

Harsco Infrastructure Services Limited – Contract Terms and Conditions

Edition 2009/2 – effective from 15 December 2009

1. Definitions, Interpretation, the Contract etc

- 1.1. Unless otherwise specifically provided, in these Terms and Conditions the following words and phrases have the meanings set out below:
- "All Risks Insurance" means the insurance defined as All Risks Insurance in Clause 6.8 of the JCT Standard Form of Building Contract 2005 Edition.
- "Authorised Person" means an Harsco Infrastructure corporate director, employee holding the position of branch manager or above or a person nominated in writing by one of these for the purposes of the Contract.
- "Business Day" means Monday to Friday excluding Christmas Day, Good Friday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday and Harsco Infrastructure's standard shutdown periods at Christmas and Easter.
- "Business Hire Rates" means the rates charged by Harsco Infrastructure's hire and sale business and which are available on request.
- "Contract means" the contract between Harsco Infrastructure and the Customer into which these terms are incorporated.
- "Contract Price" means the total sum agreed for the original agreed Hire Period for each agreed Item in Harsco Infrastructure's quotation(s) for the original Works (excluding any subsequent variations).
- "Customer" means the party engaging Harsco Infrastructure to undertake the Works.
- "Equipment" means the scaffolding, systems equipment, tubes, fittings, boards, mast climbing equipment (including mast climbing working platforms, masts and transport platforms), hoists, temporary roofing and other materials supplied by Harsco Infrastructure to the Customer for the purpose of the Works.
- "Extra Hire Period" means the period identified in Clause 3.4.
- "Harsco Infrastructure" means the Harsco Infrastructure company that has entered/will enter into the Contract with the Customer - being either Harsco Infrastructure Services Ltd or an associated or subsidiary company.
- "Hire Period" means the period stated in Harsco Infrastructure's quotation(s) or otherwise agreed in writing for hire by the Customer of each Item. Unless otherwise agreed in writing, the Hire Period will start on the earlier of (1) the day on which Harsco Infrastructure issues a handover certificate for the Structure (or, in the case of Progressive Installation, for the first part of the Structure); and (2) provided that Harsco Infrastructure has taken reasonable steps to install the Equipment, 2 Business Days after commencement of delivery of the Equipment to Site.
- "Inherent Defect" means a defect not reasonably ascertainable by inspection on completion of installation of the Structure or, in the case of Progressive Installation, the relevant part thereof.
- "Insolvent" means a party is Insolvent if he enters into an arrangement, compromise or composition in satisfaction of his debts (including a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); without a declaration of solvency, he passes a resolution or makes a determination that he be wound up; he has a winding up order or bankruptcy order made against him; he has appointed to him an administrator or administrative receiver; he is the subject of any analogous arrangement, event or proceedings in any other jurisdiction; additionally, in the case of a partnership, each partner is the subject of an individual arrangement or other event or proceedings referred to above.
- "Item" means each separately identified item of temporary work or supply of Equipment in Harsco Infrastructure's quotation(s).
- Joint Names Policy means the policy of insurance which includes both the Customer and Harsco Infrastructure as named insured's and under which the insurers have no right of recourse against any entity or person named as an insured under the policy.
- "Normal Working Hours" means the hours of work on a Business Day, namely 8 a.m. to 4.30 p.m. Monday to Thursday and 8 a.m. to 3.30 p.m. on Friday.
- "Price" means see the amounts stated at Clause 3.1.
- "Progressive Installation" means a situation, agreed between Harsco Infrastructure and the Customer, in which the Structure is installed in more than one operation, thereby permitting the Customer to use those parts of the Structure that are installed prior to completion of the installation of the whole Structure.
- "Progressive Dismantling" means a situation, agreed between Harsco Infrastructure and the Customer, in which the Structure is dismantled in more than one operation, thereby permitting the Customer to use those parts of the Structure that have not been dismantled.
- "Regulation" means any statute, order in council, regulation, direction, bye-law or other lawful requirement or instruction.
- Schedule of Additional Rates means the schedule provided by Harsco Infrastructure which will be used for the pricing of varied and/or additional items where these Terms so provide.
- "Site" means the place where the Works are to be carried out, including the access ways, buildings and other structures thereon.
- "Structure" means the Equipment relating to each Item in the course of installation, once installed and in the course of dismantling.
- "Terms" means these Terms and Conditions
- "Works" means the temporary work to be undertaken for and the Equipment supplied to the Customer by Harsco Infrastructure in accordance with the Contract including all variations and additions thereto.
- 1.2. Unless specifically otherwise stated, a reference in these Terms to a Clause is to a Clause of these Terms.
- 1.3. The headings in this Contract are descriptive only and do not restrict or limit the interpretation of the individual Clauses or the Contract.
- 1.4. In these Terms, unless the context otherwise requires, words denoting a person or the masculine include any individual, firm, partnership, company, other body corporate and the feminine and vice versa.
- 1.5. These Terms may not be altered without the written agreement of Harsco Infrastructure, signed by an Authorised Person.
- 1.6. Any terms and conditions provided by or on behalf of the Customer are hereby excluded and do not form part of the Contract.
- 1.7. None of Harsco Infrastructure's sales literature shall, unless otherwise expressly agreed in writing by Harsco Infrastructure and signed by an Authorised Person, form part of the Contract.

2. Customer's obligations and undertakings

- 2.1. It is the Customer's obligation, free of charge, to:
- 2.1.1. Provide safe, adequate and unobstructed vehicle and personnel access to and egress from the Structure, the Equipment, the Site, the location(s) of Harsco Infrastructure's works and the storage facilities (provided under Clause 2.1.8) at all times. If the ground is unsuitable for vehicles to travel or work on, the Customer will supply and lay suitable timbers or equivalent to enable the passage and working of vehicles;
- 2.1.2. Obtain at its own expense and during the currency of the Works maintain and comply with all necessary consents, licences, permissions or permits required for or in connection with the Works. The Customer shall provide all such consents, licences, permissions and permits to Harsco Infrastructure before the commencement of the Works. Harsco Infrastructure reserves the right to adjust its prices and/or rates if any such consents, licences, permissions or permits impose conditions which involve additional expense to Harsco Infrastructure;
- 2.1.3. Inspect each Structure on completion of installation. No claim for defects (other than Inherent Defects) will be permitted unless the Customer gives written notice of any such defects no later than the end of the Business Day after issue of the handover certificate by Harsco Infrastructure or, if work is carried out on the Site by the Customer, its servants, agents or sub-contractors on days which are not Business Days, the end of the next working day after issue of the handover certificate by Harsco Infrastructure;
- 2.1.4. Provide, at Harsco Infrastructure's request, within a reasonable time of such request, any craneage, hoists and forklifts (together with operators) necessary for the installation, adaptation and dismantling of the Equipment, and movement of the Equipment around Site;
- 2.1.5. Provide setting out positions for the Equipment (from existing structures, unless otherwise agreed) to suit all trades using the Equipment, and to suit existing and new services;
- 2.1.6. Provide Harsco Infrastructure, its servants, sub-contractors, agents and insurers with access to the Site, the Structures and Equipment to inspect, test, adjust, repair, modify or replace it or parts thereof;
- 2.1.7. Comply with the Safety Clauses at Clause 13;
- 2.1.8. Provide adequate facilities, within reasonable proximity of Harsco Infrastructure's working areas on Site (such proximity to be to the satisfaction of Harsco Infrastructure), for the storage of the Equipment, other materials, equipment, tools or property which Harsco Infrastructure may bring on to the Site for the purpose of the Works;
- 2.1.9. Provide all necessary water, lighting, power and site security for the Works, the Equipment and the Structures;
- 2.1.10. In relation to mast climbing equipment, provide and maintain a suitable 400v 3 phase power supply (of minimum 32 ampere capacity for each mast) to within 5 metres of each mast at approximately 2-3 metres above ground level and as requested by Harsco Infrastructure.
- 2.2. Unless otherwise agreed in writing, the buildings and structures on Site and their contents together with the Works, the Structure and all Equipment on Site shall be at the Customer's risk and the Customer shall, at its own cost, for the benefit of itself and Harsco Infrastructure take out and maintain a Joint Names Policy with insurers approved by Harsco Infrastructure (such approval not being unreasonably withheld or delayed) for All Risks Insurance for the full reinstatement value of all items referred to above, professional fees and consequential losses and shall maintain such Joint Names Policy up to the final removal of all Equipment from Site. The Customer shall forthwith provide Harsco Infrastructure with a copy of the insurance policy referred to in this Clause on Harsco Infrastructure's request.
- 2.3. The Customer shall:
- 2.3.1. Be liable for and indemnify Harsco Infrastructure against any expense, liability, loss (including consequential losses), claim or proceedings whatsoever:
- 2.3.1.1. In respect of personal injury to or the death of any person; or
- 2.3.1.2. Any loss, injury or damage whatsoever to any property real or personal, including the Structure and Equipment,
- which may arise out of or be in any way connected with the carrying out of works on Site or the use or misuse of or damage to the Equipment or the Structure except and to the extent that the same is due to the negligence, omission or default of Harsco Infrastructure. For the avoidance of doubt, damage to the Structure or Equipment includes exposure to or marking by paint and/or contaminants.

- 2.3.2. Without prejudice to 2.3.1 above and at its own cost, take out and maintain adequate public liability insurance to include but not be limited to insurance in respect of all matters referred to in 2.3.1 above. The Customer shall forthwith provide Harsco Infrastructure with a copy of the insurance policy referred to in this Clause on Harsco Infrastructure's request.
- 2.4. The Customer shall not negotiate or compromise without Harsco Infrastructure's written agreement any insurance claim relating to the Works, the Structure or the Equipment and any insurance proceeds received by the Customer relating to the Works, the Structure or the Equipment shall be immediately paid to Harsco Infrastructure and be held in trust by the Customer for Harsco Infrastructure until such payment.
- 2.5. If the Customer fails to fulfill all or any of its obligations under Clauses 2.1 or 13 or fails to take out insurance under Clauses 2.2 or 2.3, Harsco Infrastructure may (without prejudice to any other remedies it may have) carry out such obligations and/or take out such insurance itself and, in any event, the Customer will:
- 2.5.1. Reimburse Harsco Infrastructure for any costs, loss or damage incurred thereby;
- 2.5.2. Comply with and fulfill the requirements of any licence, consent, permission or permit obtained by Harsco Infrastructure;
- 2.5.3. Indemnify Harsco Infrastructure against all losses, damages, penalties, costs on an indemnity basis and expenses awarded against or incurred, paid or agreed to be paid by Harsco Infrastructure in connection with or arising from the failure of the Customer to comply with the requirements of or to provide any of the items referred to in Clauses 2.1, 2.2, 2.3 and 13.
- 2.6. The Customer undertakes not to carry out or cause or permit to be carried out any alteration, adaptation, variation, addition or repair to the Structure or the Equipment or to interfere with it or deface the Equipment in any way except as agreed in writing between Harsco Infrastructure and the Customer.

3. Charges

- 3.1. The Price for each Item is the price set out in Harsco Infrastructure's quotation(s) unless otherwise agreed by Harsco Infrastructure in writing.
- 3.2. Subject to Clause 3.3, if the Customer wishes to omit an Item or any part thereof, the Customer shall give no less than 2 Business Days notice in writing and will be liable to pay Harsco Infrastructure its reasonable costs incurred plus 20%.
- 3.3. The Customer is not entitled to instruct a third party to carry out the work omitted under Clause 3.2 without Harsco Infrastructure's prior agreement in writing.
- 3.4. Extra hire charges for each Item apply throughout the Extra Hire Period and:
- 3.4.1. The Extra Hire Period commences on the expiry of the Hire Period for that Item;
- 3.4.2. Subject to 3.4.3 and 3.4.4 and 3.5 below, the Extra Hire Period ends on the Business Day after receipt by Harsco Infrastructure of notice in writing from the Customer to dismantle the Equipment;
- 3.4.3. In cases of Progressive Dismantling, the Extra Hire Period ends on the Business Day after receipt by Harsco Infrastructure of notice in writing to dismantle or remove the last element of the Structure;
- 3.4.4. Where Harsco Infrastructure has been delayed by circumstances beyond its control from collecting all or some of the Equipment, the Extra Hire Period ends on the date of collection of the last remaining Equipment by Harsco Infrastructure.
- 3.5. At any time after expiry of the Hire Period for an Item, Harsco Infrastructure may give 7 days notice in writing that it does not wish to continue to supply the Equipment. In such cases, and subject to Clause 3.4.4 above, the Extra Hire Period ends on expiry of Harsco Infrastructure's notice.
- 3.6. Subject to Clause 3.7 below, extra hire is charged for each Item at the following weekly rates:
- 3.6.1. At the extra hire rate set out in Harsco Infrastructure's quotation(s) or otherwise agreed in writing;
- 3.6.2. If there is no such rate:
- 3.6.2.1. At the rates set out in the Schedule of Additional Rates for the same items; or
- 3.6.2.2. If there are no items in the above Schedule which are the same or there is no such Schedule, at Harsco Infrastructure's Business Hire Rates current at the date at which the extra hire commences.
- 3.7. Where the Extra Hire Period is not a full week or weeks, each day will be charged at one seventh of the weekly rates.
- 3.8. Except where Clause 3.6.2.2 applies, Harsco Infrastructure is entitled to increase extra hire charges and charges for dismantling the Structure and/or Equipment in accordance with Clause 5.4.2 below, where and to the extent that the Extra Hire Period for that Item exceeds 6 months.
- 3.9. Reduced extra hire charges will apply where less Equipment than stated in Harsco Infrastructure's quotation or otherwise agreed for each Item remains on Site during the Extra Hire Period. Reduced extra hire for each week or part is charged at the proportion which the reduced Equipment remaining on Site at the beginning of each week bears to the amount of Equipment in the original Item. The proportion will be calculated by Harsco Infrastructure by comparing the dimensions of the reduced and original Equipment.

4. Additional work and variations

- 4.1. The Customer may instruct Harsco Infrastructure in writing to supply additional Equipment, carry out additional and/or varied work, and/or additions, alterations, adaptations or variations to the Structure(s). Omissions are dealt with in Clause 3.2.
- 4.2. Harsco Infrastructure will commence such works, detailed in Clause 4.1, within a reasonable time of receipt of such instructions unless Harsco Infrastructure notifies the Customer within 7 days of receiving such an instruction that:
- 4.2.1. It objects to carrying out such work; or
- 4.2.2. It objects to carrying out such work except on terms that payment for some or all of such work is made in advance of commencement of that work.
- No such notification will amount to a breach of contract by Harsco Infrastructure. In cases of such notification, Harsco Infrastructure will not be obliged to carry out the work requested unless agreed by Harsco Infrastructure in writing.
- 4.3. Harsco Infrastructure will be entitled to additional payment for any additional or varied works carried out whether the subject of written instructions or not. Harsco Infrastructure will be entitled to payment as follows:
- 4.3.1. At the rates set out in Harsco Infrastructure's Schedule of Additional Rates for the same or similar items;
- 4.3.2. If there are no items which are the same or similar in the Schedule, at the rates in quotation(s) provided by Harsco Infrastructure for the additional or varied work. Any such quotations will be deemed to be accepted unless specifically rejected in writing within 7 days of the date of the quotation;
- 4.3.3. If 4.3.1 and 4.3.2 do not apply, at Harsco Infrastructure Business Hire Rates current at the date of the carrying out of the additional or varied work, plus dayworks for installation and dismantling. For dayworks charges, see Clause 5.3 below; in the case of minor alterations of an existing Structure at dayworks rates. For dayworks charges, see Clause 5.3 below;
- 4.3.4. If 4.3.1 to 4.3.4 do not apply, at rates analogous to the rates in Harsco Infrastructure's quotation(s) which have been accepted in relation to the Works for the same or similar work.

5. Other additional charges

- 5.1. Harsco Infrastructure's quotations are based on the Customer having supplied Harsco Infrastructure with adequate and accurate measurements, drawings and information regarding construction and health and safety details and Site conditions (including but not limited to access and the availability of working and storage areas). In the event of the Customer supplying drawings, measurements and information which are inadequate or inaccurate, Harsco Infrastructure will be entitled to its additional costs plus 20% and a reasonable adjustment to any time agreed for completion.
- 5.2. Harsco Infrastructure will be entitled to extra charges for the following items:
- 5.2.1. Unless Harsco Infrastructure has provided a quotation (in which case, Clause 4.3.2 will apply), Harsco Infrastructure will be entitled to charge its costs plus 20% in relation to:
- 5.2.1.1. Safety inspections (except for 6 weekly inspections of mast climbing equipment, which are provided free of charge by Harsco Infrastructure);
- 5.2.1.2. Training (other than basic/induction procedures for mast climbing equipment);
- 5.2.1.3. Double handling of materials and Equipment;
- 5.2.2. Unless Harsco Infrastructure has provided a quotation (in which case, Clause 4.3.2 will apply), Harsco Infrastructure will be entitled to charge dayworks in relation to:
- 5.2.2.1. Safety and/or remedial work to Equipment or Structures, except where caused by Inherent Defect or fair wear and tear;
- 5.2.2.2. Making good defects in the Equipment once dismantled (Inherent Defect and fair wear and tear excepted) and including, but not limited to remedial works necessary due to exposure to or marking by paint and/or contaminants;
- 5.2.2.3. Standing time (except where caused by acts or omissions of Harsco Infrastructure, its servants or agents);
- 5.2.2.4. Working in attendance on other contractors;
- 5.2.2.5. Any other additional cost, loss or expense, which is outside Harsco Infrastructure's reasonable control and for which no express provision for charges is made in Harsco Infrastructure's quotation(s) or in these Terms.
- 5.3. Work charged on the basis of dayworks is charged at the rates quoted by Harsco Infrastructure (or, if none have been quoted, in accordance with the rates in the RICS "Prime Cost of Daywork carried out under a Building Contract", 3rd Edition June 2007, as amended or substituted from time to time) for the hours recorded on Harsco Infrastructure's record sheets or additional work instruction sheets together with expenses incurred. The signature by an employee of the Customer on such sheets is deemed to be acceptance for all purposes of the hours and expenses recorded, that the work recorded has been carried out and is chargeable on the basis of costs or dayworks, as the case may be.
- 5.4. Unless otherwise agreed in writing, Harsco Infrastructure's quotations and charges allow for the work to be executed during Normal Working Hours and are based upon the current rates of wages and other emoluments and expenses payable by Harsco Infrastructure to or in respect of work people engaged upon or in connection with the Works together with the current prices of materials and transport charges at the date of Harsco Infrastructure's quotation.
- 5.4.1. If Harsco Infrastructure are required to carry out works outside or in addition to Normal Working Hours, it will be entitled to additional payment in accordance with the overtime rates set out at WR. 4 of the CUC Working Rule Agreement for the Construction Industry (revised 26 June 2006), as amended or replaced from time to time;

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- 5.4.2. Increases in the costs of labour, materials or plant, which occur after the last date for dismantling Equipment in HarSCO Infrastructure's original quotation, shall be additions to the charges otherwise due to HarSCO Infrastructure from the Customer. For Equipment and labour such additions shall be calculated using the BERR Price Adjustment Formula Series 3 as published on the BCIS website, using the categories Scaffolding: Labour and Materials, Scaffolding: Materials only and Plant where applicable, or such other category or combination of categories as HarSCO Infrastructure shall reasonably consider appropriate. The base date for the index shall be the month before the date of HarSCO Infrastructure's original quotation.
- 5.4.3. Upon any change in or imposition of any new Governmental taxes, levies or contributions relevant to or in connection with the Works, HarSCO Infrastructure shall be entitled to charge its reasonable additional costs caused thereby and/or associated therewith, in addition to the prices otherwise charged.

6. Completion

- 6.1. HarSCO Infrastructure will use its reasonable endeavours to complete erection or dismantling of any part of the Equipment within the time period agreed between the parties in writing or, in the absence of such agreement, within a reasonable time.
- 6.2. If the carrying out of HarSCO Infrastructure's Works or any part thereof is delayed or disrupted by any of the following:
- 6.2.1. The acts or omissions of the Customer, its servants or agents;
 - 6.2.2. The acts or omissions of other contractors or statutory bodies;
 - 6.2.3. Delay in commencement beyond HarSCO Infrastructure's control;
 - 6.2.4. Restrictions in access to, from or around the Site which were not specifically identified in writing prior to conclusion of the Contract;
 - 6.2.5. Adverse weather conditions;
 - 6.2.6. Weather conditions and/or wind speeds which, in the reasonable opinion of HarSCO Infrastructure, make it unsafe to carry out the Works or any part thereof;
 - 6.2.7. Force majeure;
 - 6.2.8. Variations or additional works;
 - 6.2.9. Any other cause whatsoever beyond HarSCO Infrastructure's control, HarSCO Infrastructure shall be entitled:
 - 6.2.9.1. To be paid for standing time, hire and extra hire charges and any other loss, expense, costs or damages incurred or suffered by HarSCO Infrastructure. Standing time will be paid on the basis of dayworks rates in accordance with Clause 5.3;
 - 6.2.9.2. To adjust the time period agreed for completion of installation, dismantling and carrying out of the Works;
 - 6.2.9.3. If a force majeure event continues for a period of 120 days or more, by written notice to the Customer, to terminate its employment under the Contract.

HarSCO Infrastructure's entitlement under this sub-clause is without prejudice to any other rights or remedies which it may have.

7. Liability

- 7.1. Subject to Clause 7.3 below, HarSCO Infrastructure agrees to remedy, within a reasonable time and at its own expense, any defects in the Structure drawn to its attention in writing which have arisen from Inherent Defect or fair wear and tear.
- 7.2. HarSCO Infrastructure will have no liability to the Customer in relation to the matters set out in Clause 7.1 in circumstances in which the Customer has not requested HarSCO Infrastructure to carry out such remedial works and/or has not allowed HarSCO Infrastructure a reasonable time in which to do so.
- 7.3. HarSCO Infrastructure has no liability under Clause 7.1 above or otherwise howsoever in relation to:
 - 7.3.1. The quality or fitness for purpose of Equipment, where the Customer requests or requires a specific manufacturer or supplier of Equipment (other than HarSCO Infrastructure); or
 - 7.3.2. Water ingress through temporary roofs supplied and/or erected by HarSCO Infrastructure. For the avoidance of doubt, HarSCO Infrastructure does not warrant that any such temporary roofs are watertight.
- 7.4. Subject to Clause 4.2, HarSCO Infrastructure agrees to remedy at the Customer's expense any defects in or damage to the Structure drawn to HarSCO Infrastructure's attention in writing which have arisen from any cause other than those set out in Clause 7.3. Payments due under this clause will be calculated in accordance with Clause 4.3 and, for most climbing works, Clause 5.2.2.
- 7.5. HarSCO Infrastructure will not be liable to the Customer for damage to roofs, glass or external cladding caused by or arising out of the Works and the Customer shall indemnify HarSCO Infrastructure against all demands, claims, proceedings, costs and expenses in connection therewith in respect of such damage unless, and to the extent that, such damage is proved to be due to negligence on the part of HarSCO Infrastructure.
- 7.6. The Customer hereby agrees that it will not hold HarSCO Infrastructure liable for breach of any express or implied terms of the Contract or for breach of any alleged duty of care in tort for any loss or damage suffered by the Customer which is covered by and/or within the ambit of the Joint Names Policy which the Customer is obliged to take out pursuant to Clause 2.2 above, whether such policy is taken out or not.
- 7.7. HarSCO Infrastructure's total liability for delay shall not exceed 5% of the Contract Price. HarSCO Infrastructure's total liability under, in connection with or arising out of this Contract, including liability in tort including negligence and for breaches of statutory duty (except for liability for death, personal injury or fraud) shall not exceed 50% of the Contract Price. Payment of any such sum shall fully discharge all the said liabilities of HarSCO Infrastructure.

8. Payment

- 8.1. Unless other application dates are agreed in writing, HarSCO Infrastructure is entitled to submit invoices or applications for payment to the Customer:
- 8.1.1. At the end of each month during the course of the Works (or at any time thereafter).
 - 8.1.2. In relation to the final account, within 14 days of dismantling the last item of Equipment (or at any time thereafter).
- 8.2. Unless otherwise agreed in writing, HarSCO Infrastructure is entitled to payment as follows:
- 8.2.1. 70% of the Price for the Item on completion of installation.
 - 8.2.2. 30% of the Price for the Item on completion of dismantling.
 - 8.2.3. In the case of Progressive Installation or Progressive Dismantling, the above percentages will apply to the same proportion of the Price as the proportion of the Item which has been installed or dismantled, as the case may be.
- 8.3. Where additions, alterations, adaptations and/or variations to the existing Structure and/or to provide a new Structure are carried out, 70% of the additional payment (calculated in accordance with Clause 4.3 above) will be invoiced/applied for on completion of the addition, alteration, adaptation and/or variation, with the balance being payable on completion of dismantling of such Structure.
- 8.4. HarSCO Infrastructure is entitled to include in its invoices/applications for payment:
- 8.4.1. Charges in accordance with Clauses 8.2 and 8.3 above;
 - 8.4.2. Where Equipment is in the course of installation, addition, alteration, adaptation, variation or dismantling, charges proportionate to the amount of the Equipment installed, added, altered, adapted, varied or dismantled, as the case may be;
 - 8.4.3. Extra hire charges in accordance with Clause 3;
 - 8.4.4. Any other charges which HarSCO Infrastructure is entitled to make in accordance with this Contract;
 - 8.4.5. For most climbing works, HarSCO Infrastructure is entitled to include in its first application/invoice all setting up and transport charges per position.
- 8.5. Where HarSCO Infrastructure and the Customer have agreed that some or all of the Price and/or sums due will be paid in advance of commencement of the Works or the relevant part(s) of the Works, HarSCO Infrastructure has no obligation to carry out any work under this Contract until receipt of such advance payment in cleared funds. The Customer agrees not to deduct the advance payment, or any part thereof, from any application or invoice other than that relating to the final account.
- 8.6. The sums invoiced or applied for (together with VAT thereon) will be due 14 days after issue of the invoice/application for payment (as applicable) and the final date for payment will be 30 days after the issue of the invoice/application for payment.
- 8.7. Not later than 5 days after issue of an invoice or application for payment, the Customer shall give a written notice to HarSCO Infrastructure specifying the amount of payment proposed to be made in respect of that application, the basis on which such amount is calculated and to what the amount relates, and, subject to Clause 8.4, shall pay the amount proposed no later than the final date for payment.
- 8.8. Not later than 5 days before the final date for payment of an amount due in accordance with Clause 8.6, the Customer may give a written notice to HarSCO Infrastructure which shall specify any amount proposed to be withheld and/or deducted from that due amount, the ground or grounds for such withholding and/or deduction and the amount of withholding and/or deduction attributable to each ground.
- 8.9. Where the Customer does not give any written notice pursuant to Clause 8.7 or 8.8, the Customer shall pay HarSCO Infrastructure the amount stated in the invoice or application for payment.
- 8.10. The Customer shall not be entitled to deduct discount or retention from any sums claimed in invoices or applications for payment.
- 8.11. The Customer is deemed to have accepted for all purposes that amounts invoiced and paid in full are correctly calculated and due.
- 8.12. All sums and rates quoted are exclusive of VAT unless otherwise agreed in writing. VAT will be charged and is due at the prevailing rate from time to time.
- 8.13. If the Customer fails to pay any amount due to HarSCO Infrastructure in terms of the Contract on its due date and no effective notice to withhold payment has been given, or breaches any other provision of the Contract or fails to pay any amount due to HarSCO Infrastructure in terms of any other contract between HarSCO Infrastructure and the Customer on its due date or breaches any other provision of any other contract between HarSCO Infrastructure and the Customer then HarSCO Infrastructure may, without prejudice to its other rights and remedies:
- 8.13.1. Declare all amounts due by the Customer to HarSCO Infrastructure in terms of the Contract (and any other contracts between HarSCO Infrastructure and the Customer) to be immediately due and payable; and
 - 8.13.2. Charge interest at 8% above the base rate of the Bank of England prevailing from time to time on the sum outstanding from the final date for payment until the date payment is received in cleared funds; and
 - 8.13.3. Suspend performance of its obligations, provided it has given 7 days' notice of its intention so to do, stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance ceases when the Customer has made payment in full of the amount due.
 - 8.13.4. Without prejudice to the above rights, if non-payment relates to most climbing equipment provided, immobilise the most climbing machines, provided it has given 7 days' notice of its intention so to do, stating the ground or grounds on which it is intended to do so. The machines will be turned back on when the Customer has made payment in full of the amount due.
- During a suspension or immobilisation in accordance with 8.13.3 or 8.13.4 above, hire or extra hire charges (as applicable) will continue to be charged and HarSCO Infrastructure will be entitled to charge the Customer for its losses, costs and expenses incurred as a result of the non-payment, suspension and/or period during which the machines are turned off. Any period of suspension or immobilisation in pursuance of the right conferred by this Clause shall be disregarded in assessing compliance with HarSCO Infrastructure's obligations as to completion and the date for completion shall be adjusted to take account of any such period. The Customer is not entitled to use the Structure or Equipment during any such period.

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9. Termination

- 9.1. Without prejudice to any other rights which HarSCO Infrastructure may have, if:
- 9.1.1. The Customer fails to pay the amount properly due on any invoice or application for payment and/or any VAT thereon by the final date for payment;
 - 9.1.2. The Customer fails to pay any sums due under other contracts with HarSCO Infrastructure Services Ltd or an associated or subsidiary company; or
 - 9.1.3. The Customer continues to commit a breach of its obligations under this Contract, after HarSCO Infrastructure has given it 7 days written notice of the breach and required it to be remedied,
- HarSCO Infrastructure may by written notice terminate its employment under this Contract.
- 9.2. In the event of the Customer becoming Insolvent HarSCO Infrastructure may, at any time, by written notice to the Customer, terminate its employment under this Contract with immediate effect.
- 9.3. Without prejudice to any other rights or remedies which HarSCO Infrastructure may have, upon termination of HarSCO Infrastructure's employment under this Contract under Clauses 9.1 or 9.2, HarSCO Infrastructure shall be entitled to payment of its account in accordance with Clause 9.4 below.
- 9.4. HarSCO Infrastructure shall be entitled to be paid its account within 7 days of issue of the same, which shall include:
- 9.4.1. The Price for all items erected or in the course of erection or dismantling;
 - 9.4.2. All other amounts due, payable and/or properly chargeable under this Contract;
 - 9.4.3. The cost of Equipment ordered and/or purchased for the Works, for which HarSCO Infrastructure has paid or is legally bound to pay;
 - 9.4.4. The cost of removing from Site any Equipment and property of or hired by HarSCO Infrastructure, its servants or agents (including dismantling costs);
 - 9.4.5. Any design costs incurred;
 - 9.4.6. Any other cost, loss and/or expense (including overheads and/or financing charges) suffered by HarSCO Infrastructure by reason of the termination and/or the Customer's breaches of Contract;
 - 9.4.7. Any legal costs incurred by HarSCO Infrastructure by reason of the termination and/or the Customer's breaches of Contract, on an indemnity basis;
 - 9.4.8. VAT;
- less any sums already paid.
- 9.5. Without prejudice to the above and HarSCO Infrastructure's other rights and remedies, if HarSCO Infrastructure's employment is terminated under Clause 9 or 6.2(c) above or otherwise comes to an end, HarSCO Infrastructure has the right to enter on the Site and take possession of the Equipment and property of or hired by HarSCO Infrastructure, its servants and agents and the Customer will, so far as it lawfully can, assist HarSCO Infrastructure to resume possession of the same.

10. Title

- 10.1. Title in the Equipment and all other property of HarSCO Infrastructure taken on to Site by HarSCO Infrastructure, its servants or agents remains at all times with HarSCO Infrastructure.

11. Adjudication

- 11.1. If any dispute or difference arises under this Contract, each party has the right to refer it for adjudication at any time in accordance with this Clause.
- 11.2. The Adjudication provisions of the Scheme for Construction Contracts (England and Wales) Regulations 1998 ("the Scheme"), as amended or revised from time to time, shall apply to this Contract and any adjudication in accordance with this Clause.
- 11.3. For the purposes of the Scheme, the nominating bodies for any disputes arising under this Contract are the RICS and TECBA.
- 11.4. Any notices of intention to seek adjudication, adjudication notices and referral notices under the Scheme, unless otherwise agreed in writing, shall be served on the Company Secretary at HarSCO Infrastructure's registered office in an envelope marked ADJUDICATION.

12. General

- 12.1. This Contract shall be governed and interpreted according to the law of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts.
- 12.2. Any reference in these Terms to any statute or statutory provision includes a reference to any amendment, extension or re-enactment of such statute or statutory provision.
- 12.3. Except as set out in Clause 11.4 above, any notices required by this Contract to be given to HarSCO Infrastructure in writing shall be sent to the address on HarSCO Infrastructure's quotation by registered post.
- 12.4. HarSCO Infrastructure shall be entitled to serve any notices required by this Contract on the Customer at its registered office or at the address, facsimile number or email address given on the Customer's invitation to tender, acceptance of quotation or order. Any such notices will be deemed to have been received by the Customer:
- 12.4.1. delivered by hand, at the time of delivery;
 - 12.4.2. If sent by pre-paid first class post, 2 Business Days after posting (exclusive of the day of posting).
 - 12.4.3. If sent by facsimile, on HarSCO Infrastructure receiving a successful transmission report.
 - 12.4.4. If sent by email, at the time of sending.
- 12.5. If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable, the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.
- 12.6. The Customer shall not be entitled to copy or use HarSCO Infrastructure's design or drawings without written permission from HarSCO Infrastructure. For the avoidance of doubt, HarSCO Infrastructure shall have no liability in relation to or arising out of use of its design or drawings if these are used and/or modified without HarSCO Infrastructure's written consent or for any purpose not agreed in writing with HarSCO Infrastructure.
- 12.7. The Customer shall reimburse any costs including legal costs on an indemnity basis which HarSCO Infrastructure incurs in enforcing its rights under, in connection with or for breach of this Contract, including but not limited to recovery of any sums whether by negotiation, litigation, or otherwise howsoever (but the parties shall bear their own costs of adjudication).
- 12.8. This Contract is personal to the Customer and it may not be assigned without the prior written consent of HarSCO Infrastructure. The Customer shall not hire, sub-let or lend any of the Equipment to a third party. HarSCO Infrastructure may, upon written notice to the Customer, assign the benefit of this Contract.
- 12.9. HarSCO Infrastructure may subcontract the Works or any part(s) thereof.
- 12.10. Nothing in this Contract is intended to or will create any benefit for or right to enforce any of the Terms to any third party.
- 12.11. Each right or remedy of HarSCO Infrastructure under this Contract is without prejudice to any other right or remedy of HarSCO Infrastructure under this Contract or in law or in equity.
- 12.12. The failure or delay by HarSCO Infrastructure to exercise any of its rights under this Contract will not operate as a waiver or variation of that or any other right and any defective or partial exercise of any right will not preclude HarSCO Infrastructure from exercising that or any other right.

13. Safety Clauses

- 13.1. The Customer shall comply with these Safety Clauses free of charge.
- 13.2. The Customer shall comply with and ensure that its employees, subcontractors and their employees comply with all safety notices provided by HarSCO Infrastructure, the safety clauses in this Clause 13, and all other relevant statutory provisions relating to safety. The Customer acknowledges that adequate information about the use and safety of the Equipment and the Structure is available and that it has acquainted itself with such information.
- 13.3. The Customer shall ensure that all persons operating or using most climbing equipment are competent and have been inducted in the safe use of such equipment by HarSCO Infrastructure.
- 13.4. The Customer shall provide all facilities for HarSCO Infrastructure's employees and other operatives under the CDM Regulations 2007 as amended or modified or any replacement thereof for the time being in force.
- 13.5. The Customer shall supply full details of products or substances hazardous to health used or to be used on Site from whatever source in sufficient time to allow HarSCO Infrastructure to establish necessary procedures to ensure the safety of its workforce without causing delay.
- 13.6. The Customer shall supply, fix and maintain any warning lamps and warning notices that may be required under the provisions of any statutory provision, Regulation, or otherwise.
- 13.7. Upon handover and thereafter, the Customer shall ensure that working platforms comply with all applicable statutory requirements and Regulations at all times.
- 13.8. Toe boards specifically marked are for kick board protection only and under no circumstances are to be used for access and/or working platforms.
- 13.9. The Customer shall ensure that the ground and/or base provided for HarSCO Infrastructure's Equipment is adequate to support all loads to be applied without settlement, including the provision of any necessary foundations and/or spreaders.
- 13.10. The Customer shall provide all necessary fencing and other protection (including but not limited to fan protection and hoarding) around the base of, underneath and in the vicinity of the most climbing equipment.
- 13.11. The Customer shall provide any necessary support structures (including back/under propping) for most climbing equipment.
- 13.12. The Customer shall ensure that adequate facilities for tying are made available and are maintained and that facilities and structures made available for tying are adequate to take all loads to be applied. No ties or braces are to be removed without reference to HarSCO Infrastructure's design engineer. It is the Customer's responsibility to make good tie holes and other parts of the building damaged as a result of tying.
- 13.13. In relation to most climbing equipment, the Customer will carry out daily and weekly inspections of the equipment, will do so in accordance with the site documentation pack provided by HarSCO Infrastructure and will inspect the equipment after adverse weather.
- 13.14. HarSCO Infrastructure will not undertake statutory inspection of scaffolds or the signing of the register as the Work at Height Regulations 2005, as amended or modified or any replacement thereof for the time being in force, provide that these are the responsibility of the employers of labour using the scaffolds.
- 13.15. It is the responsibility of the Customer to ensure that there are site arrangements for response to emergencies and suitable rescue arrangements including early attendance by the emergency services.

14. Breakdowns – most climbing equipment

- 14.1. Any breakdown or unsatisfactory working of the Equipment must be reported to HarSCO Infrastructure as soon as practicable.
- 14.2. Hire charges will continue to accrue during breakdowns or stoppages, except that, where a breakdown or stoppage is due to fair wear and tear or Inherent Defect, charges will be reduced to take account of the period of stoppage so caused. HarSCO Infrastructure will accept no liability or responsibility for any loss or damage due to any stoppage or breakdown however caused.
- 14.3. Repairs will be carried out during Normal Working Hours, unless the Customer gives HarSCO Infrastructure 24 hours written notice of the requirement for out of hours work. In such a case, HarSCO Infrastructure will charge rates appropriate to the time(s) at and over which work is carried out.