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REFERENCE No S160903  
DATED 24 November 2016

## REISSUE CERTIFICATE CONTRACT

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### The Applicant

Name: Arconic Architectural Products sas  
Registered office (if applicable): 1 rue du Ballon  
Merxheim  
France  
68500  
Address for correspondence: As above

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### The Subject

Proprietary name: Reynobond Architecture Wall Cladding Panels  
Nature of product or process: Aluminium composite cladding panels

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### The Fee: £2205.00

*Unless otherwise stated, this Contract offer will remain open for acceptance for 90 days from the date stated above. However, the BBA reserves the right to revise the Fee and/or revise/withdraw the offer at any time prior to acceptance by the Applicant.*

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### The Agreement:

**The BBA offers to carry out the Work set out in this Contract upon receipt of the Fee stated above. By signing this Contract the Applicant: accepts the BBA's offer to carry out the Work; agrees to pay the Fee; expressly confirms that the signatory has accessed and carefully considered the BBA Certificate Contract Terms and Conditions ('Terms') appended hereto; and accepts that the Terms shall form part of and be incorporated into the 'Contract' defined in the Terms.**

Signed on behalf of the Applicant ..... Date .....

Name .....

Job Title .....

Client Purchase Order Number (if applicable) .....

## **Reissue Certificate Contract Appendix – Project Scope**

### **1 General**

- 1.1 Subject to the Terms and Conditions of this Reissue Certificate Contract, the BBA will carry out the Work detailed below.
- 1.2 The expiry date of the Certificate will be unchanged by this Reissue.

### **2 Work to be carried out by the BBA**

- 2.1 Reissue of Certificate 08/4510 to cover:
  - 2.1.1 Change of company name from Alcoa Architectural products to Arconic Architectural Products sas
  - 2.1.2 Updates to the national Building Regulations
  - 2.1.3 Updates to NHBC Standards
  - 2.1.4 Updates to the CDM Regulations
  - 2.1.5 Removal of the Zurich Building Guarantee Technical Manual 2007 following its withdrawal
  - 2.1.6 Updates to Technical references and Standards
  - 2.1.7 Re-assessment of impact resistance (for test data currently held on file) in accordance with ETAG 34 – I : 2012 following the withdrawal of BS 8200, re-classification of the use categories and an update of section 5.10
  - 2.1.8 Updates to the fire section, including reference to the necessary height and boundary restrictions, where appropriate Update of Certificate format
  - 2.1.9 Inclusion of a new paragraph regarding manufacturing
  - 2.1.10 Non-technical recommendations as identified during the last Certificate Review S160286
- 2.2 The BBA will prepare and, if appropriate, circulate a draft Reissue Certificate for comment
- 2.3 Should a Reissue Certificate be issued it will be in Product Sheet format

### **3 Provision of information, samples, etc, required from the Applicant, at their expense**

- 3.1 Provision of such original drawings, photographs and/or other illustrations as may be required as artwork for reproduction in any Reissue issued. If this is not of adequate quality the BBA will arrange for suitable artwork to be produced at the Applicant's expense.

### **4 Assumptions made in the preparation of this contract**

- 4.1 This contract covers the work described in section 2. Should additional work become necessary during the course of this Reissue process, it will be carried out under a Contract Variation at the Certificate holder's expense.
- 4.2 Should additional technical work become necessary as a result of updated Technical references and Standards other than that stated in clause 2.1.7 of this Contract, it will be carried out under a Contract Variation at the Certificate holder's expense.
- 4.3 No meetings have been included in the contract price. Should the Certificate holder request meetings, or they become necessary during the course of the work, these will be covered under a Contract Variation at the Certificate holder's expense.
- 4.4 The Certificate holder must take up this Reissue Contract by 3<sup>rd</sup> March 2017 for the validity of the Certificate to continue.

## CERTIFICATE CONTRACT TERMS AND CONDITIONS

### 1 INTERPRETATION

In the Contract, unless the context otherwise requires, the following words or expressions shall have the meanings hereby assigned to them, namely:

- (a) **'Additional Fee'** - the fee payable for the provision of the Additional Work or in the event of delays attributable to the Applicant (as determined and confirmed by BBA).
- (b) **'Additional Work'** - tests, investigations, experiments, assessment and/or profiling in addition to the Work (as determined and confirmed by BBA).
- (c) **'Annual Fee'** - the non-refundable annual fee payable by the Applicant in respect of the Certificate (as determined and confirmed by BBA).
- (d) **'Applicant'** - the person, firm or company or other legal entity specified in the Certificate Contract.
- (e) **'Applicant Material'** - has the meaning prescribed in paragraph 11(h).
- (f) **'BBA'** - the British Board of Agrément.
- (g) **'BBA Logos'** - designs, words, trademarks and/or logos held or registered by BBA.
- (h) **'Certificate'** - the Agrément Certificate or the Environmental Profile Certificate which may be issued pursuant to paragraph 8 hereof.
- (i) **'Certificate Contract'** - the document titled "Certificate Contract" or the document titled "Reissue Certificate Contract" or the document titled "Reproduction Certificate Contract" and the related Project Scope.
- (j) **'Contract'** - these Terms and the Certificate Contract.
- (k) **'Deliverables'** - any materials and/or documents created, generated and/ or produced by or on behalf of BBA in the performance of the Work, Additional Work and/or BBA's obligations under the Contract (including, without limitation, the Certificate, any reports, statements and data).
- (l) **'Expiry Date'** - one year on from the date of issue or reissue of the Certificate or from the date of the most recent Annual Fee Payment, as appropriate.
- (m) **'Fee'** - the fee specified in the Certificate Contract and as may be varied in accordance with these Terms and Conditions.
- (n) **'Information'** - any information, data or the like received by the BBA from the Applicant in relation to the Subject and the Work or Additional Work.
- (o) **'IPR'** - any actual or claimed intellectual property or ownership rights including without limitation copyright, trademarks, patents, data and designs existing anywhere in the world and whether registered or not.
- (p) **'Material Safety Data Sheet'** - a document describing the known hazards associated with material and indicating safe handling procedures.
- (q) **'Project Scope'** - the Project Scope as set out in the Certificate Contract.
- (r) **'Report'** - any report issued by the BBA under the Contract.
- (s) **'Specified Use'** - the use specified in the Certificate Contract in respect of which (but of no other) the Subject will be assessed by the BBA hereunder.
- (t) **'Subject'** - the subject matter for assessment and/or profiling, brief particulars of which are set out in the Certificate Contract, including parts and samples thereof.
- (u) **'Surveillance'** - a series (consisting of such number of visits and audits as the BBA may in its discretion determine, normally two to each production location each year) of unannounced inspections by the BBA or its agent of the place where the Subject is manufactured, processed, fabricated, assembled or applied or any other place judged relevant by the BBA and any other work, including reviews of the Certificate, as judged necessary by the BBA.
- (v) **'Terms'** - the terms and conditions set out in this document.
- (w) **'Work'** - the tests, investigations, experiments, assessment and/or profiling to be carried out by the BBA or arranged by the BBA hereunder of the Subject in respect of:
  - (i) its application for the Specified Use in the United Kingdom only (unless otherwise stated in the Certificate Contract); or
  - (ii) its environmental impact.

Brief particulars of the Work are set out in the Project Scope (as determined and confirmed by BBA).

The singular includes the plural, and vice versa.

Paragraph headings and bold are included for the convenience of the parties to the Contract and do not affect its interpretation.

References to statutes, any statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.

In the event of conflict between these Terms and the Certificate Contract or the Project Scope, then these Terms will prevail.

### 2 WORK AND ADDITIONAL WORK

- (a) The Work is subject to confirmation and/or reconsideration as deemed necessary by the BBA during the course of the Work and, notwithstanding the Project Scope, the BBA at its entire discretion may perform or require such additional tests, experiments, investigations, assessments, profiling, information or samples as and when it shall deem necessary for the purposes of the Work whether or not the BBA exercises its right to treat such additional tests, experiments, investigations, assessments, information and samples as Additional Work under paragraph 2(b).
- (b) If the BBA considers at any time during the Work that Additional Work is necessary or desirable, for instance if the Subject or the Information is inadequate or unsatisfactory, then it shall notify the Applicant of brief details of Additional Work and also of the Additional Fee. In the event that the Applicant is not willing to pay the Additional Fee, BBA may terminate the Contract in accordance with paragraph 17(a)(ii).
- (c) Postponement or delay of the Work or the Additional Work by the Applicant may also result in an Additional Fee.
- (d) The BBA may obtain such services, assistance, advice and information from third parties and, without prejudice to the generality of the foregoing, may consult any third parties as it may deem necessary to enable the BBA effectively to carry out the Work or Additional Work.
- (e) Unless otherwise determined by the BBA, the Work and Additional Work will be carried out at the BBA's premises.
- (f) The Applicant may request to witness any tests or part thereof that are being carried out as part of the Work and Additional Work. Whether or not such a request is granted is at the absolute discretion of the BBA. The BBA reserves the right to charge the Applicant for any additional costs that may be incurred in accommodating witnessing of tests.

- (g) At any time during the Work or Additional Work and as it judges appropriate, the BBA may issue a Report to the Applicant.

### **3 FEE**

- (a) The Applicant agrees to pay the Fee and any Additional Fee that is notified to it by BBA in accordance with these Terms.
- (b) In consideration of the payment by the Applicant of the Fee, the BBA will, subject to the terms of the Contract, carry out the Work.
- (c) Where a factory inspection is included within the Project Scope, the Fee provides for one inspection within the UK of a factory manufacturing the Subject, as identified in the Project Scope.
- (d) The Fee does not include any amount to cover the cost of: additional inspections of the factory manufacturing the Subject; or inspections of other factories manufacturing the Subject, as identified by the Applicant; or the provision of information, samples, etc; or any work or other matter which is stated in the Project Scope to be the subject of a separate charge. These will be charged separately to the Applicant at BBA's then current rate for such work.
- (e) The BBA will not undertake or arrange for Additional Work to be carried out or to recommence the Work following delay or postponement by the Applicant (as referred to in paragraph 2(c) above) unless the Applicant agrees thereto and pays the Additional Fee to the BBA within the time specified by the BBA.
- (f) Cancellation of the Contract by the Applicant after the Contract has been accepted will make the Applicant liable for a cancellation fee based on the amount of work undertaken by the BBA before such cancellation was notified (and calculated at BBA's then current rate for such work) and any costs incurred by the BBA (**Cancellation Fee**).

### **4 ANNUAL FEE**

The Annual Fee:

- (a) is payable by the Applicant to maintain the validity of the Certificate and the non-exclusive licence issued by the BBA to the Applicant as described in paragraph 11(c);
- (b) is non-refundable; and
- (c) covers updates of the Certificate for non-technical changes, such as Building Regulation and/or National Statement amendments that do not require any technical work, Certificate holders address or contact details.

### **5 BBA OBLIGATIONS**

The BBA agrees to use reasonable care and skill in carrying out the Work and any Additional Work in accordance with Section 13 of the Supply of Goods and Services Act 1982.

### **6 SUSPENSION AND TERMINATION OF WORK AND/OR ADDITIONAL WORK**

- (a) If at any time during the Work or Additional Work there is revealed a deficiency in the performance of the Subject which is such that the BBA would be unlikely (were the Work to be completed) to issue the Certificate, or if in the opinion of the BBA there is other good reason (including, without limitation, if the Applicant is unwilling to pay any Additional Fee), the BBA may suspend the Work or Additional Work and notify the Applicant in writing of such deficiency or other good reason and suspension. The Applicant may then, if it so wishes but only with the agreement of the BBA and within a time limit determined by the BBA, request the BBA to recommence the Work or Additional Work.
- (b) If no such request is given by the Applicant within a reasonable period of time (as determined by the BBA) or the BBA determines that it will not proceed with the Work or Additional Work, then the BBA's obligation to carry out further Work or Additional Work under the Contract shall thenceforth cease and determine, and the Fee would become repayable to the Applicant or alternatively a credit note would be issued to the Applicant (as determined by BBA), in both cases less such amounts as will reimburse the BBA its then current charge-out rate plus disbursements in relation to the Work or Additional Work already carried out.
- (c) In the event of the termination of the Work or Additional Work, the BBA at its discretion, may issue a Report to the Applicant on the Work or Additional Work carried out or conducted by the BBA to the date of termination. The Report will have a date of issue and no ongoing currency.

### **7 DELAYS IN CARRYING OUT THE WORK OR ADDITIONAL WORK**

If at any time during the Work or Additional Work the BBA is unable to progress the Work or Additional Work due to delays attributable to the Applicant (including, without limitation, if the Applicant does not provide Information or the Subject as required by the BBA), then the BBA reserves the right to charge an Additional Fee having taken account of any increases in costs post-dating the Fee or any Additional Fee already charged.

### **8 CERTIFICATE AND REPORT**

- (a) The Applicant agrees and acknowledges that the award of the Certificate and the issue of any Report as and when determined by the BBA and their format, content and in the case of a Certificate continuance are at the absolute discretion of the BBA. The BBA may at any time and at its absolute discretion issue and publicise any comments, observations and opinions it may have on the Work and/ or the Additional Work at any time after it has issued the Certificate or Report.
- (b) The Applicant agrees and acknowledges that the BBA will publish the issued Certificate in full, together with key information extracted there from, that will enable it to be located, for example in an index or on an internet search engine.
- (c) Subject to paragraph 13(c), the BBA shall not be liable to the Applicant for any loss or damage suffered by the Applicant as a result of any refusal to grant the Certificate or the expiry or withdrawal or suspension of the Certificate or any revision, reissue or replacement thereof.
- (d) If in its absolute discretion the BBA is satisfied that the Subject, when manufactured, processed, assembled or applied as specified in the Certificate Contract is satisfactory for the Specified Use or that a representative environmental profile has been prepared, it may issue the Certificate in respect of the Subject on completion of the Work and Additional Work which the BBA considers is necessary or desirable to carry out..
- (e) The Certificate will declare how, where relevant and in the opinion of the BBA, the Subject, if used in accordance with the provisions of the Certificate, will meet or contribute to meeting the relevant requirements of any statutory regulations, or parts thereof, which the BBA may take into account, which are in force at the date of issue of the Certificate. Subject thereto, the form of the Certificate will be in the absolute discretion of the BBA provided that the BBA will not include in the Certificate any details of the composition or method of manufacture of the Subject save such as shall be mutually agreed between the Applicant and the BBA in writing.
- (f) The contents of the Certificate will reflect the BBA's opinion on the Subject at the time the Work or Additional Work is carried out in relation to the Specified Use. The BBA provides no guarantee or warranty to the Applicant or to any third party that the Subject will

continue to meet, or contribute to meeting the relevant requirements of any statutory regulations, or parts thereof, which are in force at the date of issue of the Certificate. The contents of paragraph 8(f) should be noted in particular.

- (g) The BBA's opinion stated in the Certificate will only remain valid provided that the Subject:
- (i) is maintained at or above the levels which have been assessed and found satisfactory by the BBA;
  - (ii) continues to be checked as and when deemed appropriate by the BBA under arrangements that it will determine; and
  - (iii) is reviewed by the BBA as and when it considers appropriate.
- (h) Any information relating to the manufacture, supply, installation, use, maintenance and removal of the Subject which is contained or referred to in the Certificate is the minimum requirement to be met when the Subject is manufactured, supplied, installed, used, maintained or removed. It does not purport in any way to restate the requirements of the Health and Safety at Work etc Act 1974, or of any other statutory, common law or other duty of care which may exist at the date of issue or reissue of the Certificate; nor is conformity with such information to be taken as satisfying the requirements of the Health and Safety at Work etc Act 1974 Act or of any statutory, common law or other duty of care.
- (i) Publications, documents, specifications, legislation, regulations, standards and the like referenced in the Certificate will be those that are current and/or deemed relevant by the BBA at the date of issue or reissue of the Certificate.

## **9 SURVEILLANCE**

- (a) The Applicant shall:
- (i) permit the BBA or its agents from time to time and at any time without prior notice and whether before or after the Work or Additional Work or the issue of the Certificate (if any) to enter upon the places specified in the Certificate Contract or other places to inspect the manufacture, processing, assembly or application of or method of testing the Subject; and
  - (ii) procure permission for the BBA or its duly authorised representatives or agents from time to time and at any time and whether before or after the Work or Additional Work or the issue of the Certificate (if any) to enter upon the places of third parties to inspect examples of the Subject actually assembled or being assembled as part of a building or being installed or applied or otherwise in current use.
- (b) At any time after the Certificate is issued as part of its surveillance the BBA can prepare and issue Reports, which may report the results of reviews of the Certificate and requirements that have to be met by the Applicant to maintain the validity of the Certificate. The cost of preparing and issuing such Reports is covered by the Annual Fee.

## **10 OTHER OBLIGATIONS OF THE APPLICANT**

The Applicant:

- (a) shall disclose to the BBA full particulars of and relating to the Subject including (but without prejudice to the generality of the foregoing) particulars of the Subject's physical or chemical composition, of any process or method of manufacture thereof, of the control of the quality of the composition or manufacture thereof, of any test data or other relevant data including (but without limitation to the generality of the foregoing environmental data) already available and, where appropriate, of the test procedures used to obtain the same provided that the BBA will not include in the Certificate, the ownership of IPR in the Subject, any details of the composition or method of manufacture of the Subject save such as shall be mutually agreed between the Applicant and the BBA in writing;
- (b) shall at its own expense and at its own responsibility provide and deliver to the BBA or to any third parties nominated by the BBA in writing at any place specified by the BBA, Information or the Subject or any part thereof in such quantity and selected by such methods as the BBA may reasonably require for the purpose of the Work or Additional Work or Surveillance;
- (c) shall at its own expense and at its own responsibility provide any labour and expertise reasonably required for the fabrication and/or assembly and/or installation/application of the Subject wheresoever directed by the BBA and in that respect shall also provide relevant risk assessments and method statements;
- (d) shall provide Material Safety Data Sheets if the Subject or any part thereof is defined as hazardous by the Control of Substances Hazardous to Health Regulations 2002 and comply in all respects with the provisions of the Health and Safety at Work Act 1974 and any other relevant statutory provision or regulation in connection with the supply of the Subject or any part thereof to the BBA;
- (e) shall at the conclusion of the Work and Additional Work undertake to collect from the BBA or any third parties nominated by the BBA, any part of the Subject not consumed or otherwise disposed of for the purposes of the Work and Additional Work. Failure to do so within one month from the issue of the Certificate or Report will leave the BBA free to dispose of the Subject entirely at its discretion and at the Applicant's cost;
- (f) shall if required by the Certificate or otherwise by the BBA in writing, mark, in the manner determined by the BBA, the Subject or the containers in which the Subject is delivered or the delivery notes declaring the supply of the Subject with the BBA Logos incorporating the number of the Certificate and any other information as may from time to time be required in writing by the BBA;
- (g) shall immediately notify the BBA of any change in the particulars supplied to the BBA or any third parties and also of any new or additional information concerning the Subject or its suitability for the Specified Use or its environmental impact including, without limitation to the generality of the foregoing, details of claims by users of the Subject that it is or may be unsatisfactory for the Specified Use or is or may be affecting the environment in a way that has not been taken into account in the Certificate;
- (h) shall immediately notify the BBA of any change either before or after the issue of any Certificate in Regulations, specifications, tests, calculations, methodologies, protocols, product formulation, raw materials, materials suppliers, manufacturing location or any other change that results or might result in a variation of the Subject and or its performance as described in the Certificate;
- (i) shall, if it wishes to use the Certificate or Report in any court or arbitration proceedings, inform the BBA to this effect in advance. If any director or employee of the BBA is required to appear before court or arbitration proceedings, the Applicant will reimburse BBA on demand for all of BBA's fees, costs and expenses incurred in respect of such appearance; and
- (j) consents to the BBA appointing agents or representatives to carry out any of the Work, Additional Work or Surveillance.

## **11 INTELLECTUAL PROPERTY RIGHTS**

- (a) BBA has no obligation to make any investigation into the ownership or control of IPR in the Subject, the Information and the Applicant Material, or any authority that the Applicant expressly or impliedly represents itself to have in respect of such IPR.
- (b) The parties acknowledge that the IPR and all other rights in the Deliverables (including, without limitation, those in the BBA Logos) belong to BBA and/ or BBA's licensors and the Applicant shall at no time dispute ownership.
- (c) While the Certificate is valid, the BBA grants to the Applicant a non-exclusive license to:

- (i) use the BBA Logos strictly in accordance with the current or later versions of the "BBA Brand Guidelines" document (a copy of which is on the BBA's website); and
  - (ii) disclose, publish and make known to any third parties in writing the contents of the Certificate or Report provided that such disclosure is of the Certificate or Report in its entirety with no additions, deletions, amendments or variations of format of any kind whatsoever.
- (d) This license can be suspended or revoked at any time by the BBA including and without prejudice to the generality of the foregoing upon the suspension or withdrawal or expiry of the Certificate.
- (e) The license in paragraph 11(c) permits the Applicant to:
- (i) display details of the Certificate on its website; and
  - (ii) create a link from its website to the BBA website.
- (f) The Applicant may not undertake any of the following without the prior written consent of BBA:
- (i) use nor permit the use of the Certificate or Report or other communication made by the BBA hereunder in any arbitration or litigation;
  - (ii) publish nor permit to be published the Certificate or Report or communication made by the BBA hereunder in connection with any prospectus as defined in the Companies Act which is in force at the date of the Contract;
  - (iii) publish nor permit to be published otherwise than verbatim to any third parties the Certificate or Report; and
  - (iv) publish nor permit to be published any communication issued or made by the BBA hereunder.
- (g) The Applicant acknowledges that the BBA is not restricted in how it may use the Certificate or Report and that the BBA may, without prejudice to the generality of the foregoing, display the Certificate or Report on the BBA website and distribute the Certificate or Report to third parties in electronic and paper form.
- (h) The Applicant hereby grants BBA permission to use the Subject, the Information and any other material provided by the Applicant to BBA in whatever medium ("**Applicant Material**") for the purpose of BBA fulfilling its obligations under the Contract and to maintain and otherwise deal with the Certificate and Report or matters related thereto.
- (i) BBA is not responsible for and is excluded from all liability to the Applicant or any third party for any matters arising from:
- (i) the presence or absence of any IPR or similar right which may subsist in the Subject or any IPR or similar right in any other product or system which may conflict with the Subject; or
  - (ii) whether or not the Applicant has the right to manufacture, supply, install, maintain, market or otherwise deal with the Subject.
- (j) The Applicant hereby agrees to indemnify BBA on demand against any claim, loss, damage, cost and/ or expense suffered or incurred as a result of a third party claiming that BBA's:
- (i) use of the Subject, the Information or the Applicant Material infringes that third party's rights; and/or
  - (ii) performance of the Work and/or the Additional Work, infringes that party's rights.

## 12 CONFIDENTIALITY

- (a) Save as mutually agreed between the Applicant and the BBA or in the interests of health and safety or in the public interest as determined by the BBA or required under legislation or if required by persons with statutory powers or if required by a Court of Law, the BBA agrees that it will not disclose to any third parties (other than those instructed or consulted by it in connection with the Work or Additional Work or the Surveillance or the Certificate) the Subject, Information and Applicant Material.
- (b) For the avoidance of doubt, it is agreed that the provisions of this paragraph 12 also apply to the Subject, Information and Applicant Material received by BBA prior to the date of the Contract, but related to or in anticipation hereof.

## 13 LIMITATION OF LIABILITY

- (a) This paragraph 13 sets out the entire financial liability of BBA (including any liability for the acts or omissions of its employees, agents or sub-contractors) to the Applicant in respect of (i) any breach of the Contract; (ii) any use made by the Applicant of the Certificate; and (iii) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- (b) Except as expressly provided in the Contract, no warranty, condition, undertaking or term, expressed or implied, statutory or otherwise as to the condition, quality, performance or fitness for purpose of any goods and/or services provided hereunder will be assumed by BBA and all such warranties, conditions, undertakings and terms are hereby excluded.
- (c) Nothing in this Contract limits or excludes the liability of BBA for (i) death or personal injury resulting from negligence; or (ii) any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other.
- (d) Subject always to paragraph 13(c), the entire financial liability of BBA to the Applicant in respect of any breach of the Contract or any other duty, negligence, misrepresentation, restitution or otherwise arising in connection with the subject matter of the Contract shall be limited to the aggregate of the Fee and, where appropriate, the Additional Fee.
- (e) Subject always to paragraph 13(c), in no event shall BBA be liable to the Applicant for any of the following however and whenever arising:
- (i) loss of profits;
  - (ii) loss of business;
  - (iii) loss of revenue;
  - (iv) loss of data;
  - (v) loss of goodwill ;
  - (vi) loss of anticipated savings; and/ or
  - (vii) indirect or consequential loss or damage.
- (f) BBA and the Applicant agree that the limitations of liability contained in this paragraph 13 have been discussed, negotiated and agreed between them in the context of the other provisions of the Contract and satisfy the requirement of reasonableness within the meaning of sub-section 2(2) and Section 11 of the Unfair Contract Terms Act 1977.

- (g) BBA and the Applicant agree that should any limitation or provision contained in the Contract be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.
- (h) Subject always to paragraph 13(c), BBA shall under no circumstances be liable to the Applicant or any third party and hereby excludes any liability for any matters arising directly or indirectly from:
  - (i) actual installations of the Subject, including their nature, design, methods, performance, workmanship and maintenance; or
  - (ii) any works and constructions in which the Subject is installed, including their nature, design, methods, performance, workmanship and maintenance;
  - (iii) any loss or damage howsoever caused by the Subject including its manufacture, supply, installation, use, maintenance and removal; and
  - (iii) any claims relating to CE marking.

#### **14 PAYMENT TERMS**

- (a) The Fee will be invoiced by BBA to the Applicant in accordance with the payment terms specified in the Certificate Contract.
- (b) Upon the issue of the Certificate and upon each subsequent anniversary of that issue date, BBA will charge the Applicant the Annual Fee at the then current rate to be paid on terms determined by the BBA.
- (c) Any Additional Fee will be invoiced by BBA to the Applicant in accordance with paragraph 3(e).
- (d) BBA's invoices shall be payable in cash or by crossed cheque payable to the 'British Board of Agrément' or by credit transfer to the bank of the 'British Board of Agrément' within thirty days of the date of the invoice unless otherwise specified by BBA. Direct debit arrangements can be arranged by the BBA.
- (e) Without prejudice to any other right or remedy that it may have, if the Applicant fails to pay BBA any sums due on the due date, BBA may charge interest on such sum from the due date for payment at the annual rate of 8% above the Bank of England's base rate from time to time, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.
- (f) BBA reserves the right to immediately suspend the Work and/or the Additional Work or to suspend and/or withdraw the Certificate if any sums payable by the Applicant under the Contract or any other Contract or agreement between BBA and the Applicant are not received by BBA by the due date.

#### **15 EXPIRY OF THE CERTIFICATE**

- (a) If the Applicant does not pay the Annual Fee, the Certificate will expire on the Expiry Date (unless previously withdrawn or suspended by the BBA as provided for in paragraph 16 below).
- (b) The BBA may, however, extend the validity of the Certificate by notice in writing to the Applicant.

#### **16 WITHDRAWAL OR SUSPENSION OF THE CERTIFICATE**

The BBA shall be entitled to withdraw or suspend the Certificate at any time immediately by notice in writing to the Applicant in any of the following circumstances:

- (a) the Applicant is in breach of any of the Terms or any of the conditions set out in the Certificate;
- (b) there is any change in the technical specification of the Subject as assessed and as set out in the Certificate;
- (c) there is any change in Regulations, specifications, tests, calculations, methodologies, protocols or any other change that results or might result in a variation of the Subject and or its performance as described in the Certificate;
- (d) any information becomes available which was not at the disposal of the BBA prior to the issue of the Certificate or there is any change in the particulars of and relating to the Subject including (but without prejudice to the generality of the foregoing) particulars of its physical or chemical composition, any change in the process or method of manufacture thereof or in the control of the quality of the composition or manufacture thereof, any change in the place of manufacture, processing or assembly or data/information that could affect the conclusions drawn from the assessment and/or profiling;
- (e) any Standards or other normative documents or regulations which the BBA may have taken into account which are in force or existence at the date of issue of the Certificate have been amended or revised in such a way that the statements made by the BBA in the Certificate concerning the British Standards Specifications or such Regulations are no longer correct in all respects and may in the opinion of the BBA be misleading;
- (f) the Applicant fails, when so required by the Certificate or otherwise by the BBA in writing, to mark or continue to mark in the manner determined by the BBA any or all of the Subject or the containers in which the Subject is delivered or the delivery notes declaring the supply of the Subject with the BBA logo incorporating the number of the Certificate and any such other information as may from time to time be required in writing by the BBA;
- (g) If the Applicant does not allow the BBA to carry out Surveillance or if the BBA notifies the Applicant that in the opinion of the BBA production control is not being maintained;
- (h) the Applicant fails to pay to the BBA any Annual Fee within the time limit determined by the BBA;
- (i) if for any other reason the BBA, in its sole discretion, is of the opinion that the statements made by the BBA in the Certificate are no longer correct and the Certificate should be withdrawn; or
- (j) the Applicant goes into liquidation or has a receiver or administrator appointed over any part of its business, property or assets.

#### **17 TERMINATION**

- (a) Notwithstanding any other provisions herein contained, and without prejudice to any other rights that BBA may have, BBA may forthwith terminate the Contract by written notice to the Applicant if the Applicant:
  - (i) misuses the Certificate or Report in any way and/ or in contravention of the Contract;
  - (ii) is in material breach of a provision of the Contract and fails to remedy such breach (if capable of remedy) within 14 days of having received written notice of breach; or
  - (iii) (being an individual) has a statutory demand or bankruptcy order being made against him or makes an arrangement or composition with creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) enters into administration (whether out of court or otherwise), receivership, liquidation, a formal arrangement with its creditors or analogous proceedings or procedure, or is otherwise insolvent or ceases or threatens to cease to trade.

- (b) Upon termination of the Contract, the Certificate (if any) will be withdrawn, and BBA will not be required to provide written notification to the Applicant of such withdrawal.
- (c) Termination of the Contract and withdrawal or suspension of the Certificate does not entitle the Applicant to any refund of fees paid under the Contract.

#### **18 EFFECT OF EXPIRY OR WITHDRAWAL OR SUSPENSION**

Upon expiry or upon receiving notice of withdrawal or suspension of the Certificate:

- (a) all licences granted by BBA to the Applicant under the Contract will cease immediately;
- (b) the Applicant shall immediately cease to use the BBA Logos in relation to the Subject or to in any way hold out that the Subject has a current Certificate issued by the BBA including the withdrawal and/or cancellation of any leaflets, publications or promotional material;
- (c) the Applicant shall take all reasonable and appropriate steps to advise of such expiry, withdrawal or suspension to all parties who may be affected by the expiry or withdrawal or suspension and to all parties who have a copy (in whatever medium) of the Certificate in their possession, control or custody;
- (d) the Applicant shall remove the Certificate from its website(s);
- (e) the Applicant shall take all reasonable steps to destroy all electronic and printed copies of the Certificate; and
- (f) the BBA may publicise in any way it deems appropriate the fact that the Certificate has expired or been withdrawn or suspended and may so advise any person in whose possession it knows or believes a copy of the Certificate to be.

#### **19 NOTICES**

Any notice hereby authorised or required to be given to the Applicant may be served personally or by first class post and should be addressed to the address for correspondence of the Applicant specified in the Certificate Contract, and any such notice to the BBA shall be addressed to the registered office of the BBA and if served personally shall be deemed served at the time of delivery and if sent by first class post shall be deemed delivered on the next business day.

#### **20 ENTIRE AGREEMENT AND AMENDMENT**

- (a) The Contract contains the whole agreement between the parties in respect of the subject matter and supersedes any prior written or oral agreement between them relating to it. The parties confirm that they have not entered into the Contract on the basis of and shall have no remedies in respect of any representations that are not expressly incorporated in the Contract.
- (b) Neither party will have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract. Nothing in the Contract will, however, operate to limit or exclude any liability for fraud.
- (c) No variation of the Contract shall be effective unless it is in writing and signed by the parties or their authorised representatives.

#### **21 THIRD PARTY RIGHTS**

None of the provisions of the Contract are intended to or will operate to confer any benefit pursuant to the Contract (Rights of Third Parties) Act 1999 on a person who is not named as a party to the Contract.

#### **22 ASSIGNMENT**

The Applicant is not entitled to assign or otherwise transfer any right or obligation under this Contract without the prior written consent of BBA.

#### **23 GOVERNING LAW**

The Contract shall be governed by and construed in accordance with English law and in the event of any dispute the parties submit to the exclusive jurisdiction of the courts of England and Wales.

#### **24 FORCE MAJEURE**

- (a) For the purposes of the Contract, 'Force Majeure' means any circumstances beyond the reasonable control of the parties to the Contract affected by it (including, without limitation, any strike, lock-out or other forms of industrial action).
- (b) Neither party to the Contract shall be liable for delay in performance or failure to perform its obligations under the Contract if such delay or failure results from Force Majeure. Such delay or failure shall not constitute a breach of the Contract.
- (c) If either party is prevented from performance of its obligations by reason of Force Majeure for a continuous period in excess of 6 months, the other party may terminate the Contract forthwith on service of written notice upon the party so prevented, in which case neither party will have any liability to the other except that rights and liabilities which accrued prior to such termination will continue to subsist.

End of Contract