

MALTBY COLLIERY LIMITED GENERAL CONDITIONS OF CONTRACT FOR WORKS AND SERVICES (INCLUDING ON SITE REPAIRS)

(1) In these Conditions of Contract (unless the context otherwise requires) the following expressions have the following meanings.

- (a) **"Maltby Colliery"** means Maltby Colliery Limited (Company registration number 06057412) with the registered address West Terrace, Esh Winning, Durham, County Durham, DH7 9PT or the subsidiary company and defined by section 1159 of the Companies Act 2006 or ancillary organisation of Maltby Colliery on whose behalf the Contract is made;
 - (b) **"Completion Certificate"** means the certificate issued pursuant to Condition 10(2)(a);
 - (c) **"Contract"** means the agreement between Maltby Colliery and the Contractor for the execution of the Works comprising either:-
 - (i) the invitation to tender issued by Maltby Colliery, the Contractor's tender (together with any documents and drawings referred to therein) and Maltby Colliery's acceptance thereof or, in the case of a term contract, any call-off order by Maltby Colliery in accordance therewith; or
 - (ii) Maltby Colliery's offer and the Contractor's acceptance thereof;whether made (wholly or in part) orally or in writing and together in either case with these Conditions of Contract, any special conditions and any specification or other document incorporated in the Contract by express reference;
 - (d) **"Contractor"** means the person, firm, company or other entity with whom the Contract is made;
 - (e) **"Contractor's Representative"** means the person appointed for the time being by the Contractor under Condition 3(1);
 - (f) **"Contract Price"** means the sum to be ascertained and paid to the Contractor for the execution of the Works in accordance with the Contract;
 - (g) **"Date for Completion"** means the date specified by or fixed in accordance with the Contract for the completion of the execution of the Works;
 - (h) **"Engineer"** means the person appointed for the time being by Maltby Colliery under Condition 2(2);
 - (i) **"Engineer's Representative"** means any person or persons to whom the Engineer delegates any of his powers or functions under the Contract;
 - (j) **"Final Certificate"** means the certificate issued pursuant to Condition 10(2)(c);
 - (k) **"Hargreaves Group"** means Maltby Colliery and its subsidiaries from time to time and the ultimate holding company (if any) of Maltby Colliery and every other subsidiary of the same ultimate holding company (if any) from time to time (and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act 2006);
 - (l) **"Intellectual Property Rights"** means any and all intellectual property rights protected under the law anywhere in the world, including without limitation, patents, designs, copyright, trade marks, know-how, technical information, rights in data and database rights (whether registered or unregistered or any applications for registration) whether now known or in the future;
 - (m) **"Interim Certificate"** means a certificate issued pursuant to Condition 10(3)(a);
 - (n) **"Loss"** means any and all loss, damage, penalties, costs and expenses (including legal expenses and disbursements) arising from any and all liabilities, obligations, awards, actions, claims and/or proceedings whatsoever and howsoever caused or arising and whether or not such losses were reasonably foreseeable at the time the Contract was made;
 - (o) **"Personal Data"** has the same meaning as the term 'personal data' under the Data Protection Act 1998
 - (p) **"Maintenance Period"** means the period (if any) specified in the Contract;
 - (q) **"Machinery"** means any plant or machinery belonging to Maltby Colliery which the Contractor is to repair under the Contract;
 - (r) **"Month"** means, for the purpose of Condition 10, a Maltby Colliery accounting period;
 - (s) **"Site"** means the location where the Works are to be executed by the Contractor;
 - (t) **"Timed Programme"** means the programme for the execution of the Works specified by or contained in the Contract or, if no such programme is specified by or contained in the Contract, the approved programme referred to in Condition 6(2);
 - (u) **"Variation Order"** means a written order made by the Engineer under Condition 8;
 - (v) **"Works"** means the plant or equipment to be supplied and erected and/or the work (including without limitation any repairs) or services to be performed as described in the Contract.
- (2) The headings of these Conditions of Contract shall not affect their interpretation.
- (3) A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- (4) The Contract and the documents referred to herein set out the entire Contract between the parties in relation to the subject matter hereof and supersedes any previous agreement relating to the subject matter of the Contract, whether written or oral. For the avoidance of doubt, the Contract shall expressly exclude any standard terms and conditions of purchase that the Contractor may purport to apply under this Contract. Each party acknowledges that in entering into the Contract it is not relying upon any representation, warranty, promise or assurance made or given by the other party or any other person in any form whatsoever which is not expressly set out in the Contract.

- 2(1) The Contractor shall carry out and complete the execution of the Works in accordance with the Contract and to the satisfaction of the Engineer. The Engineer may give instructions to the Contractor about the execution of the Works as expressly provided in the Contract or as the Engineer considers necessary or expedient and the Contractor shall comply with any such instructions given by the Engineer. The Engineer shall give all instructions, decisions and orders as expeditiously as possible in the circumstances.
- 2(2) Maltby Colliery shall appoint a person to be the Engineer for the purposes of the Contract and, subject to Condition 2(3), to carry out the functions of the Engineer under the Contract. Maltby Colliery shall notify the Contractor in writing of his appointment (or of the appointment of any other person to succeed him).
- 2(3) The Engineer may from time to time delegate to the Engineer's Representative any of his powers and functions under the Contract and shall notify the Contractor in writing as to what powers and functions have been so delegated.
- 2(4) The Contractor shall afford reasonable facilities and assistance to the Engineer, the Engineer's Representative and any person assisting them to enable them to carry out their duties in connection with the Contract.

- 3(1) The Contractor shall appoint a person to be responsible for and to manage the execution of the Works on behalf of the Contractor and shall notify the Engineer of his appointment (or of the appointment of any other persons to succeed him).
- 3(2) The Engineer shall be entitled to object to the appointment of a particular person as the Contractor's Representative or to require at any time the person appointed as the Contractor's Representative to be replaced by another person satisfactory to the Engineer.
- 3(3) The Engineer shall give instructions to the Contractor about the execution of the Works through the Contractor's Representative.
- 3(4) The Contractor and the Contractor's Representative shall co-operate with Maltby Colliery in all matters relating to the Works.

- 4(1) If under the Contract the Contractor designs the whole or any part of the Works, the provisions of this Condition shall apply to the design by the Contractor and for this purpose work undertaken by the Contractor in completing or detailing any design furnished to the Contractor by or on behalf of Maltby Colliery shall be regarded as design by the Contractor provided that the Contractor shall not thereby become responsible for those aspects of the design furnished by or on behalf of Maltby Colliery.
- 4(2) The Contractor shall undertake the design in accordance with the specification laid down by Maltby Colliery and all statutory requirements. If the Contractor requires information on loadings or other stresses additional to that contained in the specification before submitting the design to the Engineer under Condition 4(3), such information shall be provided by the Engineer.
- 4(3) The Contractor shall submit to the Engineer for approval on or before the date specified in the Contract (or, if no such date is specified, within a period to be agreed between the Engineer and the Contractor) the agreed number of copies of the design. The Engineer shall within fourteen (14) days (or such other period as the Engineer and the Contractor may agree) inform the Contractor whether the Engineer approves the design or not.
- 4(4) If the design is rejected by the Engineer, the Contractor shall at his own cost amend it as required by the Engineer and re-submit it to the Engineer for approval within fourteen (14) days or such other period as the Engineer may allow. On receipt of the amended design the provisions of Condition 4 shall apply afresh. The time taken or allowed for the re-submission of the design and its consideration by the Engineer within the time provided for in Condition 4(3) shall not entitle the Contractor to an extension of time for the completion of the Works. On approval one copy of the design shall be returned to the Contractor and Maltby Colliery shall retain the other copies but Maltby Colliery shall make two copies available at the Site for reference.
- 4(5) The design as approved shall not be varied except in accordance with the provisions of Conditions 4, 5, and 8 and, subject to this, the Works shall be executed in accordance with the approved design.
- 4(6) On completion of the Works the Contractor shall provide the Engineer with one complete set (in the form required by the Engineer) of detailed drawings and supporting documents for the Works designed by the Contractor as finally completed. Copyright in these drawings and in the design shall remain with the Contractor but Maltby Colliery shall be entitled to use them at no additional charge to Maltby Colliery for the purpose of the Works or any other purpose in the United Kingdom. Where Maltby Colliery uses these drawings and documents for any purpose other than the Works, the Contractor shall not be liable in the event that the design proves to be defective or inadequate for that purpose.

- 5(1) If prior to the issue of the Completion Certificate or during the Maintenance Period (if any) the design of the Works (or any part of them) proves defective, inadequate or otherwise not in accordance with the Contract, the Contractor shall promptly take such steps as may be necessary to rectify the design of the Works and agree the amended design with the Engineer. All remedial and additional work shall then be carried out to the satisfaction of the Engineer.
- 5(2) Notwithstanding the approval by the Engineer of the design for the Works and that the Contractor may have executed the Works in accordance with the approved design, the cost of work carried out by the Contractor under Condition 5(1) shall, subject to Condition 5(3), be borne by the Contractor.
- 5(3) Where the design of the Works proves defective, inadequate or otherwise not in accordance with the Contract by reason of a design or part of a design furnished by Maltby Colliery, the cost of work carried out by the Contractor under Condition 5(1) shall be paid by Maltby Colliery as if such work were carried out under a Variation Order provided that the Contractor has executed the Works in accordance with the approved design.

- 6(1) The execution of the Works shall be completed by the Contractor on or before the Date for Completion.
- 6(2) If no Timed Programme is specified by or contained in the Contract, the Contractor shall where appropriate as soon as practicable before commencing the execution of the Works submit one to the Engineer for approval. The Timed Programme shall show where appropriate the resources to be deployed in the execution of the Works. If no Date for Completion is specified in the Contract, the Timed Programme shall state the date by which the Contractor proposes to complete the execution of the Works and, if approved by the Engineer, that date shall be treated as the Date for Completion for the purpose of the Contract. The Timed Programme shall where appropriate specify the proposed dates of accomplishment of all major stages in the execution of the Works, and shall also state the time of any activities to be carried out by Maltby Colliery or any other party which require to be co-ordinated with the carrying out by the Contractor of any part of the Works.
- 6(3) The Contractor shall commence the execution of the Works either on the date specified in the Contract or the Timed Programme or, if no such date is specified, as agreed with the Engineer.
- 6(4) In carrying out the Works the Contractor shall adhere to the Timed Programme. If at any time the execution of the Works by the Contractor falls behind the Timed Programme, or it appears likely that it will fall behind, the Engineer may require the Contractor to submit a modified Timed Programme to him for approval. The approval by the Engineer of a modified Timed Programme shall not relieve the Contractor of his obligation under Condition 6(1) except to the extent that the Date for Completion is extended in accordance with Condition 6(6).
- 6(5) The Contractor may apply to the Engineer for an extension of time to complete the execution of the Works if completion is delayed by any of the following events or matters:-
 - (a) Variation Orders;
 - (b) suspension of the execution of the Works as provided for in Condition 11;
 - (c) any acts, omissions, defaults or delays on the part of Maltby Colliery, its workmen, agents or contractors in connection with the Contract;
 - (d) industrial disputes affecting the progress of the Works involving Maltby Colliery employees;
 - (e) modifications to the Timed Programme required by the Engineer as a result of any of the events or matters mentioned in Conditions 6 (5) (a) to (d) above.
- 6(6) The Engineer shall consider the Contractor's application and shall grant an extension of time if he is reasonably satisfied that there has been a delay to the completion of the Works by the events or matters referred to in the Contractor's application in accordance with Condition 6(5). The extension of time which the Engineer shall grant on being so satisfied shall be for so long a period as he considers reasonably reflects the extent of delay suffered by reason of those events or matters and the Date for Completion shall be amended accordingly.
- 6(7) The Contractor shall not be entitled to any payment or compensation in respect of any extension of time granted to him under this Condition solely by virtue of the grant of such extension.
- 6(8) At any time the Engineer may fix a date for completion of the Works earlier than the Date for Completion (or any extension thereof already granted) or may direct the Contractor to modify the Timed Programme if in his opinion the fixing of such an earlier date or such modification of the Timed Programme is reasonable having regard to a Variation Order for the alteration or omission of any part of the Works and the earlier date shall thereupon become the Date for Completion.

- 7(1) Where the Works are, or include, the repair of Machinery and the Contract provides for an inspection of the Machinery prior to commencement of the repair, the Contractor shall on or before commencing the repair carry out an inspection of the Machinery by arrangement with the Engineer. On conclusion of the inspection, the Contractor shall immediately report back to the Engineer advising him of the repairs required, their cost and the time required to effect such repairs.
- 7(2) The Engineer may then either:-
 - (a) arrange for the Contractor to receive a written instruction to carry out the repairs stipulating the price and time period;
 - (b) instruct the Contractor not to carry out the repairs.
- 7(3) If the Engineer gives an instruction under Condition 7(2)(b) and no further work is required, the Contract shall thereupon terminate. Maltby Colliery shall pay to the Contractor the reasonable costs incurred by him in carrying out the inspection but other than that shall have no other liability to the Contractor as a result of the termination of the Contract.

- 8(1) The Engineer only may order the Contractor, by the issue of a Variation Order, to alter the design, nature or quantity of the Works or to undertake the addition, omission or substitution of any work. No Variation Order shall invalidate the Contract nor shall it entitle the Contractor to any compensation for loss of profit or overhead recovery in respect of work which he is no longer required to do or to any other payment except as provided for in this Condition.
- 8(2) The value of Variation Orders shall be added to or deducted from the Contract Price as the case may be and the Contract Price shall be treated as amended accordingly. The value shall be ascertained by the Engineer as follows:-
 - (a) by measurement and valuation at the rates and prices (if any) shown in the Contract or those for similar work contained in the Contract;
 - (b) if Condition 8(2)(a) does not apply, by measurement and valuation at fair and reasonable rates and prices; or
 - (c) if the value of Variation Orders cannot appropriately be ascertained by measurement and valuation, by the application of fair and reasonable rates and prices.

- 9(1) Subject to Condition 8, the Contract Price shall be, in accordance with the Contract, the fixed sum stated in the Contract and/or the value of the Works as calculated by measurement of the work done or by reference to the materials supplied and hours worked as valued in accordance with the fixed rates and prices contained in the Contract.
- 9(2) The Contract Price shall represent the amount due to the Contractor in respect of the performance in full of his obligations under the Contract, and shall in particular be inclusive of:-
 - (a) the provision of all services, equipment, materials, packing and transport (including loading, unloading, freight, insurance and labour charges) except to the extent that the Contract otherwise provides;
 - (b) all overtime payments necessary to complete the Works by the Date for Completion; and
 - (c) all costs in respect of labour; and the Contractor shall be deemed to have satisfied himself before submitting his tender as to the correctness and sufficiency of his tender, and of the rates and prices upon which it was based, for performing all the Contractor's obligations under the Contract.
- 9(3) Where the Contract Price is to be assessed by measurement the Engineer shall, except as otherwise stated in the Contract, ascertain and determine by measurement the value of the Works completed in accordance with the Contract. The Contractor shall furnish all particulars required for this purpose and the Engineer shall, when he requires any part or parts of the Works to be measured, inform the Contractor who may attend or send a qualified agent to assist the Engineer in making such measurement.
- 9(4) The Contract Price is deemed to exclude VAT and Maltby Colliery shall pay such VAT as is properly chargeable on the supply of goods and services to them under the Contract.

- 10 (1) Where the Contract provides for payment by invoice, payment of the Contract Price shall be due following completion of the Works as provided in this Condition 10(1). The Contractor shall submit an invoice to Maltby Colliery for the Contract Price and Maltby Colliery shall pay the sum to which the invoice relates no sooner than thirty (30) working days and no later than forty-five (45) working days from the last day of the month following the month in which the properly rendered invoice was received.
- 10 (2) Maltby Colliery shall be entitled to deduct from the sums due under the Contract (and any other sums) due to the Contractor any sums that the Contractor may owe to Maltby Colliery at any time.
- 10 (3) If there is any invoice which is in dispute (whether in whole or part), Maltby Colliery shall be entitled to withhold payment of the relevant invoice in full. The parties shall enter into good faith discussions to resolve such dispute.
- 10 (4) If Maltby Colliery fails to make payment to the Contractor of any sums owed, the Contractor may charge interest to Maltby Colliery on such sums at a rate of 2% (two per cent) above the base lending rate from time to time of the Bank of England until such payment has been made. Interest shall not be payable on any unpaid sums under Conditions 10(a) and 10(b) above.
- 10 (5) Payment of the price for the Works shall not constitute acceptance by Maltby Colliery of the Works.
- 10 (6) The following provisions shall apply where payments are not being made on Interim Certificates:-
 - (a) On completion of the Works in accordance with the Contract, the Contractor shall apply to the Engineer for a Completion Certificate. The Engineer shall if he is satisfied that the Works have been completed in accordance with the Contract, issue the Completion Certificate within twenty eight (28) days of receipt of the application but the issue of the Completion Certificate shall be without prejudice to the Contractor's obligations during the Maintenance Period (if any).
 - (b) Maltby Colliery shall then pay the Contractor the Contract Price within fourteen (14) days of receipt of a request for payment accompanied by the Completion Certificate from the Contractor, less any retention money provided for in the Contract.
 - (c) Within twenty eight (28) days of the end of the Maintenance Period (if any), the Contractor shall be entitled to apply to the Engineer for a Final Certificate. The Engineer shall, if he is satisfied that all outstanding work and obligations under the Contract have been satisfactorily carried out by the Contractor, issue the Final Certificate within 28 days of receipt of the application.
 - (d) Maltby Colliery shall then pay the Contractor the retention money (if any) within fourteen (14) days of receipt of a request for payment accompanied by the Final Certificate from the Contractor.

(3) The following provisions shall apply where payments are being made on Interim Certificates:-

- (a) The Contractor shall make an application, supported by appropriate documentary evidence, to the Engineer monthly for an Interim Certificate showing the value of all work completed in accordance with the Contract by the Contractor on the Site during the previous month. The Engineer shall, if he is satisfied that such work has been completed in accordance with the Contract, issue an Interim Certificate within fourteen (14) days of receipt of the application certifying payment of the amount which in the Engineer's opinion is due to the Contractor under the Contract for such work.
- (b) Maltby Colliery shall then pay the Contractor the amount certified on an Interim Certificate issued by the Engineer no sooner than thirty (30) working days and no later than forty- five (45) working days of receipt of a request for payment accompanied by the Interim Certificate from the Contractor, less any retention money provided for in the Contract.
- (c) On completion of the Works in accordance with the Contract, the Contractor shall be entitled to apply to the Engineer for a Completion Certificate. The Engineer shall, if he is satisfied the Works have been completed in accordance with the Contract, issue a Completion Certificate within twenty eight (28) days of receipt of the application but issue of the Completion Certificate shall be without prejudice to the Contractor's obligations during the Maintenance Period (if any).
- (d) Maltby Colliery shall then pay the Contractor no sooner than thirty (30) working days and no later than forty- five (45) working days of receiving a request for payment accompanied by the Completion Certificate from the Contractor the difference between the total of the amounts paid on all Interim Certificates and the Contract Price, less any retention money provided for in the contract.
- (e) Within twenty eight (28) days of the end of the Maintenance Period (if any), the Contractor shall be entitled to apply to the Engineer for a Final Certificate. The Engineer shall, if he is satisfied that all outstanding work and obligations under the Contract have been satisfactorily carried out by the Contractor, issue the Final Certificate within twenty eight (28) days of receipt of the application.
- (f) Maltby Colliery shall then pay the Contractor the retention money (if any) no sooner than thirty (30) working days and no later than forty- five (45) working days from receiving a request for payment accompanied by the Final Certificate from the Contractor.
- (4) The issue by the Engineer of any certificate under these Conditions of Contract or the payment of any invoice shall be evidence only as to the general sufficiency of the work referred to in the certificate or invoice and shall not be conclusive evidence as to the satisfactory performance by the Contractor of his obligations (including without limitation his maintenance obligations) under the Contract nor that the Works (or any part of the Works) have been executed in accordance with and comply with the requirements of the Contract.

11 (1) The Engineer may by written notice at any time order the Contractor to suspend the execution of the whole or any part of the Works for the time being or for a specified period.

- (2) Maltby Colliery shall pay to the Contractor the Contractor's additional direct costs incurred as a result of complying with an order by the Engineer under Condition 11 provided that the Contractor has taken all steps as are practicable in the circumstances to avoid or reduce the same.
- (3) The provisions of Condition 11 shall not affect Maltby Colliery's right to terminate the Contract under these Conditions and except as provided by Condition 11 the Contractor shall not be entitled to any payment from Maltby Colliery in respect of any suspension of the Works.

12 (1) The Contractor shall not carry out work on a daywork basis unless there is provision in the Contract for specific work to be executed on such basis or unless requested to do so in writing by the Engineer. Where work is executed on a daywork basis Maltby Colliery shall pay the Contractor for such daywork at the rates and prices applicable to daywork agreed by Maltby Colliery. The Contractor shall keep proper records, in a form approved by the Engineer, of all items to be included in the cost of dayworks and shall produce the same to Maltby Colliery on demand.

- (2) The Contractor shall where facilities exist, ensure that dayworkers clock in immediately on completing work. The Contractor shall submit to the Engineer daily time sheets in triplicate for his approval and signature. One copy of the time sheet shall be retained by Maltby Colliery, one copy shall be retained by the Contractor and the third is to be submitted with the application for payment under Condition 10.
- (3) The Engineer may instruct the Contractor to work overtime. Except where such overtime has been provided for in the Contract Price in accordance with Condition 9, Maltby Colliery shall pay the Contractor for such overtime at the rates and prices applicable to overtime agreed by Maltby Colliery unless the Engineer requires the Contractor to work overtime because of any default on the part of the Contractor (including without limitation where it appears to the Engineer that the Contractor is unlikely to meet his obligations under Condition 6). The Contractor shall keep proper records of all overtime worked for which he intends to claim payment in accordance with Condition 12 and produce the same to Maltby Colliery on request.

13 (1) Maltby Colliery may, before the completion of the Works, take possession of any section of the Works which has been completed to the satisfaction of the Engineer and in accordance with the Contract provided that the section is:-

- (a) a section specified in the Contract for possession to be taken before the completion of the Works; or
- (b) a section in respect of which Maltby Colliery and the Contractor agree or the Engineer gives an instruction that possession should be given before the Completion of the Works.
- (2) If the Contract provides for possession to be taken of a section or sections of the Works before completion of the Works, a Date for Completion shall be specified in the Timed Programme in respect of each section of the Works and the provisions of Condition 6 shall accordingly apply to each section of the Works.
- (3) If, under Condition 13, possession of any section of the Works is taken before completion of the whole of the Works, the following provisions shall apply:-
 - (a) the Engineer shall issue a Completion Certificate for that section and the provisions of Condition 10 shall apply in respect of that Completion Certificate;
 - (b) the Maintenance Period (if any) in respect of that section shall commence on the issue of the Completion Certificate for that section;
 - (c) the Contractor shall be released from his obligations under Condition 36(1) in respect of that section upon the issue of the Completion Certificate for that section; and
 - (d) the Contractor shall be entitled to apply for a Final Certificate in respect of that section at the end of the Maintenance Period (if any).

14 (1) This Condition shall only apply if the Contract so provides.

- (2) Without prejudice to any other rights or remedies which Maltby Colliery may have, if the execution of the Works is not completed by the Contractor by the Date for Completion (as may be amended under Condition 6(5)) the Contractor shall be liable to pay to Maltby Colliery liquidated damages in respect of the delay at the rate and up to the maximum specified in the Contract for the period during which the execution of the Works remains uncompleted. Maltby Colliery if they so require shall be entitled to deduct liquidated damages in such circumstances from any subsequent payments made to the Contractor.
- (3) If the Contract provides for possession to be taken by Maltby Colliery of a specified section or sections of the Works before completion of the Works and a Date for Completion has been fixed for that section or those sections in accordance with the Contract, the provisions of Condition 14(2) shall apply to that section or those sections separately at the rate or rates and maxima for liquidated damages specified in the Contract in respect of that section or those sections.
- (4) No concessions by Maltby Colliery to the Contractor in respect of the execution of the Works shall affect the right of Maltby Colliery to recover liquidated damages under this Condition.

15 (1) Without prejudice to any other rights or remedies which Maltby Colliery may have, Maltby Colliery may proceed in accordance with the provisions of Condition 15(2) and 15(3) in any of the following events:-

- (a) if the Contractor fails to execute the whole or any part of the Works in accordance with the Contract (including without limitation the commencement of the execution of the Works in accordance with the Contract or the Timed Programme or as agreed with the Engineer) or with due diligence and expedition or refuses or neglects to comply with any instruction given and confirmed in writing by the Engineer in connection with the Works provided that Maltby Colliery have first specified in writing the failure, refusal or neglect to the Contractor and the Contractor has failed to remedy it within 7 days or such other time period as the Engineer may require; or
- (b) if after a written warning given by the Engineer it appears that the time likely to be required for the execution of the Works by the Contractor will significantly exceed the Date for Completion because of the default of the Contractor; or
- (c) if the Contractor commits any other material breach of Contract.
- (2) Maltby Colliery may, on giving notice in writing to the Contractor, by their own workmen or other contractors carry out work to remedy the Contractor's failure, neglect, refusal or breach. The cost incurred by Maltby Colliery (including without limitation any tendering and administrative cost) in so doing shall be payable by the Contractor to the extent that it exceeds the amount (if any) which would have been payable by Maltby Colliery to the Contractor under the Contract for such work.
- (3) Maltby Colliery may, on giving notice to the Contractor, take the whole (or any part) of the Works out of the Contractor's hands. In this event the Contractor shall leave the Site (or, if Maltby Colliery take only part of the Works out of the Contractor's hands, that part of the Site affected by Maltby Colliery decision) at the direction of the Engineer. On receipt of such notice the Contractor shall not without the written consent of the Engineer remove from the Site any materials, plant, spares or equipment whether to be incorporated in the Works or not.
- (4) If, having taken the whole (or any part) of the Works out of the Contractor's hands under Condition 15(3), Maltby Colliery proceed to complete the Works (or that part of the Works) by their own workmen or other contractors:-
 - (a) Maltby Colliery shall pay to the Contractor all sums which, at the date of taking over the Works (or that part of the Works) out of the Contractor's hands, have already been certified by the Engineer as payable to the Contractor and (except for any sums subsequently certified by the Engineer in respect of any parts of the Works remaining in the Contractor's hands) shall only be obliged to make further payment to the Contractor in respect of work executed up to that date (but not then certified for payment) in accordance with Condition 15(5);
 - (b) Maltby Colliery shall be entitled to recover from the Contractor all costs (including without limitation any tendering and administrative costs) incurred by Maltby Colliery in completing the Works (or that part of the Works) in excess of the amount which would have been payable by Maltby Colliery to the Contractor under the Contract for such work.
 - (5) If, having taken the whole (or any part) of the Works out of the Contractor's hands under Condition 15(3), Maltby Colliery do not proceed to complete the Works (or that part of the Works) or if, having completed the Works (or that part of the Works), the costs incurred by Maltby Colliery in so doing are less than the amount which would have been payable by Maltby Colliery to the Contractor under the Contract for such work, Maltby Colliery shall pay the Contractor for the work (if any) executed by him up to the date of taking the Works (or that part of the Works) out of his hands not previously certified for payment, provided that no payment shall be made to the Contractor greater than the difference between the costs incurred by Maltby Colliery in completing the Works (or that part of the Works) and the amount which would have been payable to the Contractor for such work.
 - (6) For the purposes of carrying out work under the above provisions of this Condition, Maltby Colliery may take possession of and use any plant, spares and equipment at the Site not for incorporation in the Works without being liable for fair wear and tear or loss of or damage to the plant and equipment except as provided in Condition 25. Maltby Colliery may also require the Contractor to assign to them the benefit of any sub-contract entered by the Contractor in connection with the Works for the supply of goods or services.

16 If the Contractor suffers an Insolvency Event, Maltby Colliery may terminate either in whole or in part the Contract forthwith by notice to the Contractor (or to the liquidator, receiver, manager or administrator), without prejudice to any other rights of Maltby Colliery, and act as provided for in Condition 15(5) as if such notice had taken the whole or part of the Works out of the Contractor's hands. For the purposes of this Condition 16, Insolvency Event shall mean:

- (a) the Contractor, irrespective of its status and in any jurisdiction:
 - (i) suffers actions analogous to those described in Conditions 16 (b) to 16 (e);
 - (ii) suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (b) the Contractor, being an individual or a partnership:
 - (i) suspends, or threatens to suspend, payment of its debts or admits inability to pay its debts or is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case within the meaning of section 268 of the Insolvency Act 1986;
 - (ii) makes, or proposes to make, an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;
 - (iii) is, or proposes to become, the subject of a bankruptcy petition or order; or
 - (iv) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing its own affairs or becomes a patient under any mental health legislation;
- (c) the Contractor, being a company or limited liability partnership:
 - (i) has a petition filed, a notice given, a resolution passed, or an order made, for or in connection with its winding up or such other circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in respect of the Contractor;
 - (ii) has an application made to court, or an order made, for the appointment of an administrator, or has a notice of intention to appoint an administrator given by the Contractor or its directors or a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) or has an administrator appointed over it;
 - (iii) has a receiver appointed over any of its assets or undertaking or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Contractor or if any other person takes possession of or sells the Contractor's assets;
 - (iv) has a floating charge holder over its assets becoming entitled to appoint or has an administrative receiver appointed;
 - (v) makes, or proposes to make, any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;
 - (vi) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - (vii) is, or is reasonably considered by Maltby Colliery to be, unable to pay its debts when they fall due as defined in Section 123 of the Insolvency Act 1986 (on the basis that the words "it is provided to the satisfaction of the court that" are deemed omitted from sections 123(1)(e) and 123(2) of that Act);
 - (d) any distress is levied against the Contractor or its property by any third party provided always that such event is material in nature and not remedied or corrected within a reasonable period of time;
 - (e) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or against, the whole or any part of its assets and such attachment or process is not discharged within a reasonable period of time; or
 - (f) Maltby Colliery, acting reasonably, has serious doubts as to the Contractor's solvency.

17(1) If Maltby Colliery acting for any reason whatsoever (including without limitation wholly or partly by reason of an event or circumstances referred to in Condition 15(1)) decide not to proceed to completion of the Works either permanently or for the time being they may give notice in writing to the Contractor to terminate the Contract which shall do all that is necessary to ensure the orderly cessation of work at the date specified by Maltby Colliery.

- (2) If the Contract is terminated under Condition 17(1) the Contractor shall (except where the termination is wholly or partly by reason of an event or circumstances referred to in Condition 7 or Condition 15(1)) be paid:-
 - (a) at the rates and prices stipulated in the Contract for work which has been carried out by the Contractor up to the date of termination or, if the Contract Price is a lump sum as provided for in Condition 9(1), that proportion of the Contract Price which represents the extent of the work which has been carried out by the Contractor up to the date of termination compared with the full extent of the Works; and
 - (b) compensation in respect of any expenditure or loss (other than loss of profit and overhead recovery) reasonably incurred or suffered by the Contractor which is directly attributable to the termination in so far as such expenditure or loss shall not have been covered by the payment to the Contractor under Condition 17(2)(a) or otherwise paid by Maltby Colliery under the Contract.
- (3) Except as provided in Condition 17(2), Maltby Colliery shall be under no liability to the Contractor in respect of the termination of the Contract under Condition 17(1).

18(1) The Contractor shall indemnify, keep indemnified and hold Maltby Colliery harmless against any and all Loss arising from or incurred by reason of or in connection with any infringement or alleged infringement of Intellectual Property Rights in respect of the Works or any design, drawings, plant and equipment, materials or other items provided by the Contractor in connection with the execution of the Works.

- (2) Maltby Colliery warrants that any design or instructions given by them in connection with the execution of the Works will not cause the Contractor to infringe any patent, registered design, trade mark, trade name, copyright or similar right in the execution of the Works.

19 All information, written or otherwise, provided by Maltby Colliery in connection with the Contract shall be treated by the Contractor as confidential. Except so far as confidential disclosure to agents, sub-contractors or suppliers is necessary for the performance of the Contract, its use shall be confined to the Contractor's employees properly engaged in the execution of the Contract and for the purposes of the Contract. All documents and written information (including without limitation drawings, plans, photographs, specifications and computer programmes) which are provided to the Contractor by Maltby Colliery for the purposes of the Contract shall be returned to Maltby Colliery immediately on the termination of the Contract.

20 The Contractor shall not without the prior written consent of Maltby Colliery publicly announce or advertise in any form that he supplies goods or services to Maltby Colliery.

21(1) The Contractor shall not assign the whole or any part of the Contract or any interest in it without the prior written consent of Maltby Colliery.

- (2) Subject as hereafter provided, the Contractor shall not without the prior written consent of Maltby Colliery sub-contract the execution of the whole or any part of the Works and such consent shall not relieve the Contractor from any liability or obligation under the Contract.
- (3) The Contractor may (or shall if the Contract so provides) sub-contract the execution of those parts of the Works (if any) specified in the Contract to a sub-contractor agreed by Maltby Colliery or to one of the sub-contractors specified in the Contract approved by Maltby Colliery.
- (4) Where any part or parts of the Works are sub-contracted, the provisions of the Contract shall continue to apply in full as between Maltby Colliery and the Contractor as though the sub-contracted works were being carried out by the Contractor himself, who shall be liable for the acts and defaults of any sub-contractor, his servants and agents.
- (5) In respect of any part of the sub-contracted works, Maltby Colliery shall be entitled, upon serving notice to that effect upon the Contractor, to make payment direct to the sub-contractor.
- (6) Where notice has been served upon the Contractor in accordance with Condition 21(5) the Contractor shall, if so requested by Maltby Colliery inform Maltby Colliery as to the amount claimed as due by the sub-contractor to whom the notice applies.
- (7) Any payments made to a sub-contractor in accordance with this condition shall be notified by Maltby Colliery to the Contractor and may be deducted from any sums payable to the Contractor under the Contract.
- (8) Notwithstanding direct payment by Maltby Colliery under this Condition, no contractual relationship shall be implied or inferred between Maltby Colliery and any sub-contractor nor shall the Contractor be relieved of any liability to Maltby Colliery in

respect of the sub-contracted works.

22 If the Contractor or a person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) corruptly offers, gives or agrees to give to any person a gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forbore to do, any action in relation to the obtaining or execution of the Contract, or any other contract with Maltby Colliery or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with Maltby Colliery, or if in relation to any contract with Maltby Colliery the Contractor or a person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) commits an offence under the Prevention of Corruption Acts 1889-1916, Maltby Colliery shall be entitled to terminate the Contract and the provisions of Condition 15 shall apply to such termination.

23 (1) (a) The following provisions of this Condition shall apply to all claims for additional payment or for extensions of time to complete the execution of the Works by the Contractor.
(b) Within seven (7) days of such circumstances or events occurring, the Contractor shall inform the Engineer in writing of any circumstances or events occurring about which the Contractor knows or ought to have known and in respect of which the Contractor is of the opinion that he may be entitled to an additional payment in connection with the Contract (other than under a Variation Order) or to an extension of time to complete the execution of the Works.

(c) As soon as practicable after giving notice to the Engineer under Condition 23(1)(b), the Contractor shall submit to the Engineer such further information concerning the Contractor's claim as the Engineer may require. The requirement by the Engineer for the Contractor to submit any information under Condition 23 shall in no circumstances constitute any admission on the part of the Engineer or Maltby Colliery that the Contractor is entitled to all or any part of the amount claimed. Furthermore, the provisions of this condition are strictly without prejudice to the Contractor's obligation under Condition 23(2).

(2) Within two (2) months (or such other period as the Engineer may agree) of the circumstances or events mentioned in Condition 23(1)(b) occurring, the Contractor shall submit full and detailed particulars in a manner acceptable to the Engineer of the amount or extent of his claim and the grounds upon which his claim is based. If the Contractor is unable to submit full and detailed particulars of his claim within two (2) months (or such other period as may have been agreed by the Engineer), the Contractor shall submit such particulars as he is able to provide within that time and indicate when he expects full and detailed particulars to be available for submission. The Engineer shall then fix a reasonable period for full and detailed particulars of the claim to be submitted and the Contractor shall submit such particulars within that time. The Engineer shall thereupon within two months of receiving full and detailed particulars of the Contractor's claim and the grounds upon which it is based notify the Contractor of Maltby Colliery decision on the claim provided that, if it is impracticable for the Engineer to notify the Contractor of the decision on the claim within two months, the Engineer shall indicate within that period to the Contractor when it is anticipated that the decision on the claim will be notified to the Contractor.

(3) The Contractor shall not be entitled to an additional payment or an extension of time to complete the execution of the Works if the Contractor does not comply with the provisions of Condition 23(1) and 23(2).

24 Whenever under the Contract a sum of money is recoverable by Maltby Colliery from, or payable by Maltby Colliery to the Contractor, the sum may be deducted from, or reduced by, the amount of any sum then due (or which may at any time afterwards become due) to, or from, the Contractor under the Contract or any other dealing with Maltby Colliery.

25 (1) The Contractor shall indemnify, keep indemnified and hold Maltby Colliery harmless against any and all Loss suffered or expenditure incurred by Maltby Colliery arising out of or in connection with the death of or injury to any person or out of or in connection with the damage to any property, including without limitation property of Maltby Colliery, to the extent that such death, injury or damage is caused by breach of Contract, negligence or breach of statutory duty by the Contractor, his employees, agents or sub-contractors or breach of statutory duty on the part of Maltby Colliery to the extent that it results from an act or omission of the Contractor, his employees, agents or sub-contractors.

(2) The Contractor shall not be liable under the provisions of Condition 25(1) for any loss of profits or of contracts sustained by Maltby Colliery and the liability of the Contractor to indemnify Maltby Colliery in respect of damage to the property of Maltby Colliery shall be limited to £5,000,000 (five million pounds) in respect of any one cause of action.

(3) The Contractor shall insure his liabilities under Condition 25(1) with an insurer approved by Maltby Colliery in a sum of not less than £5,000,000 in respect of any one incident or matter and shall if required by Maltby Colliery from time to time produce satisfactory evidence that the policy or policies of insurance have been effected and maintained in force. The approval by Maltby Colliery of the insurance of the Contractor shall not in any way limit or relieve the Contractor of his liabilities under Condition 25(1).

26 (1) This Condition shall apply unless specifically excluded.

(2) The Contractor shall take full responsibility for the Works from the date of commencement thereof until the Works are completed, provided that if Maltby Colliery take over any portion of or part of the Works (as laid down in Condition 13) before they take over the whole of the Works, the Contractor shall cease to be responsible for that portion or part of the Works and responsibility therefor shall pass to Maltby Colliery. If any loss or damage from any cause whatsoever shall happen to the Works or any portion or part thereof while the Contractor shall be responsible for it the Contractor shall at his own cost repair and make good the same so that at completion the whole of the Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract. The Contractor shall also be liable for any loss or damage to the Works occasioned by him or any of his sub-contractors for the purpose of complying with his obligations under Conditions 36 and 37 and for any loss or damage becoming apparent or occurring during the Maintenance Period (if any) from a cause arising prior to the commencement of the Maintenance Period.

(3) Without limiting his obligations and responsibilities under Condition 26(2), the Contractor shall insure and keep insured in the joint names of the Contractor and Maltby Colliery each portion or part of the Works (and any plant or materials brought onto the Site for incorporation in the permanent part of the Works) for the full re-instatement value against loss or damage from any cause whatsoever until the Works are completed and also for any loss or damage becoming apparent or occurring during the Maintenance Period (if any) from a cause arising prior to the commencement of the Maintenance Period and for any loss or damage occasioned by the Contractor for the purpose of complying with his obligations under Condition 36 and 37.

(4) All materials, spares, plant, equipment and temporary facilities not intended for incorporation in the permanent part of the Works shall be insured by the Contractor.

(5) The insurance required by Condition 26 shall be effected with an insurer approved by Maltby Colliery and the Contractor shall from time to time, if required by Maltby Colliery, produce satisfactory evidence that the policy or policies of insurance have been effected and maintained in force. The approval by Maltby Colliery of the insurance shall not in any way limit or relieve the Contractor of his liabilities under Condition 26.

27 The Contract, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in all respects in accordance with the laws of England, and the English courts shall have exclusive jurisdiction in all matters relating to the Contract (whether of a contractual or tortious nature or otherwise).

28 (1) Any notice to be served under these Conditions shall be in writing (which shall include telex or facsimile) and shall be sent by first-class post, telex or facsimile to or left at, in the case of a notice to be sent to Maltby Colliery, the address from which Maltby Colliery letter of acceptance or order was sent, or, in the case of a notice to be sent to the Contractor, the registered office or last known business address of the Contractor.

(2) Any notice to be served under these Conditions by or on the Engineer shall be sent by first-class post, telex or facsimile to or left at the business address of, as the case may be, the Contractor's Representative or the Engineer.

(3) Any notice shall be deemed to have been served as follows:-

(a) in the case of telex, facsimile or delivery by hand, on the first business day after transmission or delivery;

(b) in the case of service by first-class mail, on the second business day after the day on which it was posted;

provided that, in the case of transmission by telex or facsimile, a copy of the telex or facsimile is also sent by the first available first class post after the telex/facsimile transmission.

(4) In this Condition the expression "business day" shall mean any day other than Saturday, Sunday or any other day which is a public holiday in the place at which such notice is left or sent.

29 All spares, materials and workmanship shall be of the type and qualities specified in the Contract or, if none are specified, of types and qualities suitable for their purpose and satisfactory to the Engineer. The Engineer may direct that tests are carried out on the spares, materials and workmanship and, unless otherwise provided in the Contract, the tests shall be carried out at the Contractor's cost.

30 (1) Except as otherwise stated in the Contract, the Contractor shall provide suitable plant and equipment for the execution of the Works. If under the Contract Maltby Colliery are to provide specified plant and equipment to the Contractor for the execution of the Works, the Contractor may, within one (1) week of commencing to use such specified plant and equipment or within one (1) month of such specified plant and equipment being first available for inspection by the Contractor (whichever is the sooner), reject it on the grounds of its unsuitability or poor condition but thereafter shall not be entitled to reject the plant and equipment nor make any claim against Maltby Colliery on such grounds.

(2) If Maltby Colliery provide any plant and equipment (other than plant and equipment specifically to be provided by Maltby Colliery under the Contract) to the Contractor for the execution of the Works, the Contractor shall not be entitled to make any claim against Maltby Colliery because of the unsuitability or condition of such plant and equipment. If such plant or equipment breaks down or becomes unusable, the Contractor shall at his cost repair or replace it.

(3) The Contractor shall take proper care of and at his own cost maintain in good condition and working order all plant and equipment provided by Maltby Colliery (whether specifically to be provided by Maltby Colliery under the Contract or otherwise) for the execution of the Works.

31 Maltby Colliery and any persons authorised by the Engineer shall at all times when they consider it necessary have access to the Site and Works and to all workshops or premises where work, materials or plant and equipment are being prepared in connection with the execution of the Works. The Contractor shall afford reasonable facilities and assistance to Maltby Colliery in this respect.

32 (1) Except as otherwise provided in the Contract, the Contractor shall be responsible for the true and proper setting out of the Works from bench marks, base lines or other reference points provided by Maltby Colliery and for the correctness of the position, levels, dimensions and alignments of all parts of the Works. The Contractor shall provide all necessary instruments, appliances and labour for this purpose. The checking of any setting-out or of any line or level by Maltby Colliery shall not relieve the Contractor of any responsibility for the correctness thereof and the Contractor shall protect and preserve all bench marks, sight rails, pegs and other things used in setting out the Works.

(2) If at any time during the execution of the Works any error appears or arises in the position, levels, dimensions or alignment of any part of the Works set out by the Contractor, the Contractor shall at his own cost rectify such error to the satisfaction of the Engineer unless the error is based on incorrect data supplied in writing by Maltby Colliery in which case the costs of rectifying the same shall be paid by Maltby Colliery.

33 (1) The Engineer may during the execution of the Works order in writing the removal and proper re-execution (notwithstanding any previous examination thereof or interim payment thereof) of any work which has not been completed in accordance with the Contract.

(2) If the Contractor fails to carry out any such order Maltby Colliery may (by their own workmen or by utilising another Contractor) carry out the same and all costs incurred in connection therewith shall be paid by the Contractor.

34 (1) No work shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for Maltby Colliery to examine and measure any work which is about to be covered up or put out of view. The Contractor shall give due notice to the Engineer whenever any such work is ready or about to be ready for examination and Maltby Colliery shall without unreasonable delay attend for the purpose of examining and measuring such work unless they consider it unnecessary and advise the Contractor accordingly.

(2) The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the Engineer may direct and shall reinstate and make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirements of Condition 34(1) by the Contractor and are found to have been executed in accordance with the Contract, any costs incurred in uncovering, making openings in or through, reinstating and making good the same shall be paid by Maltby Colliery but in any other case such costs shall be paid by the Contractor.

35 The Contractor shall, if required by the Engineer, search for the cause of any defect, imperfection or fault in the Works. Unless the defect, imperfection or fault is one for which the Contractor is liable under the Contract, the cost of the work carried out by the Contractor in searching shall be borne by Maltby Colliery but if the defect, imperfection or fault is one for which the Contractor is liable under the Contract, the cost of the work carried out in searching shall be paid by the Contractor.

36(1) The Contractor shall take all reasonable and proper steps for the care of the Works from the date of their commencement until Maltby Colliery have issued a Completion Certificate for the Works under Condition 10 provided that the Contractor shall continue to take such steps in respect of any parts of the Works not completed on the issue of the Completion Certificate until those parts are in fact completed.

(2) Without prejudice to Conditions 25 and 26, if any defect, damage or loss appears in or happens to the Works or to any part of them by reason of any failure by the Contractor under Condition 36(1) the Contractor shall at his cost repair and make good the same so that, on the completion of the execution of the Works, the Works are in good order and condition and in conformity with the requirements of the Contract. To the extent that any such defect, damage or loss arises from any other cause, the Contractor shall if required by the Engineer repair and make good the same at the cost of Maltby Colliery.

(3) If for any reason during the execution of the Works or during the Maintenance Period any remedial or other work or repair is in the opinion of the Engineer urgently necessary and the Contractor is unable or unwilling at once to do such work or repair, Maltby Colliery may (by their own workmen or other contractors) do such work or repair as they consider necessary. If the work or repairs done by Maltby Colliery is work which the Contractor was liable to do at his cost under the Contract all costs incurred in connection therewith shall be paid by the Contractor.

37(1) During the execution of the Works and/or prior to the end of the Maintenance Period (if any) the Contractor shall promptly repair and make good any defect in or damage to the Works notified to him in writing by the Engineer and arising out of defective materials, workmanship or design of the Works (other than a design or part of a design furnished by Maltby Colliery) or out of any act or omission of the Contractor.

(2) Where the Works are to include the repair of Machinery, the Contractor shall also make good:-

(a) all damage to the Machinery (or any part thereof) attributable to any such defect or fault in the Works; or

(b) defects which are found or develop in the Machinery (or any part thereof) arising from the failure of the Contractor, his servants or agents or of any sub-contractor or his servants or agents to carry out the Works in accordance with the Contract.

(3) The provisions of Condition 37(1) and 37(2) shall further apply to any part of the Works repaired or made good for a period equal to the Maintenance Period from the date of such repair or making good.

(4) If the Contractor fails to do any work under this Condition, Maltby Colliery may (by their own or other workmen) carry out such work and all costs incurred in connection therewith shall be paid by the Contractor.

(5) The provisions of Condition 37 shall be without prejudice to any other rights or remedies Maltby Colliery may have in respect of any breach of contract or other default on the part of the Contractor in connection with the Works.

38 The Contractor shall at his expense observe and perform the Works in accordance with all reasonable standards of safety and comply with Maltby Colliery's health and safety procedures from time to time in force, including without limitation the conditions and requirements set out in Maltby Colliery's document concerning health and safety entitled 'Scope and Requirements Health and Safety Provisions Pre Mobilisation Document' (or such revision of the document at Maltby Colliery may issue in writing to the Contractor from time to time) and all the other instructions given by the Engineer in connection with the safe execution of the Works and the operation of the Site and shall report to Maltby Colliery any unsafe working conditions or practices.

39(1) The Contractor shall provide all necessary supervision having regard to the nature and extent of the Works, to secure the proper and safe execution of the Works in accordance with the Contract, including without limitation the provision of a competent and authorised agent or charge man skilled in the type of work being executed and approved by the Engineer and who shall be on the Site at all times while work is in progress.

(2) The Contractor shall also provide during the Maintenance Period such supervision as the Engineer may require.

(3) Maltby Colliery shall have an absolute right to object without giving any reason to the engagement (whether as employee or independent contractor) by the Contractor or any sub-contractor of any person in or about the execution of the Works at the Site and immediately upon receipt of such objection the Contractor shall ensure that any such person ceases to be so engaged and to attend at the Site.

(4) The Contractor shall if so required deliver to the Engineer a return in such form and at such intervals as the Engineer may require showing in detail the names and numbers of the labour from time to time employed by the Contractor or his sub-contractors on the Site in connection with the Works and shall if required by the Engineer immediately notify him of the name and class of labour of any workman taken on or removed from employment by the Contractor or any sub-contractor.

40 (1) In accordance with the requirements of the Engineer the Contractor shall afford reasonable facilities for any other contractors employed by Maltby Colliery and for the workmen of Maltby Colliery who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which Maltby Colliery may enter into in connection with or ancillary to the Works.

(2) The Contractor shall not intentionally interfere with any existing works, whether the property of Maltby Colliery or of any other party and whether the position of such works is indicated to the Contractor by Maltby Colliery or not, except where such interference is specifically described as part of the Works, either in the Contract or in an instruction by the Engineer.

41(1) On the completion of the execution of the Works or the termination of the Contract, the Contractor shall promptly upon receipt of the Engineer's agreement clear away and remove from the Site all plant and equipment, unused materials, rubbish and temporary works and leave the whole of the Site and the Works clean and in a condition satisfactory to the Engineer.

(2) Any scrap material and/or redundant equipment that Maltby Colliery so require shall remain the property of Maltby Colliery. The Contractor must stack any such material/equipment in a position as directed by the Engineer.

42 All fossils, coins, articles of value or antiquity or other remains or things of geological or archaeological interest discovered on the Site shall, as between Maltby Colliery and the Contractor, be deemed to be the absolute property of Maltby Colliery. The Contractor shall take all reasonable precautions to prevent his workmen or any other persons from removing or damaging any such items and shall immediately upon their discovery and before removal acquaint Maltby Colliery of the discovery and carry out the Engineer's instructions as to their disposal at the cost of Maltby Colliery.

43. The Contractor warrants to the Maltby Collier that to the extent it processes any Personal Data in connection with the provision of the Contract, it shall comply with the provisions of the Data Protection Act 1998.

44. Other than members of the Hargreaves Group, a person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. Maltby Colliery may perform any of its obligations or exercise any of its rights hereunder through any member of the Hargreaves Group. Notwithstanding that members of the Hargreaves Group shall be entitled to enforce certain rights under this Contract which have been given for their benefit, the parties to this Contract may enter into any agreement or arrangement varying or amending any of the terms of this Contract, or compromising or settling any claim under this Contract (including in respect of such rights), without reference to the interests of, or the consent of, the other members of the Hargreaves Group not party to this Contract.

43 (a) If any provision of the Contract is held by any court or other competent authority to be void or unenforceable (in whole or part), the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.

(b) The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies otherwise provided by law.

(c) The failure of a party to exercise or enforce any right under the Contract shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

(d) Save as expressly set out elsewhere in this Contract, no variation of the Contract shall be binding upon the parties unless the same shall be in writing signed by a duly authorised representative of both the Maltby Colliery and the Contractor and such variation shall be particular to the circumstances mentioned by such writing and shall not be regarded as a general variation.

July 2011