

1 DEFINITIONS

- The Company means **Controlled** Limited
The Customer means the Person, Firm or Company from where the Company accepts an order.
The Works means the work included or specifically described in the quotation order and acceptance to be carried out by the Company.

2 CONSTRUCTION

The Clause headings herein shall not affect the interpretation of these conditions.

3 SEVERABILITY

Any provisions of these conditions, which in any way now, or subsequently, contravene the Law, shall be deemed severable and shall not affect any other provisions herein.

4 LEGAL

This Contract shall be subject to and shall be interpreted in accordance with the Law shall be of England and shall be subject to the jurisdiction of the English court only whereby any dispute shall be finally determined.

5 OFFER AND ACCEPTANCE

- 5.1 All quotations are made and all orders are accepted subject to these conditions. All other terms and conditions or warranties are excluded from the contract unless expressly agreed in writing by the Company.
- 5.2 No quotation submitted by the Company shall constitute a binding offer. No order placed upon the Company shall constitute a binding contract unless and until it has been expressly agreed in writing by the Company.
- 5.3 Acceptance of any order by the Company shall be subject to investigation of the Customers credit status. The Company reserves the right to vary the payment terms under Clause 7 at any time on the basis of a revised credit opinion.
- 5.4 In placing an order the Customer is deemed to acknowledge that there is no inclusion in the Contract of any warranty, description, condition, statement or other representation contained in or arising from any prior correspondence, discussions, statements or technical literature unless expressly included in the quotation, order and written acceptance thereof.
- 5.5 Quotations will remain open for acceptance for a period of 8 weeks from the date thereof.
- 5.6 The Company may withdraw any quotation without penalty at any time up to its acceptance of an order.

6 PRICES

- 6.1 Unless otherwise expressly stated in the quotation all prices quoted are based upon the costs of labour and materials and all other costs prevailing at the date of quotation. The Company reserves the right to charge the Customer any increased costs incurred.
- 6.2 Prices quoted are exclusive of Value Added Tax, which will be charged at the rate or rates applicable at the date of invoice.
- 6.3 Where quotations are based upon specifications, drawings, quantities and other information provided by the Customer they will be subject to re-measurement and the final account payable by the Customer shall be based upon the remeasured quantities. The Company reserves the right to adjust quoted prices in the event of significant variations to quantities.

7 PAYMENT

- 7.1 Unless otherwise expressly agreed in writing the Company shall present accounts to the Customer, which shall be paid in full within 30 days of the date of presentation.
- 7.2 Unless provision is accepted by the Company for interim progress payments, accounts will be presented to the Customer immediately upon completion of the works as Clause 14.
- 7.3 Where provision is accepted for progress payments such accounts will be presented to the Customer by the Company at intervals not exceeding one month. The first account will be presented not later than one month following commencement on site or if so agreed of offsite works. The final account will be presented immediately upon completion of the Works as Clause 14.
- 7.4 Accounts presented to the Customer by the Company shall comprise the total value of all works executed in accordance with this Contract including all accepted variations, increased costs and other sums payable under any provision of the Contract and, in the case of progress payments, all un-fixed goods and materials delivered to the site for use in the Works.
- 7.5 The Company retains absolute discretion regarding quantities and dates of material deliveries.
- 7.6 Where goods and materials have been purchased or produced specifically for the Contract but cannot be delivered to site for reasons beyond the control of the Company the value of such goods and materials shall be included in accounts due for payment under Clause 7.3. The Company reserves the right to charge the Customer for any resultant storage or additional transport and handling costs.

- 7.7 In the event of default in payment by the Customer the Company shall be entitled without prejudice to any other rights or remedies to suspend all further operations on the Works under this or any other Contract between the parties and to charge the Customer with interest on any amount outstanding at the rate of 6% per annum above the base rate of the Company's bank current at the date payment was due.

8 TITLE TO GOODS

- 8.1 All goods and materials shall remain the property of the Company until the Company shall have received payment in full in accordance with accounts presented under Clause 7. Notwithstanding that the goods and materials have been delivered to the site or that they have been incorporated in the Works the Company shall have the absolute right to recover such materials and goods where payment in full has not been received.
- 8.2 In the event that the Customer purports to have sold the material and goods to a third party the proceeds of such sale shall be paid into a separate Bank Account and kept intact until payment in full has been received by the Company from the Customer.
- 8.3 It is expressly agreed that the Company shall have the right to trace its title to the goods and materials into any such sub-sales. The Company may also require the Customer to assign the right to receive payment arising from such sub-sales.

9 BANKRUPTCY OF CUSTOMER

If the Customer commits an act of bankruptcy or makes an arrangement with his Creditors or being a Company enters into Liquidation, whether compulsory or voluntary (other than for the purpose of amalgamation or reconstruction) or if a receiver or manager is appointed of all or part of its assets or undertakings or if he suffers any execution whether legal or equitable to be levied upon his property or obtained against him, then the Company may, without prejudice to any other rights or remedies by written notice forthwith determine this Contract and shall have the right to recover or to deduct from or set off against any such amount otherwise due under this or any other Contract the amount of damage suffered and loss and expenses incurred by the Company by reason of such determination under this clause.

10 INFORMATION

- 10.1 The Company shall not be liable for the accuracy of any information provided by the Customer nor for any defects arising out of incorrect drawings, specifications, calculations, quantities, dimensions or instructions etc. so provided. The costs of rectifying such defects will be charged to the Customer in accordance with Clause 13.
- 10.2 The Customer shall indemnify the Company from and against all actions which may arise due to the provision of the Works in accordance with information provided by the Customer where it is alleged that such information infringes a patent registered design, copyright or other exclusive right.
- 10.3 All drawings, specifications, calculations and other information supplied by the Company are supplied on the express understanding that copyright is reserved by the Company.
- 10.4 Such information shall not be used by the Customer in any way except in connection with the Contract for which it is issued.

11 DRAWINGS

- 11.1 The Company shall provide to the Customer on request two copies of any drawings, sketches or calculations agreed to be necessary for completion of the Works. Such drawings, sketches or calculations shall be limited to the data essential to the manufacture and installation operations associated with this specific Contract. The Company reserves the right to charge the Customer for all office or other administration costs incurred.
- 11.2 All dimensions, datum, lines and other construction details illustrated on any drawings and sketches and any calculations provided by the Company shall be deemed to have been checked and accepted by the Customer for accuracy or discrepancy with all other drawn, written or site data.
- 11.3 The Customer shall indemnify the Company from and against any defects and resultant actions or costs due to any such errors or discrepancies.

12 PROGRAMME

- 12.1 Programmes for execution of the Contract works will be agreed by the Company based upon information provided by the Customer, Suppliers, Manufacturers and others. The Customer shall have no right to damages or to cancel an order due to failure by the Company for any reason to meet programme dates.
- 12.2 Work is to be carried out during normal working hours in a single continuous visit. The Customer will be charged with any costs incurred where reasons beyond the control of the Company overtime or extra visits prove necessary.
- 12.3 The Customer shall provide the Company in writing with at least 15 working days' notice to commence on site, or re-commence in the event of an interrupted operation.

- 12.4 If the Company accepts variations to the Contract works under Clause 13 any previous agreed programme will be adjusted accordingly. Should the original Contract Programme period require extension due to variations the costs so incurred by the Company shall be charged to the Customer.
- 12.5 If the commencement progress or completion of the Works is materially affected by any act, omission or default of the Customer, his servants or other sub-contractors, or his client, then any costs so incurred by the Company will be charged to the Customer.

13 VARIATIONS

- 13.1 Variations by the Customer to the Contract Works will only be accepted by the Company if such variations are reasonable and do not change the nature of the Works.
- 13.2 No work shall be omitted by the Customer from the Contractor if that omission is with the intention of placing the work with others
- 13.3 Variations must be issued in writing by the Customer. If the Customer issues verbal instructions the Company may confirm receipt of them in writing to the Customer whereupon they will be deemed to constitute accepted variations to the Contract.
- 13.4 Variations will be priced, where it is reasonable so to do, on the basis of the Contract Price. If this is not reasonable they will be priced against day-work charges calculated in accordance with the Definition of Price Cost of Day-work carried out under a Building Contract (current edition published by the R.I.C.S. and B.E.C.) with percentage additions as follows:
- | | |
|-----------|------|
| Labour | 200% |
| Materials | 25% |
| Plant | 20% |
- 13.5 Where variations require significant additional drawing office work the Company reserves the right to charge the Customer with the resultant costs in addition to the valuation of variations under any other provision of the Contract.
- 13.6 If compliance with an accepted variation substantially changes the conditions under which any other work is executed then such other work shall be treated as if it had been the subject of a variation and shall be valued accordingly

14 COMPLETION

Upon completion of the Works the Company shall confirm in writing to the Customer the Date of Completion which will apply so far as any warranties, liability for defects and payment terms are concerned.

15 STATUTORY NOTICES

The Customer shall ensure that all Notices are given and all permissions sought and granted to satisfy the requirements of statutory bodies, local authorities and the like. The Customer shall indemnify the Company from and against all action arising out of failure to comply with such requirements and shall be liable for any resultant costs incurred by the Company.

16 HEALTH AND SAFETY/FACTORIES ACTS ETC.

The Company will for its part comply with the requirements of the Factories Acts, Health and Safety at Work Acts and any other statutory regulations for the time being in force so far as they apply to the agreed scope of the Works. The Customer will for its part comply with these regulations so far as they apply to any provisions of this contract.

17 LOSS, DAMAGE OR INJURY

- 17.1 The Customer shall be liable for the replacement cost of any materials, whether or not properly incorporated in the Works, that have been damaged, stolen, lost or destroyed by any persons or cause whatsoever other than by the Company or any of its employees.
- 17.2 Save where the Company is legally proved to have failed to exercise reasonable care in the performance of the Contract and such failure results in death or personal injury the Company shall not be liable in respect of claims arising by reason of death or personal injury in connection with the Contract.
- 17.3 Any liability for negligence or breach of statutory or legal duties by any of the Company's employees will only be accepted by the Company where such negligence or breach of duty is directly connected to the performance of the Contract.
- 17.4 Under no circumstances whatsoever shall the Company be liable for the consequential loss, loss of profits or damage to property.

18 DEFECTS LIABILITY

- 18.1 In lieu of warranty implied by Law the Company will make good by replacement or, at the Company's option, by repair any defects in the Works carried out by the Company which become apparent within 6 months from the Date of Completion notified under Clause 14 provided that:
- I. The Company agrees that such defects are due solely to faulty materials or workmanship by the Company.
 - II. The materials and goods involved were manufactured by the Company
 - III. All payments applied for and due under Clause 3 have been received by the Company.

- 18.2 The above shall be the limit of the Company's liability and the Company will not in any circumstances be liable for any losses, damages or expenses directly or indirectly incurred by the Customer as a result of such defects.
- 18.3 Where materials not manufactured by the Company are installed by the Company in the Works the liability of the Company shall be limited to the installation of such materials which shall be deemed to have been specified by the Customer so that no warranties whatsoever as to their fitness for any purpose shall be given or implied by the Company. The Company will on request assign to the Customer such rights as it may have against the Supplier and/or Manufacturer.

19 DISPUTES

- 19.1 In the event of any dispute or difference between the Customer and the Company including but not limited to manufacture and installation manufacture and supply only contracts with a residential occupier or occupiers arising under the contract either party may refer the dispute or difference to adjudication.
- 19.2 The rules for any adjudication will be as set out in the Housing Grants, Construction and Regeneration Act 1996: Part II Construction Contracts.
- 19.3 In the event of either Party to a dispute or difference being dissatisfied with the award of any adjudication previously made between the Parties may following compliance with any adjudicators award arising from that adjudication refer the dispute or difference to arbitration.
- 19.4 Where pursuant to Clause 19.3 either Party requires the dispute or difference to be referred to arbitration then that Party shall serve on the other party a notice in writing of arbitration giving the other party 14 days to concur in the appointment of an Arbitrator a person to be appointed on the request of either Party by the President for the time being of the Royal Institution of Chartered Surveyors.
- 19.5 Nothing stated herein shall prejudice any other rights and remedies available to the Company.

CONDITIONS APPLICABLE TO SUPPLY & INSTALLATION OF SYSTEMS:

20 SCOPE OF THE WORKS

The scope of the Works shall be limited to the items included and specifically described in the quotation, order and variations accepted in writing by the Company under the provisions of this Contract, but the following operations are included in whole or part as deemed necessary by the Company.

21 ATTENDANCES

The following attendances and services will be provided by the Customer free of any charge to the Company as considered necessary by the Company for the completion of the Works within the agreed programme.

21.1 General Attendances

- I. Suitable clear access to site and working areas from agreed commencement date.
- II. Storage of materials and plant in safe and secured covered store.
- III. Use of welfare facilities and sanitary accommodation.
- IV. Labour and plant for receiving and unloading materials and placing in storage and for distributing materials to working areas, including hoisting where necessary, at time to suit agreed programme.
- V. Scaffolding and other equipment necessary for access and safety purposes to comply with current Health and Safety legislation. Scaffolding and the like to be suitable for the type of work and to be erected, moved, altered and re-erected as necessary.
- VI. Supply of electricity for lighting and power to required (110v 15amp unless otherwise advised) with socket outlets within 15 metres from each working face.
- VII. Clearance from workface of all rubbish arising from the Works.
- VIII. Protection of all completed and uncompleted work from damage by preceding or following trades or any other occurrence beyond the control of the Company.

21.2 Special Attendances and Services

- I. Provision of datum levels at not more than 15 metres intervals and true grid lines on each floor.
- II. Cutting and drilling of holes.
- III. Cleaning down finished work on completion.
- IV. Provisions of kerbs, upstands, etc.