maintain and make good the Domestic Sub-Contract Works in the same manner and for the same period as Imtech has to maintain and make good the Main Contract Works in accordance with the Main Contract. The commencement of the maintenance and make good period is practical completion of the Project Works unless identified elsewhere. This obligation shall include a like obligation as that of Imtech to remedy defects, shrinkages or faults in the Domestic Sub-Contract Works.
- 27 The Domestic Sub-Contractor shall attend to all such defects and other similar matters as soon as they are reported to it and in any event by no later date than notified to the Domestic Sub-Contractor by Imtech. In the event that the Domestic Sub-Contractor does not comply with this requirement by the date so notified then Imtech shall be entitled to make such arrangements as are necessary to remedy the matter in question without further notice to the Domestic Sub-Contractor and to deduct all costs incurred in doing so from the Domestic Sub-Contractor's account or to recover the same as a debt from the Domestic Sub-Contractor. Refer to Appendix C.

Extension of Time for Completion

- 28 The Domestic Sub-Contractor shall be entitled to an extension of time by means of an adjustment to the dates for completion in the event that one of the following occur:
- 28.1 any of the events set out in the relevant provisions of the Main Contract for which Imtech is entitled to receive an extension of time for completion of the Main Contract; or
- 28.2 any impediment, prevention or default of Imtech or any of Imtech's persons (including where Imtech is the Principal Contractor, any default, whether by act or omission, in that capacity),
- providing always that the event causes delay to the completion of the Domestic Sub-Contract Works and that any act, omission or default of the Domestic Sub-Contractor is not causing delay to the completion of the Domestic Sub-Contract Works at the same time as the event that would entitle the Domestic Sub-Contractor to an adjustment of the date for completion.
- 29 In order to be entitled to an adjustment of the completion date the Domestic Sub-Contractor shall inform Imtech of all events that cause delay to the progress of the Domestic Sub-Contract Works within 7 days of the occurrence of each such event. In its notice to Imtech the Domestic Sub-Contractor shall identify all such events

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that constitute an event under clause 28.1 or clause 28.2 above, and provide Imtech with all reasonable details and an estimate of the extent of the delay to the completion date.

- 30 The provisions of clauses 28 and 29 above apply equally to any Sectional Completion Dates set out in this Domestic Sub-Contract.
- 31 If on receiving a notice and particulars under clause 28 Imtech shall within 16 weeks of the receipt of such notice and sufficient particulars notify the Domestic Sub-Contractor whether in the opinion of Imtech the Domestic Sub-Contractor is properly entitled to an extension of time to the date for completion. In any such notification Imtech shall notify the Domestic Sub-Contractor as to which events it considers have caused or contributed to any extension of time awarded and the period of time awarded for each such event. Imtech shall also detail the reasons behind its assessment of any extension of time that may be due including its reasons for not awarding an extension of time in respect of any event notified under clause 28 by the Domestic Sub-Contractor.

Loss and/or Expense

- 32 The Domestic Sub-Contractor shall be entitled to be reimbursed any direct loss and/or expense incurred by means of an addition to the Domestic Sub-Contract Sum in the event that one of the following occur:

- 32.1 any of the matters set out in the relevant provisions of the Main Contract for which Imtech is entitled to receive an equivalent payment under the Main Contract; or
- 32.2 any impediment, prevention or default of Imtech or any of Imtech's persons (including where Imtech is the Principal Contractor, any default, whether by act or omission, in that capacity),

providing always that the matter causes the direct loss and/or expense incurred in connection with the Domestic Sub-Contract Works and that any act, omission or default of the Domestic Sub-Contractor is not causing or contributing to such direct loss and/or expense at the same time as the matter that would entitle the Domestic Sub-Contractor to reimbursement of such direct loss and/or expense.

- 33 In order to be entitled to the reimbursement of direct loss and/or expense the Domestic Sub-Contractor shall inform Imtech of all matters that give rise to such an entitlement within 7 days of the occurrence of each such matter. In its notice to Imtech the Domestic Sub-Contractor shall identify all such matters that constitute an event under clause 32.1 or clause 32.2 above, and provide Imtech with all reasonable details and an estimate of the extent of the direct loss and/or expense incurred.
- 34 If on receiving a notice and particulars under clause 32 Imtech shall within 16 weeks of the receipt of such notice and sufficient particulars notify the Domestic Sub-Contractor whether in the opinion of Imtech the Domestic Sub-Contractor is properly

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entitled to the reimbursement of direct loss and/or expense. In any such notification Imtech shall notify the Domestic Sub-Contractor as to which matters it considers have caused or contributed to any direct loss and/or expense awarded and the amount awarded for each such matter. Imtech shall also detail the reasons behind its assessment of any direct loss and/or expense that may be due including its reasons for not awarding direct loss and/or expense in respect of any matter notified under clause 32 by the Domestic Sub-Contractor.

Payment

- 35 The Domestic Sub-Contractor shall not later than the date specified in the Schedule of Valuation Dates submit to Imtech a Valid Statement of the value of all work properly executed under the Domestic Sub-Contract and, if allowable under the Main Contract, all materials properly delivered in accordance with the programme requirements to the site of the works for incorporation into the Domestic Sub-Contract Works and if allowable under the Main Contract the value of off-site materials for incorporation into the Domestic Sub-Contract Works at the date of such statement, subject to the provision of a written Certificate of Indemnity which is acceptable to Imtech.
- 36 The value of work done and shown in the Valid Statement shall be calculated in accordance with the rates and prices, if any, specified in the Domestic Sub-Contract, or if there are no such rates and prices, then by reference to the Domestic Sub-Contract Sum. Any statement submitted which does not comply with the requirements of a Valid Statement as set out in this Domestic Sub--Contract will not constitute a Valid Statement and Imtech will not be obliged to make any payment to the Domestic Sub-Contractor against that statement.
- 37 Further the statement referred to at Clause 35 must be addressed and delivered by post or by hand to the 'Sub-Contract Accounts Payable Manager' at Imtech's head office or by e-mail both as identified in the Appendix to the Articles of agreement. All such submissions must also be copied, by e-mail, to the project Quantity Surveyor as identified in the Pre-Start Meeting Minutes or replacement thereof subsequently notified to the Domestic Sub-Contractor.
- 38 The statement submitted by the Domestic Sub-Contractor as provided in the Clause 35 shall constitute a "Valid Statement" for the purposes of the payment provisions of this Domestic Sub-Contract but not otherwise and only if addressed and delivered as set out in clause 37. A statement issued in any other way or to any other address will not constitute a Valid Statement and Imtech will not be obliged to make any payment to the Domestic Sub-Contractor against that statement.
- 39 No later than the date shown in the Schedule of Valuation Dates or if no such date is shown no later than 30 days after the Main Contract Application Date as shown in or calculated in accordance with the Schedule of Valuation Dates ("the Payment Due Date"), there shall be due to the Domestic Sub-Contractor in respect of the value of the work and materials included in a Valid Statement, payment of a sum calculated and determined by Imtech in accordance with the rates and prices included in the Domestic Sub-Contract or by reference to the Domestic Sub-

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Contract Sum. The amount due to the Domestic Sub-Contractor shall be subject to the deduction of:

- 39.1 retention at the rate specified in the Appendix to the Articles of Agreement;
 - 39.2 the total amount certified to be paid by Imtech in previous payments;
 - 39.3 any amount to be deducted in accordance with the Construction Industry Tax Deduction Scheme as set out in Clauses 54 and 55; and
 - 39.4 any amount allowable or payable to Imtech by the Domestic Sub-Contractor under the terms of the Domestic Sub-Contract or any other agreement between Imtech and the Domestic Sub-Contractor.
- 40 The final date for payment shall be as shown in or calculated in accordance with the Schedule of Valuation Dates or if no such date is shown 10 days after the Payment Due Date.
- 41 No later than 5 days after the payment due date for payment to the Domestic Sub-Contractor shown in or calculated in accordance with the Schedule of Valuation Dates Imtech shall issue to the Domestic Sub-Contractor a notice detailing the calculation of the amount of the payment to be made (“the Payment Notice”).
- 42 In the event that Imtech do not issue the notice referred to in clause 41 then the Domestic Sub-Contractor may issue a notice to Imtech (the “Default Payment Notice”) stating the amount that the Domestic Sub-Contractor considers that Imtech should pay to the Domestic Sub-Contractor for work up to Main Contract Application Date against which Imtech have failed to issue a Payment Notice. The amount stated in the Default Payment Notice cannot exceed the amount stated in the corresponding Valid Statement that had been submitted by the Domestic Sub-Contractor. Any such Default Payment Notice shall only be valid on receipt of the said Default Payment Notice served by recorded delivery to the Financial Director of Imtech at the address identified in the Appendix to the Articles of Agreement.
- 43 In the event that a Default Payment Notice is issued then the final date for payment shall be delayed by the number of days between the latest date by which the Payment Notice should have been issued by Imtech and the date on which the Imtech Financial Director received the Default Payment Notice. Any such delay shall not constitute a delay in payment under the Domestic Sub-Contract or at law.
- 44 Not later than 2 days before the final date for payment of any interim payment or the final payment, Imtech may give written notice (“Pay Less Notice”) to the Domestic Sub-Contractor which shall specify any amount proposed to be withheld and/or deducted from the sum due, set out the ground or grounds and the amount attributable to each ground, and the amount to be paid to the Domestic Sub-Contractor after the deductions even if that amount shall be nil.
- 45 For the avoidance of doubt Imtech will not be obliged to pay any sum to the Domestic Sub-Contractor other than a sum that is stated in a Payment Notice,

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subject always to the effect of a valid Pay Less Notice issued under the Domestic Sub-Contract.

- 46 Subject to clause 47 the retention monies deducted in accordance with clause 39.1 shall be reduced by half in the first payment that becomes due after the First Retention Release Date stated in the Appendix to the Articles of Agreement. If no such payment becomes due within the period equal to the period between the Main Contract Application Date and the payment due date as set out in the Schedule of Valuation Dates of the First Retention Release Date then a payment shall become due at that time to facilitate the release of the retention monies due to be released.
- 47 If at the First Retention Release Date the Domestic Sub-Contract Works, including the correction of all known defects, all outstanding works and the provision of all documentation required by this Domestic Sub-Contract, has not been completed by the Domestic Sub-Contractor then the retention monies deducted in accordance with clause 39.1 shall not be reduced by half until the first payment that becomes due after the Domestic Sub-Contractor has completed the Domestic Sub-Contract Works. Any delay in payment of the retention monies due to be released after the First Retention Release Date will not be deemed to constitute a late payment if withheld by the operation of this clause.
- 48 Subject to clause 49 the balance of retention monies held after the reduction in percentage referred to in clause 46 shall become due within the period equal to the period between the Main Contract Application Date and the payment due date as set out in the Schedule of Valuation Dates after the Second Retention Release Date stated in the Appendix to the Articles of Agreement. If no such payment becomes due within the period equal to the period between the Main Contract Application Date and the payment due date as set out in the Schedule of Valuation Dates of the Second Retention Release Date then a payment shall become due at that time to facilitate the release of the retention monies due to be released.
- 49 If at the Second Retention Release Date the Domestic Sub-Contractor has not corrected all known defects in the Domestic Sub-Contract Works then the retention monies due to be released at the Second Retention Release Date shall not become due until the first payment that becomes due after the Domestic Sub-Contractor has completed the rectification of all such known defects in the Domestic Sub-Contract Works. Any delay in payment of the retention monies due to be released after the Second Retention Release Date will not be deemed to constitute a late payment if withheld by the operation of this clause.
- 50 The Second Retention Release Date will be amended by delaying it by the period of any extension of time granted to the Domestic Sub-Contractor under this Domestic Sub-Contractor.
- 51 Without prejudice to the rights which exist under this Domestic Sub-Contract or at common law Imtech shall be entitled to withhold or defer payment of all or part of any sums otherwise due pursuant to the provisions hereof where:-

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- 51.1 Imtech has included the amounts or quantities set out in the Valid Statement in its own statement to the Employer in accordance with the Main Contract and such sums have been certified as due to Imtech but the Employer or some other party upon whom the payment is dependent is insolvent and as a consequence the Employer or Imtech has not been paid in full; or
- 51.2 the Domestic Sub-Contractor has not returned a signed current agreement to be included in Imtech's self-billing system for all payments due under this Domestic Sub-Contract or any other contract between Imtech and the Domestic Sub-Contractor; or
- 51.3 the Domestic Sub-Contractor has failed to provide or return any bonds, guarantees or warranties that are identified in the Articles of Agreement and Appendix thereto as being required from the Domestic Sub-Contractor.
- 52 Imtech shall be entitled to set off against any sums (including retention) otherwise due to the Domestic Sub-Contractor under this Domestic Sub-Contract, the amount of any damages, cost, losses and expenses incurred by Imtech or which Imtech in good faith estimates it is likely to incur as a result of any breach of this Domestic Sub-Contract by the Domestic Sub-Contractor.
- 53 The Domestic Sub-Contractor acknowledges that the Liquidated and Ascertained Damages for which Imtech may be liable under the Main Contract as identified in the Appendix to the Articles of Agreement may form part of any damages claim against the Domestic Sub-Contractor arising from a failure to complete the Domestic Sub-Contract Works by the date for completion, together with all other costs arising from or under the Main Contract and any other related contracts entered into by Imtech. It is agreed that this sum is within the contemplation of the parties and does not constitute the limit of the Domestic Sub-Contractor's liability.
- 54 Tax will be deducted from payments due under this Domestic Sub-Contract in accordance with the Finance Act 1975 or any statutory modification thereof in the event that the Domestic Sub-Contractor fails to produce to the satisfaction of Imtech a valid tax certificate in accordance with the Construction Industry Tax Deduction Scheme and such renewals as may be necessary to keep it in force for the duration of the Domestic Sub-Contract, including up to the release of any retention monies.
- 55 Should the Domestic Sub-Contractor's Tax status change from gross to net or the Domestic Sub-Contractor has a net status then the Domestic Sub-Contractor must issue with its written statement submitted in accordance with clause 35 a copy of all material invoices relevant to that written statement. Tax at the appropriate percentage will be deducted from all sums due less total value of all relevant invoices provided (all values to be exclusive of VAT). Failure to provide all such material invoices with the written statement will result in Tax being deducted at the relevant percentage from the amount due less the value of any relevant invoices received.
- 56 Property in any goods or materials for incorporation into the Project Works shall pass from the Domestic Sub-Contractor to Imtech at the time of their arrival on site

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or delivery to Imtech's Designated Offsite Storage Area or upon payment by Imtech to the Domestic Sub-Contractor, whichever occurs first. Notwithstanding the foregoing, the Domestic Sub-Contractor shall bear all risks of loss or damage to such goods and materials until the date of the practical completion of the Main Contract or acceptance in writing by Imtech, whichever is the earlier.

- 57 If Imtech fails to pay the amount due, subject to any notice of withholding issued in accordance with Clause 44, by the final date for its payment then Imtech shall pay to the Domestic Sub-Contractor in addition to the balance due simple interest thereon for the period until such payment is made at a rate of 2% above the official dealing rate of the Bank of England current at the date that the payment was due under this Domestic Sub-Contract. The acceptance of any payment of interest under this clause shall not in any circumstances be construed as a waiver by the Domestic Sub-Contractor of its right to proper payment of the balance.
- 58 The Domestic Sub-Contract Sum is exclusive of VAT and in relation to any payment to the Domestic Sub-Contractor under this Domestic Sub-Contract, Imtech shall in addition pay the amount of any VAT properly chargeable at the final date for payment for each payment to be made.

Final Account

- 59 The Domestic Sub-Contractor shall send to Imtech, in the manner prescribed in Appendix C, all documents necessary for the computation of the final account for the Domestic Sub-Contract Works no later than one month before Imtech are obliged to submit all such documents and/or information under the Main Contract. In any event the submission of all such documents by the Domestic Sub-Contractor shall be no later than one month after completion of the Domestic Sub-Contract Works.
- 60 If the Domestic Sub-Contractor does not submit the documentation required by Clause 59 above then Imtech may by issue of a written notice require the Domestic Sub-Contractor to submit all such documentation within one month of receipt by the Domestic Sub-Contractor of the said notice.
- 61 In the event that the Domestic Sub-Contractor does not submit the documentation required by Clause 59 within the time required from the receipt of the written notice referred to in Clause 60 then Imtech shall be entitled to carry out the computation of the final account for the Domestic Sub-Contract Works based on the information in its possession, which computation shall be conclusive as to the final gross valuation of the Domestic Sub-Contract Works.
- 62 Not later than 1 month after Imtech is due to receive a reply to its final account submission under the Main Contract, Imtech shall prepare and send to the Domestic Sub-Contractor a statement of the calculations of the final account sum. In the event that the Main Contract does not contain provisions in respect of either the submission and/or return of a final account then Imtech shall prepare and send to the Domestic Sub-Contractor a statement of the calculations of the final account sum no later than 6 months after practical completion of the Main Contract Works.

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Unless the Domestic Sub-Contractor notifies Imtech, in writing, within 1 month of the receipt of the statement of the calculations of the final account sum that it disagrees with any of the amounts included in that calculation then the statement issued by Imtech will constitute final and conclusive evidence that any necessary effect has been given to all the terms of this Domestic Sub-Contract that require any addition or deduction from the Domestic Sub-Contract Sum, that any extension of time which is due under this Domestic Sub-Contract has been given and that any direct loss and/or expense which the Domestic Sub-Contractor is entitled to be reimbursed has been included in the final account sum.

- 63 In the event that either party has commenced adjudication, arbitration or other proceedings before the statement of final account sum has been issued or becomes final and conclusive then the statement of final account sum will be final and conclusive in respect of each and every matter which is not the subject of such proceedings.

Insurances

- 64 The responsibility for the Domestic Sub-Contractor's plant, materials and equipment or other property on the site and at any Imtech Designated Offsite Storage Area shall be at the Domestic Sub-Contractor's sole risk.
- 65 The Domestic Sub-Contractor shall indemnify and save harmless, in so far as permitted by law, Imtech against and from:
- 65.1 any breach, non observance or non performance by the Domestic Sub-Contractor, his servants or agents of the said provisions of the Main Contract or any of them;
 - 65.2 any act or omission of the Domestic Sub-Contractor, his servants or agents which involves Imtech in any liability to the Employer or others under the Main Contract;
 - 65.3 any claim, damage, loss or expense due to or resulting from any negligence or breach of duty on the part of the Domestic Sub-Contractor, his servants or agents; and
 - 65.4 any loss or damage resulting from any claim under any statute in force for the time being by an employee of the Domestic Sub-Contractor in respect of personal injury arising out of or in the course of his employment.
- 66 The Domestic Sub-Contractor shall be responsible for the cost of replacement of Free Issue Materials lost, damaged or stolen from the date of delivery to the Domestic Sub-Contractor of such Free Issue Materials until the date of practical completion of the Project Works or the acceptance in writing by Imtech that the Domestic Sub-Contract Works are practically complete, whichever is the earlier.
- 67 The Domestic Sub-Contractor shall take out and maintain such insurance as is required by law and as specified in the Appendix to the Articles of Agreement hereto and the risks commonly insured against in relation to the Domestic Sub-

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Contract Works in respect of employees, third parties, adjoining properties and the like.

- 68 Whenever Imtech shall request the Domestic Sub-Contractor shall provide evidence in the form of an authenticated certificate from a reputable Insurance Broker that such insurance is in place.
- 69 Where any claim is made under any Joint Names Insurance Policy taken out by the Employer or Imtech, where the Domestic Sub-Contractor is either recognised as an insured under the Joint Names Insurance Policy or the insurers waive any rights of subrogation they may have against the Domestic Sub-Contractor, where such claim relates to any loss or damage caused (whether directly or indirectly) by any negligence, breach of statutory duty, omission or default of the Domestic Sub-Contractor or any person for whom the Domestic Sub-Contractor is responsible, the Domestic Sub-Contractor shall pay the sum of any excess paid by Imtech or the Employer to the Insurer as required by such insurance policy or any other liability incurred by the Employer or Imtech, whichever is the greater. This sum may be withheld or deducted from any amount to the Domestic Sub-Contractor subject to compliance by Imtech with the requirements of clause 44. For the avoidance of doubt the Domestic Sub-Contractor's liability under this clause shall continue after practical completion of the Main Contract Works or termination of this Domestic Sub-Contract.

Termination

- 70 If the Domestic Sub-Contractor fails to observe, perform or comply with any of its obligations under the Domestic Sub-Contract:-
- 70.1 then if Imtech shall give to the Domestic Sub-Contractor notice of such failure and if the Domestic Sub-Contractor for seven days continues with such failure then Imtech shall be entitled by further written notice to terminate the employment of the Domestic Sub-Contractor under the Domestic Sub-Contract, or
- 70.2 by further written notice to give direction to the Domestic Sub-Contractor removing any portion of the Domestic Sub-Contract Works from his hands.
- 71 In the event that Imtech or the Domestic Sub-Contractor:
- 71.1 makes a composition or arrangement with his creditors, or becomes bankrupt, or
- being a company
- 71.2 makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 as the case may be or any amendment or re-enactment thereof, or
- 71.3 has a provisional liquidator appointed, or

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- 71.4 has a winding up order made, or
- 71.5 passes a resolution for voluntary winding up (except for the purposes of amalgamation or reconstruction), or
- 71.6 under the Insolvency Act 1986 or any amendment or re-enactment thereof has an administrator or an administrative receiver appointed

then the employment of the Domestic Sub-Contractor under the Domestic Sub-Contract is terminated forthwith.

- 72 If the Domestic Sub-Contractor is domicile or registered in any jurisdiction other than England then any act by the Domestic Sub-Contractor in that jurisdiction which would constitute one of the acts or the equivalent thereof listed in clause 71 of this Sub-Contract if committed in England will constitute such an act and the provisions of clause 71 shall apply.
- 73 If the employment of the Domestic Sub-Contractor under the Domestic Sub-Contract is terminated under clauses 70 or 71 then Imtech may employ and pay others to complete the Domestic Sub-Contract Works and to make good defects of the kind referred to in clause 26 and Imtech may enter upon and take possession of the Domestic Sub-Contract Works and (subject to third party consents) may use all of the Domestic Sub-Contractor's temporary buildings, plant, tools, equipment and materials for those purposes.
- 74 If Imtech fails to observe any of its following obligations under the Domestic Sub-Contract:
 - 74.1 to provide access to the Domestic Sub-Contract Works; or
 - 74.2 to pay a sum notified in a Payment Notice (subject to any Pay Less Notice issued) by the final date for payment.

then the Domestic Sub-Contractor may give to Imtech notice of such failure and if Imtech for twenty one days thereafter continues with such failure then the Domestic Sub-Contractor shall be entitled by further written notice to terminate the employment of the Domestic Sub-Contractor under the Domestic Sub-Contract.
- 75 The Domestic Sub Contractor shall:-
 - 75.1 when requested in writing, but not before, remove all temporary buildings, plant, tools, equipment and materials;
 - 75.2 if required by Imtech and if it is lawfully required to do so, assign to Imtech, without charge the benefit of any agreement for the supply of materials, goods or services for the purposes of this Domestic Sub-Contract;
- 76 If the employment of the Domestic Sub-Contractor under the Domestic Sub-Contract is terminated under clauses 70 or 71 then the provisions of clause 76.1

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apply and all other provisions relating to payment and retention shall cease to apply.

76.1 Upon completion of the Domestic Sub-Contract Works and making good defects in accordance with Clause 26 the Domestic Sub-Contractor may apply and Imtech shall pay to the Domestic Sub-Contractor the value of any work executed and materials and goods supplied that have not been included in previous payments. Without prejudice to its other rights Imtech may deduct from the payment direct loss and expense/or damage caused by the termination of the Domestic Sub-Contract. To the extent that amounts due to Imtech exceed the amounts due to the Domestic Sub-Contractor the balance shall be recoverable as a debt.

Dispute Resolution

77 Without prejudice to either parties' rights to refer any dispute to Adjudication at any time, if at anytime, either party is dissatisfied with any matter arising under, out of or in connection with this Domestic Sub-Contract, the matter shall be referred, in writing, by the dissatisfied party to the other party, whereupon the authorised representatives (as identified in the Appendix to the Articles of Agreement) of the parties shall meet in an attempt to resolve such matters to the satisfaction of the parties.

78 The parties may by agreement seek to resolve any dispute or difference arising under or out of this Domestic Sub-Contract through mediation.

79 Notwithstanding the provisions of Clauses 77 and 78 either party may at any time refer the dispute to be settled by an adjudicator to be nominated by the body identified in the Appendix to the Articles of Agreement within 7 days of the effective service of a notice of adjudication.

80 Should all of the issues referred to adjudication be matters between Imtech and the Domestic Sub-Contractor only then the adjudication will be subject to any effective adjudication rules included in or referred to by the Main Contract. In the event that no such rules are identified then the Scheme for Construction Contracts will apply.

81 Should Imtech be of the opinion that any of the issues is or is likely to be related to a dispute under the Main Contract then Imtech and Domestic Sub-Contractor hereby agree that such dispute under this Domestic Sub-Contract shall be dealt with jointly with the dispute under the Main Contract and they shall follow and be bound by the adjudication procedure and decision under the Main Contract and any subsequent arbitration or other legal proceedings as provided for under the terms of the Main Contract.

82 Subject to Clause 79 above and the exceptions set out below, any dispute of difference between the parties of any kind whatsoever arising out of or in connection with this Domestic Sub-Contract, whether before, during the progress of or after Completion or termination of the Domestic Sub-Contract Works, shall be referred to arbitration in accordance with the edition of the Construction Industry

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Model Arbitration Rules (CIMAR) current at the date of reference to arbitration. The exceptions to this clause are:

82.1 any dispute or difference arising under or in respect of the Construction Industry Tax Deduction Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; or

82.2 any disputes or differences in connection with the enforcement of any decision of an Adjudicator.

83 In the event that the Articles of Agreement indicate that Clause 82 does not apply then the English courts shall have jurisdiction over any dispute or difference between the parties which arises out of or in connection with this Domestic Sub-Contract.

Contracts (Rights of Third Parties) Act 1999

84 Notwithstanding any other provision of this Domestic Sub-Contract nothing in this Domestic Sub-Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

Bribery Act 2010

85 The Domestic Sub-Contractor or any person employed, engaged by or connected to the Domestic Sub-Contractor shall not:

85.1 offer, promise, give or agree to give to any person employed, engaged by, or connected to Imtech any gift, consideration or advantage as an intentional inducement or reward for any improper act or failure to act in connection with this Agreement or any other agreement or arrangement between the parties, including the award of any agreement or business and any of the rights and obligations arising out of or in connection with any such relationship; nor

85.2 enter into this Agreement or any other agreement or arrangement with Imtech in connection with which commission has been paid or has been agreed to be paid by the Domestic Sub-Contractor or on its behalf, or to its knowledge unless, before the relevant agreement is entered into, the particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to Imtech.

86 If the Domestic Sub-Contractor or any person employed or engaged by or connected with the Domestic Sub-Contractor breaches Clause 85 or any provision of the United Kingdom Bribery Act 2010, the Prevention of Corruption Acts 1889 – 1916 or any other relevant anti-corruption legislation, Imtech shall be entitled to terminate this Agreement by written notice with immediate effect.

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- 87 The decision of Imtech shall be final and conclusive in any dispute, difference or question arising in respect of:
- 87.1 The interpretation of this Clause; and
 - 87.2 Where a breach as described in Clause 85 has occurred, the right of Imtech to terminate this Agreement, and/or any Service.
- 88 Any termination of this Agreement under Clause 86 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues to Imtech.
- 89 If the Domestic Sub-Contractor commits or suspects that anyone employed, engaged by or connected to the Domestic Sub-Contractor has committed an act or omission in breach of Clause 85, the Domestic Sub-Contractor shall inform Imtech immediately in writing and in full confidence or through our confidential whistleblowing hotline on 0800 358 0366
- 90 Without prejudice to Imtech's right to terminate this Agreement, the Domestic Sub-Contractor shall indemnify and keep indemnified Imtech against all losses, damages, costs (including legal costs), proceedings, claims, liabilities or expenses suffered or reasonably and properly incurred by Imtech arising out of or in connection with any breach of this clause.

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