

Vesting Certificate

Date

Employer

and
Contractor

and
Manufacturer

Ellis House, 7 Belton Road, Silsden, Keighley, West Yorkshire BD20 0EE
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VESTING CERTIFICATE (“this Certificate”) by deed dated

PARTIES:

(1) Employer	Address (“the Employer”)
(2) Contractor Company Number □ □ □ □ □ □ □ □	Registered office address (“the Contractor”)
(3) Manufacturer Company Number □ □ □ □ □ □ □ □	Registered office address (“the Manufacturer”)

INTRODUCTION

(A)	The Employer has engaged the Contractor under a contract (“the Building Contract”) to design and build a residential property (“the Property”) at _____ (“the Site”) using the Listed Items (as defined in Clause 1 [Definitions and Interpretations] below).
(B)	The Contractor has entered into a subcontract with the Manufacturer (“the Supply Contract”) to design and fabricate the listed Items for incorporation in the Property.
(C)	Ecology Building Society (“Ecology BS”) has agreed to provide funding to the Employer for the construction of the Property on the Site.
(D)	It is a requirement of the loan agreement between the Employer and Ecology BS that the Manufacturer enters into this Certificate with the Employer and that the Employer grants security over it.

THIS DEED WITNESSES

1. DEFINITIONS AND INTERPRETATION

“Building Contract”	means the contract between the Employer and the Contractor for the construction of the Property;
“Business Days”	means Mondays to Wednesdays except bank and public holidays;
“Documents”	means all documents, data, information, text, drawings, diagrams, images, records or sound embodied in any electronic or tangible medium used or created in connection with this Certificate or the Listed Items;
“Ecology BS”	has the meaning given in Paragraph C of the Introduction;
“Factory”	means the factory in which the Listed Items are manufactured;

“Intellectual Property Rights”	means all intellectual property rights including patents, inventions, trade marks, service marks, logos, designs, design rights (whether registered or not) and all applications for any of them, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the UK) and the right to sue for passing off and all renewals and extensions of such rights;
“Law”	means any and all of the following: <ul style="list-style-type: none"> • any Act of Parliament or other legislation; • any subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978); • any exercise of the royal prerogative; • any retained European Union law in force in England under the European Union (Withdrawal) Act 2018 (whilst applicable); • the EU/UK Trade and Co-operation Agreement (so far as directly applicable under the European Union (Future Relationship) Act 2020); • any applicable judgement of a relevant court of law which is a binding precedent in England; and • any determination, direction, statutory guidance or Code of Practice having the force of law;
“Liability”	means all demands, actions, claims, proceedings, liability, losses judgements, settlements, costs (including legal costs on a “professional and own client basis), charges, taxes, interest, duties, payments and expenses;
“Listed Items”	means the off-site plant, materials, goods and items as listed in Schedule 1 [<i>Listed Items</i>] to be manufactured by the Manufacturer and provided to the Contractor under the Supply Contract;
“PPE”	means personal protective health and safety equipment appropriate for a visitor to the Factory or such other location at which the Listed Items are stored in accordance with Clause 4.1.3 [<i>Labelling, storage and inspection rights</i>];
“Parties”	means the Employer, the Contractor and the Manufacturer and “Party” means any one of them;
“Property”	means the property to be constructed on the Site under the Building Contract;
“Site”	means the site referred to in Paragraph (A) of the Introduction;
“Supply Contract”	means the contract between the Manufacturer and the Supplier for the manufacture and supply of the Listed Items; and
“Works”	means the works to construct the Property under the Building Contract.

- 1.2. In this Certificate:
 1. 2.1. references to Clauses and the Schedule are (unless stated otherwise) references to Clauses of and the Schedule to this Certificate;
 1. 2.2. the contents section, headings and references to them are not to affect its interpretation;
 1. 2.3. references to a gender include the other gender and neuter and to the singular include the plural and vice versa;
 1. 2.4. any references to Law, shall be construed as references to that Law as amended, replaced, consolidated or re-enacted and in relation to Acts of Parliament shall include all regulations, determinations, directions and statutory guidance having the force of Law made or given under them;
 1. 2.5. references to “**consent**” or “**approval**” are to the prior written consent of the consenting or approving Party and any breach of the terms of any consent given is to be a breach of this Certificate;
 1. 2.6. the terms “**including**” and “**in particular**” are illustrative only and are not intended to limit the meaning of the words which precede them;
 1. 2.7. a person include an individual and a firm, partnership, company, cooperative and community benefit society, corporation, association, organisation, government, state, agency, foundation, trust, unincorporated body and any organisation having legal capacity (in each case whether or not having separate legal personality) and its successors (including any that takes over responsibility for its functions), permitted assignees and transferees;
 1. 2.8. references to “**writing**” include electronic communications and other modes of representing words in visible and recordable form except where this Certificate states otherwise;
 1. 2.9. references to any document are (unless specified) references to such document as amended or supplemented from time to time; and
 1. 2.10. references to any Party include any (permitted) assignee of that Party (or of such assignee) and any person deriving title under them.
1. 3. The Schedule to this Certificate is an integral part of this Certificate and is to have effect as if set out in full in the body of this Certificate. References to this Certificate include the Schedule.
1. 4. Where this Certificate requires something to be done:
 1. 4.1. it must be done in accordance with this Certificate;
 1. 4.2. if it is to be done within a period after an action is taken, the day on which that action is taken does not count in the calculation of that period; and
 1. 4.3. if the last day of the period within which it must be done is not a Business Day, the period shall be extended to include the following Business Day.
1. 5. All obligations, duties and responsibilities of the Manufacturer under this Certificate are separate obligations, duties and responsibilities owed to the Employer.

2. VESTING

- 2.1. In consideration of the payment of £1 (one pound), receipt of which the Manufacturer acknowledges, the Manufacturer acknowledges that the Listed Items:
 - 2.1.1. are held to the Employer’s order (or to the order of such other person as the Employer notifies to the Manufacturer);
 - 2.1.2. have been clearly set apart from other materials at the Factory; and

- 2.1.3. have been clearly and visibly marked, individually or in sets, in a manner approved by the Employer, and so that the marks will remain legible until the incorporation of the Listed Items into the Works.
- 2.2. The Employer consents to the Contractor incorporating the Listed Items in the Works.
- 2.3. Despite the vesting of the Listed Items in the Employer under this Certificate, for the purposes of the Building Contract, the Listed Items shall be deemed to have been supplied by the Contractor as part of the Works and shall not be deemed to have been "free issued" to the Contractor by the Employer.

3. WARRANTY

- 3.1. The Manufacturer warrants that:
 - 3.1.1. the Listed Items have been and will be manufactured and prepared in accordance with the Supply Contract;
 - 3.1.2. the Listed Items are the Manufacturer's absolute and unencumbered property and on entry into this Certificate will immediately become the absolute and unencumbered property of the Employer; and
 - 3.1.3. following the vesting of the Listed Items under Clause 2.1 [Vesting] neither the Manufacturer nor any of the Manufacturer's sub-contractors, suppliers, directors or employees nor any other person (other than the Employer) shall have any property in any of the Listed Items or any claim to any of them and no lien or charge exists over any of them.
- 3.2. If any of the Listed Items are not in accordance with the Supply Contract, the Manufacturer acknowledges that, with the approval of the Employer, the Contractor may reject them by written notice to that effect to the Manufacturer. On the issue of such notice the Listed Items to which it relates shall immediately re-vest in the Manufacturer and be entirely at the Manufacturer's risk.

4. LABELLING, STORAGE AND INSPECTION RIGHTS

- 4.1. The Manufacturer undertakes to the Employer that:
 - 4.1.1. the Manufacturer will use all reasonable endeavours to ensure that the markings on the Listed Items under Clause 2.1.3 [Vesting] will continue to be visible and
 - 4.1.2. the Listed Items will continue to be clearly set apart from other materials at the Factory and stored to the satisfaction of the Employer;
 - 4.1.3. the Listed Items will remain at the Factory or at such other location as the Employer approves until they are delivered to the Site in accordance with the Supply Contract and the programme for the Works under the Building Contract. and
 - 4.1.4. the Listed Items may be inspected at the Factory (or such other location as the Employer approves under Clause 4.1.3) at any time, on reasonable notice, by the Employer or any person authorised by the Employer.
- 4.2. In making any inspection under Clause 4.1.4:
 - 4.2.1. the Employer or their representative shall comply with such reasonable safety instructions as the Manufacturer gives in relation to the Factory; and
 - 4.2.2. the Manufacturer shall provide PPE for the Employer or their representative whilst undertaking such inspection and shall make such PPE available at the Factory (or such other location at which the Listed Items are stored in accordance with Clause 4.1.3) at the time of the inspection.

5. INSURANCE

- 5.1. Subject to such insurance being available in the market at commercially reasonable rates and on commercially reasonable terms the Manufacturer shall at the Manufacturer's own cost, insure the Listed Items against loss or damage for their full value (as set out in the Schedule) once fully fabricated. The insurance policy shall:
 - 5.1.1. insure the Listed Items against fire, flood, theft, loss, damage and such other risks against which it is reasonable to insure and such risks against which the Supply Contract requires them to be insured;
 - 5.1.2. be in the joint names of the Employer and Manufacturer; and
 - 5.1.3. be maintained with a substantial and reputable insurance company based in the United Kingdom or European Economic Area.
- 5.2. Any increased or additional premium or adverse terms required by insurers because of the Manufacturer's own claims record or other acts, omissions or matters specific to the Manufacturer shall be deemed to be within commercially reasonable rates and terms.
- 5.3. Whenever required to do so by the Employer, the Manufacturer shall within 5 (five) Business Days of a request from the Employer provide the Employer with documentary evidence that the insurance referred to in Clause 5.1 is being properly maintained and that premium payments are up to date.
- 5.4. If the insurance required by this Certificate ceases to be available at commercially reasonable rates and on commercially reasonable terms, the Manufacturer shall notify the Employer immediately and the Parties shall discuss the best way to protect their respective positions. In these circumstances the Employer may terminate this Certificate under Clause 9.2 [Termination].
- 5.5. If the Manufacturer fails to maintain any of the Insurances (except following a notification under Clause 5.4) the Employer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Manufacturer.
- 5.6. The Manufacturer shall not do anything or omit to do anything, which could make the insurance under Clause 5.1 void, voidable or unenforceable.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. The Manufacturer grants the Employer an irrevocable, non-exclusive, royalty free licence to copy and use (including the right to licence others to do so) all Documents and Data in which it has Intellectual Property Rights in connection with the Listed Items including the right to licence others to use those Intellectual Property Rights. Such licence shall subsist only in relation to the construction, completion, maintenance, extension, and operation of the Property but not extend to any other property or site.
- 6.2. The Manufacturer shall indemnify and hold the Employer harmless against any Liability because of a claim or action that the normal operation, possession or use of any Documents and Data licenced by the Manufacturer to the Employer infringes the Intellectual Property Rights of any person.
- 6.3. The Manufacturer shall be responsible for the accuracy of all Documents and Data supplied to the Employer and the Contractor in connection with the Listed Items and the Works and shall indemnify the Employer in respect of any Liability caused by any errors or omissions in those Documents and Data.

7. INDEMNITY

Without prejudice to any other rights the Employer may have against the Manufacturer, the Manufacturer shall indemnify the Employer on a full indemnity basis against any Liability of any kind or nature whatsoever which may be sustained or suffered by or secured against the Employer arising out of a breach of this Certificate by the Manufacturer or any negligence, default or breach of Law in supplying the Listed Items.

8. ASSIGNMENT

- 8.1. The Manufacturer may not assign, transfer, subcontract or deal in any other manner with its rights and obligations under this Certificate without the prior written consent of the Employer. Subcontracting shall not relieve the Manufacturer from Liability for the performance of its obligations to the Employer under this Certificate and the Manufacturer shall be liable to the Employer for the performance of its subcontractors.
- 8.2. The Employer may assign, charge or transfer the benefit of all or any of the Employer's rights under this Certificate. Any assignment by the Employer (or by the Manufacturer following the Employer's prior written consent) will be effective when written notice of it is served on the Manufacturer (or the Employer, as applicable).
- 8.3. The Employer may require the Manufacturer to enter into a deed of novation to transfer or extend the Parties' obligations under this Certificate to any person. The deed of novation must be in such form as the Employer reasonably requires.

9. TERMINATION

- 9.1. Neither the Manufacturer nor the Contractor may terminate this Certificate.
- 9.2. The Employer may terminate this Manufacturer's obligations under this Certificate by giving written notice to the Manufacturer (copied to the Contractor) if:
 - 9.2.1. the Manufacturer is in material breach of this Certificate which is not remedied to the satisfaction of the Employer within 10 (ten) Business Days of a written notice from the Employer notifying the Manufacturer of the breach and stating that if it is not remedied this Certificate may be terminated for the Manufacturer's material breach;
 - 9.2.2. the Manufacturer is the subject of any insolvency related procedure including:
 - (a) suspending or threatening to suspend, payment of its debts or being unable or deemed unable to pay its debts within section 123 of the Insolvency Act 1986;
 - (b) commencing negotiations with any of its creditors with a view to rescheduling any of its debts, or making a proposal for or entering into any compromise or arrangement with any or all of its creditors;
 - (c) applying to court for, or obtaining, a moratorium under the Insolvency Act 1986;
 - (d) having a petition filed, passing a resolution, or having an order made for its winding up (except for the purposes of an amalgamation or reconstruction of a solvent company);
 - (e) giving or receiving notice of any intention to appoint or appointing or having appointed an administrator, receiver, receiver and manager or administrative receiver or applying for or being the subject of an administration order;
 - (f) having a creditor take possession of, or distress, execution, sequestration or other such process levied or enforced on or sued against, the whole or any part of its assets and such attachment or process not being discharged within 10 (ten) Working Days;
 - (g) ceasing to trade or threatening to cease to trade;
 - (h) failing within the time provided for payment to honour any guarantee or indemnity it has given which has fallen due and been called upon; or
 - (i) being the subject of any equivalent or similar event in England & Wales or in any other legal jurisdiction.

- 9.2.3. the insurance the Manufacturer is required to maintain under Clause 5.1 [Insurance] ceases to be available at commercially reasonable rates and on commercially reasonable terms;
 - 9.2.4. the Manufacturer fails to maintain the insurance required by Clause 5.1 [Insurance] in force in accordance with that Clause despite that insurance being available at commercially reasonable rates and on commercially reasonable terms;
 - 9.2.5. the Manufacturer purports to assign, subcontract, novate or create any form of security over its rights under this Certificate without Employer's written consent;
 - 9.2.6. the warranty in Clause 3 [Warranty] is or becomes untrue in any material respect;
 - 9.2.7. the Manufacturer is in material breach of the Supply Contract or the Supply Contract is terminated for any reason; or
 - 9.2.8. the Building Contract is terminated for any reason.
- 9.3. A material breach under Clause 9.2.1 shall include any breach of Clause 4 [Labelling, storage and inspection rights] other than one which is trivial or insignificant.
- 9.4. Following termination under Clause 9.2:
- 9.4.1. the Manufacturer shall, at the Manufacturer's own cost, deliver the Listed Items to the Site or to such alternative reasonable location as the Employer specifies;
 - 9.4.2. if the Manufacturer fails promptly to comply with Clause 9.4.1 the Employer may enter the Factory or any other premises where the Listed Items are being manufactured or stored and, at the cost and risk of the Manufacturer, collect them and take them to the Site or such other location as the Employer determines; and
 - 9.4.3. the Manufacturer's obligations under this Certificate shall continue in relation to the Listed Items until the Listed Items are in the possession of the Employer at the Site or other location in accordance with Clause 9.4.1 or 9.4.2 (as applicable).
- 9.5. Termination of this Certificate is without prejudice to the rights and duties of each Party accrued due before termination or to any provisions which are intended to survive termination.

10. WAIVER, SEVERABILITY AND FURTHER ASSURANCE

- 10.1. A failure or delay in exercising any rights, powers or privileges under this Certificate will not operate as a waiver of them.
- 10.2. All remedies available to the Employer for breach of this Certificate are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 10.3. The single or partial exercise of any right, power or privilege does not prevent any other exercise of that right, power or privilege or the exercise of any other right, power or privilege (whether arising out of the same factual situation or otherwise).
- 10.4. Any waiver of a breach of this Certificate is not to be effective unless given in writing signed by the Party waiving its entitlement.
- 10.5. No waiver is to be deemed a waiver of any subsequent breach or default nor is it to affect the other terms of this Certificate.
- 10.6. If any term of this Certificate is illegal, void or unenforceable, it shall be deemed to have been modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, such term shall be deemed to have been deleted and the remainder of this Certificate will continue in force as though that term had not been included in it.
- 10.7. Each Party undertakes to do all things and execute all further documents that the other may reasonably require to give effect to this Certificate.

11. ENTIRE AGREEMENT

- 11.1. Subject to Clause 11.2 this Certificate sets out the whole agreement between the Employer and the Manufacturer in relation to the Listed Items. It supersedes and extinguishes all prior negotiations, commitments, representations and warranties relating to its subject matter which any Party has made orally or in writing.
- 11.2. Each Party warrants that it has not entered into this Certificate on the basis of any representation made by the other except to the extent that such representation is expressly included in it (but nothing in this Clause 11 excludes any liability for fraudulent misrepresentation).
- 11.3. This Certificate is without prejudice to the terms of the Building Contract and the Supply Contract, each of which shall continue to be binding and of full effect and shall not be amended, waived or affected by it.

12. THIRD PARTIES

Nothing in this Certificate shall confer any benefit on a person who is not a Party to it or give any such third party a right to enforce any of its terms.

13. NO PARTNERSHIP OR AGENCY

- 13.1. Nothing in this Certificate is to constitute or be deemed to create any joint venture or any partnership under the Partnership Act 1890, the Limited Partnerships Act 1907, the Limited Liability Partnerships Act 2000 or any other Law concerning partnerships or limited liability partnerships.
- 13.2. No Party shall hold itself out as the agent of any other or have any authority to bind the other except to the extent that this Certificate expressly provides otherwise.

14. NOTICES

- 14.1. Subject to Clause 14.4, notices or other communications under this Certificate will be duly served if given by and sent to the Party to be served in accordance with the following table with the date of service and method of proof being as set out in it:

Method of Service	Date of Service	Proof of Service
Personal delivery of a letter addressed to the Party to be served at the address for service.	Day of delivery if before 16.00 on a Business Day otherwise 10.00 on the next Business Day thereafter.	Proof of delivery.
First class letter addressed to the Party to be served at its address for service.	48 (forty-eight) hours after posting if that is a Business Day otherwise 10.00 on the next Business Day thereafter.	Proof of posting unless returned through the Post Office undelivered service within 21 (twenty-one) days of posting.
Email (requesting a "read receipt") addressed to the Party to be served and sent to its email address for service.	Day of transmission if before 16.00 on a Business Day otherwise 10.00 on the next Business Day thereafter.	Proof of sending email to the correct email address.

- 14.2. The Manufacturer's and the Contractor's addresses for service are their registered office addresses. The Employer's address for service is the address set out at the start of this Certificate or such other address as it notifies to the Manufacturer and the Contractor in writing.

14.3. Each Party's email address for service is as follows:

14.3.1. for the Employer: [insert email address];

14.3.2. for the Contractor: [insert email address];

and

14.3.3. for the Manufacturer: [insert email address].

14.4. This Clause 14 does not apply to the service of legal proceedings or to notices served in legal proceedings.

15. DISPUTES

If this Certificate is a construction contract to which the Housing Grants, Construction and Regeneration Act 1996 (as amended) applies and a dispute arises which any Party wishes to refer to adjudication, the TeCSA (Technology and Construction Solicitors Association) Adjudication Rules current at the time of the dispute shall apply.

16. GOVERNING LAW AND ENFORCEMENT

16.1. The formation, construction, performance, validity and all aspects of this Certificate are to be governed by English Law.

16.2. The Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any dispute under this Certificate.

17. COUNTERPARTS

This Certificate may be executed in two or more counterparts each of which shall be deemed to be an original, but the counterparts shall together constitute one and the same Certificate.

IN WITNESS of the above the Parties have executed this Certificate as a deed and it is delivered when dated.

SCHEDULE 1: LISTED ITEMS

No	Description	Identifying mark	Insurance value
1.			£
2.			£
3.			£
4.			£
5.			£
6.			£
7.			£
8.			£
9.			£
10.			£

EXECUTED as a DEED and DELIVERED when	
Date	Name [MANUFACTURER]
Director name	Director signature
Director/Company Secretary name	Director/Company Secretary signature
Witness name	Witness signature
Witness address	
EXECUTED as a DEED and DELIVERED when	
Date	Name [CONTRACTOR]
Director name	Director signature
Director/Company Secretary name	Director/Company Secretary signature
Witness name	Witness signature
Witness address	
EXECUTED as a DEED and DELIVERED when	
Date	in the presence of [EMPLOYER]
Director name	Director signature
Director/Company Secretary name	Director/Company Secretary signature
Witness name	Witness signature
Witness address	