

System Specification Agreement

for

[INSERT ADDRESS/NAME OF PROJECT]

SYSTEM SPECIFICATION AGREEMENT DATED [DD/MM/YYYY]

BETWEEN:

- (1) SAINT-GOBAIN CONSTRUCTION PRODUCTS UK LIMITED t/a SAINT-GOBAIN WEBER (Reg. No: 00734396) whose registered office is at Saint-Gobain House, Binley Business Park, Coventry, CV3 2TT ("Weber" which term shall include successors in title and permitted assigns); and
- (2) [INSERT NAME] (Reg. No. [INSERT REGISTERED NUMBER]) Whose registered office is at [INSERT REGISTERED ADDRESS] ("Customer").

IT IS HEREBY AGREED AS FOLLOWS:

Services

- 1 By this agreement ("Agreement"), the Customer appoints Weber to specify and design an external wall insulation system ("System") by carrying out the services set out in Appendix 1 ("Services") for [INSERT ADDRESS/NAME OF THE PROJECT] ("Project").

Standard of care

- 2 In performing the Services, Weber shall exercise the reasonable skill, care and diligence to be expected of a professionally qualified and competent design consultant of the relevant discipline experienced in performing services similar to the Services in connection with projects of a similar size, scope, nature, value, purpose and complexity as the Project ("Required Standard Of Care"). For the avoidance of doubt, any fitness for purpose obligation is expressly excluded and notwithstanding any provision of this Agreement, in carrying out the Services, Weber shall have no greater duty than to exercise the Required Standard of Care.

Deleterious materials

- 3 In performing the Services, Weber shall exercise the Required Standard Of Care not to specify for use in the Project any materials, products or substances that, at the time of specification:
 - 3.1 do not conform with any relevant British or European Standards and/or Codes of Practice and/or any applicable British Board of Agrément certificate); or
 - 3.2 are generally known to the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or to the durability of buildings or structures; and/or
 - 3.3 do not comply with the guidance set out in "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices.

Professional indemnity insurance

- 4 Weber will maintain, for so long as the same continues to be available at commercially reasonable premium rates and on commercially reasonable terms, from the date of this Agreement until ten (10) years after the date of completion of the Services or, if earlier, the date of termination of this Agreement, professional indemnity insurance of not less than five million pounds (£5,000,000.00) for any one claim and in the aggregate during the period of insurance.

Copyright

- 5 Copyright in any all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD and BIM materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials created and/or developed by or on behalf of Weber in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them ("Documents") will remain vested in Weber.
- 6 Weber grants to the Customer, a non-exclusive, non-terminable, royalty-free licence to copy and make use of any Documents for any purpose relating to the Project including any of the Permitted Uses. For the purposes of this clause 6, "Permitted Uses" shall mean the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, building information modelling and repair of the Project. The licence allows the Customer to use the Documents in connection with any extension of the Project, but not to reproduce the designs contained in the Documents in any such extension.
- 7 The licence granted in clause 6 above carries the right to grant sub-licences in the same terms (mutatis mutandis) to persons engaged for and/or on behalf of the Customer in connection with the Project.

The Customer's obligations

- 8 The Customer shall:
 - 8.1 provide such drawings, designs, dimensions, calculations and other information as Weber shall reasonably require to in order perform the Services; and
 - 8.2 allow Weber and any person authorised by Weber to have access to the site of the Project at all reasonable times.

Termination

- 9 In addition to any other rights and remedies that it may have, Weber may at any time by written notice to the Customer immediately terminate the whole or any part of Weber's engagement under this Agreement.

Liability period

- 10 Weber and the Customer agree that, notwithstanding any terms and effect of the Limitation Act 1980 to the contrary, no action or proceedings for any breach of this Agreement shall be commenced after the expiry of ten (10) years from the date of completion of the Services or, if earlier, the date of termination of this Agreement.

Limitations and exclusions of liability

- 11 The extent of Weber's liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in clauses 12 to 23 (inclusive).
- 12 Weber shall not be liable for any use of the Documents for any purpose other than that for which the same were originally prepared and/or provided.
- 13 The Customer is responsible for ensuring the accuracy and sufficiency of all drawings, designs, dimensions, calculations and other information provided to Weber by or on behalf of the Customer and Weber shall have no liability in respect or arising out of any errors, omissions, discrepancies or divergences in or between drawings, designs, dimensions, calculations and other information provided to Weber by or on behalf of the Customer.
- 14 Weber shall have no liability in respect or arising out of the incorrect, defective or negligent installation of the System irrespective of whether:
 - 14.1 the Customer engages an installing contractor recognised or recommended by Weber; and/or
 - 14.2 a Weber representative attends the site of the Project prior to, during or following installation of the System.
- 15 Weber shall have no liability in respect or arising out of any failure of the installed System to achieve the U-value[s] calculated pursuant to paragraph 7) of Appendix 1.

- 16 Weber shall have no liability in respect or arising out of any project-specific alterations to Weber's generic System design carried out pursuant to paragraphs 5) and 6) of Appendix 1.
- 17 Weber will use reasonable endeavours to carry out and complete the Services within such reasonable timescales as may be requested by the Customer, however time shall not be of the essence in this regard and Weber shall have no liability for delay in completion of the Services or any part of them.
- 18 Subject to clause 23, Weber's liability under this Agreement shall be limited to five million pounds (£5,000,000.00) for any one claim and in the aggregate during the period of insurance.
- 19 Weber shall not be liable for any consequential, indirect or special losses or damage.
- 20 Weber shall not be liable for any direct or indirect loss of profit, loss of data, loss of use, loss of production, loss of contract, loss of opportunity, loss of savings, discount or rebate (whether actual or anticipated), harm to reputation or loss of goodwill.
- 21 Weber shall not be liable for any matters in respect of which it has expressly excluded liability in Appendix 1 or Appendix 2.
- 22 Except as expressly stated in this Agreement, and subject to clause 23, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 23 Nothing in this Agreement shall exclude or restrict Weber's liability for fraud, fraudulent misrepresentation or death or personal injury caused by Weber's negligence.
Assignment, sub-contracting and novation
- 24 Weber may assign, sub-contract, charge, novate or transfer any right or obligation under this Agreement without the consent of the Customer.
- 25 The Customer may not assign or transfer its obligations under this Agreement to any other person.
Agreement
- 26 This Agreement forms the whole agreement in relation to its subject matter and is to the exclusion of any other terms and conditions whether or not the same are endorsed upon, delivered with or referred to in any purchase order or other document delivered or sent by the Customer.
- 27 Acceptance of this Agreement and its terms by the Customer will take place when they are expressly accepted or by any other conduct of the Customer that Weber reasonably considers is consistent with acceptance of this Agreement and its terms, including but not limited to the Customer's instruction to Weber to proceed with the performance of the Services.
Notices
- 28 Any notice to be given by either party under this Agreement shall be sufficiently served if delivered by hand or sent by post to the registered office or if there is none the last known trading address of the party to be served.
- 29 Any notice delivered by hand shall be deemed to be served on the date of delivery and any notice sent by post shall be deemed to have been duly served on the second business day after posting.
Third party rights
- 30 Nothing in this Agreement is intended to or will grant any right to any third party to enforce any term of this Agreement, be it express or implied and the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.
Severance
- 31 If any provision of this Agreement is held by a competent authority to be invalid or unenforceable, the validity of the other provisions shall not be affected and they shall remain in full force and effect.
Extraneous rights of a consumer
- 32 To the extent that the Customer is a "consumer" as defined in the Consumer Rights Act 2015, nothing in this Agreement shall affect the Customer's statutory rights.
Governing law and jurisdiction
- 33 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be construed in accordance with the English law and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

Signed for and on behalf of **Saint-Gobain Construction Products UK Limited t/a Saint-Gobain Weber**:

Signed:

Print name:
(being a duly authorised signatory)

Date:

Signed for and on behalf of **[NAME OF CUSTOMER]**:

Signed:

Print name:
(being a duly authorised signatory)

Date:

Appendix 1: Services

- 1) The Services to be performed by Weber are the following:
- 2) Weber will provide a generic System design.
- 3) Weber will visit the site of the Project in order to perform pull-out tests.
- 4) Weber will calculate and design the type and pattern of fixings for the System.
- 5) Using information provided to it by or on behalf of the Customer, Weber will make project-specific alterations to its generic System design to accommodate particularities of the building/sub-structure on which the System is to be installed including but not limited to:
 - a) Openings
 - b) Penetrations
 - c) Abutments
 - d) Cladding systems
 - e) Eaves
 - f) Mixed substrates abutments (e.g. panels abutting concrete or steel frame (infill))
- 6) The altered System design will be provided by Weber to the Customer for approval by the Customer's design team.
- 7) Weber will carry out U-value calculations in accordance with industry-standard methodology.
- 8) Weber may, upon request and at its sole discretion, attend the site of the Project prior to, during or following installation of the System. Any such site visits and any advice or observations made during or following such site visits will be subject to Weber's "Site Visit Code of Practice", a copy of which is annexed at Appendix 2.
- 9) Documents will be issued to the Customer by Weber in electronic format, however hard copies will be provided on request.

The following are expressly excluded from and do not form part of the Services and Weber shall have no liability in respect or arising out of the following:

- The design and/or specification of products, materials or items that fall outside the scope of the System including but not limited to the following:
 - Sub-structure
 - Mastic seals
 - Window sills
 - Copings
 - Cappings
- The interface between the System and other elements of the sub-structure including but not limited to the following:
 - Openings
 - Penetrations
 - Abutments
 - Cladding systems
 - Eaves
 - Mixed substrates abutments (e.g. panels abutting concrete or steel frame (infill))

Appendix 2: Site Visit Code of Practice

MODE OF OPERATION

Weber's Technical Staff are available to attend construction sites/projects purely in an **Advisory Role** to support installation of our products/systems on behalf of our customers who are the named contracted party when invited to attend site for an **acceptable defined purpose**.

Any advice or observation that is issued in relation to the site visit is **Informative Advice** and the responsibility in terms of deciding whether to change any site practices or details remains with the relevant contracted parties. The responsibility for the means and method of construction and safety precautions remains with the relevant contacted parties.

- **General Site Walk Around** - responsibility for the quality of installation and for the supervision of the installers remains with the relevant contracted parties. If a visit is requested to comment on the standard of installation then any observation or advice will be specifically limited to what was observable at the time of the visit. A visit does not replace the need for the contracted parties to conduct formal inspection and ongoing supervision. Any advice offered by Weber on the quality of workmanship will be documented in terms of specifically detailing what was observed with copies issued to the responsible contact at the relevant contracted party. All advice issued by Weber is **Informative Advice** and the responsibility in terms of deciding whether to change site practice remains with the relevant contracted parties.
- **Issues identified outside of defined purpose** - If during a visit we identify an issue that was not part of the original defined purpose when invited to attend the site and the site condition has the potential to prejudice the performance of Weber's systems under installation then we will issue Informative Advice to a named site contact of the relevant contracted party so that they can action any necessary changes. Responsibility for installing the Weber system in line with the Weber's design recommendations remains with the contracted parties.
- **Bespoke or remedial detail** a visit to site to understand a site situation that has arisen based on an error in construction or through a situation that was not anticipated at the design stage. Normally these situations will require the production of a **Formal Design Opinion** to provide a substantiated solution to enable the project to proceed. In these situations, Weber does take liability for the validity of the proposed design detail provided within the context of the defined performance characteristics. Any subsequent changes to the original proposed design must be authorised by the owner of the project design prior to any work being conducted. Responsibility for correctly installing the Weber systems in line with this new design remains with the relevant contracted parties.

DEFINITIONS

Advisory Role – Weber staff attending site with a contracted party to help them meet their contractual obligations. No transfer of liability is passed to Weber in relation to inspection, workmanship, supervision method of working or safety procedures.

Informative Advice – Advice given during an Advisory Role visit that will assist the contracted party achieve a quality Weber installation that meets the original performance requirements set out in the design.

Acceptable Defined Purpose – Weber will attend site to offer design advice on specific site construction details. Weber will attend site to walk the site in the presence of the relevant contracted party to examine any observable issues with workmanship related to the Weber System. Weber will not attend site to provide a full sign off relating to the quality of installation or adherence to the design as this remains the responsibility of the contracted parties who have a permanent presence on the site.

Formal Design Opinion – this is an approved technical substantiation document that is issued by a competent person on behalf of Weber to cover a defined construction detail and a defined technical performance. This may take the form of an approved project detail drawing or a written assessment.

Contracted Parties - Typically the main contractor or specialist contractor who are formally contracted to deliver parts of the construction project.