



TERMS AND CONDITIONS OF TRADING

1 Definitions

In these conditions the following definitions shall apply:

“the Conditions” means the terms and conditions of the contract entered into between the Contractor and the Customer;
“the Contract Price” means the price provided by the Contractor in its quotation to the Customer which the Customer shall pay to the Contractor for executing and completing the Contract Works;
“the Contract Works” means the works specified within the Quotation to be provided pursuant to any specification/requirements of the Customer forming part of the contract;
Chambers, Museum Street, York, North Yorkshire, England, YO1 7DN and whose trading address is at Sutton Road, Wigginton, York, YO32 2RB;
“the Contractor’s Representative” means Geoff Neal, Managing Director of the Contractor or such other party as notified in writing from time to time;
“the Customer” means the person(s), firm or company by whom an order for the supply of goods and services is placed;
“the Customer’s Representative” means [NAME];
“Days” does not include weekends, Christmas Day, Good Friday or a day which under the Banking & Financial Dealings Act 1971 (or any amendment or modification thereto) is a bank holiday in England & Wales;
“the Quotation” means the Contractor’s price for executing and completing the works required by the Customer; &
“the Site” means the land and other places on which the Contract Works are to be undertaken and any other land or place provided by the Customer for the purposes of the Contract Works.

2 Acceptance of Conditions

Upon receipt of the Customer’s acceptance of the Quotation (whether in writing, verbally or by conduct) the Customer is deemed to have accepted the Conditions. The Conditions apply to any order placed by the Customer notwithstanding any terms or conditions of the Customer. Any variation of the Conditions shall be of no effect unless specifically agreed in writing by the Contractor’s Representative. The Conditions comprise the entire contract in writing for the purposes of The Housing Grants Construction and Regeneration Act 1996 (or any amendment or modification thereto) and The Local Democracy, Economic Development and Construction Act 2009 (or any amendment or modification thereto).

3 Contract Price and Additional Works

The Contract Price payable by the Customer is the price stated in the Quotation. No reduction in the price shall be applicable unless agreed in writing by the Contractor’s Representative. The Customer shall be liable for the costs incurred by the Contractor in implementing any variation, addition or omission to the Contract Works. For the avoidance of doubt, additional charges may be incurred in the event that any competent statutory authority stipulates that additional works need to be undertaken.

4 Time

If any stipulation as to time is made as to commencement or completion of the performance of the contract, the same shall be deemed to be an estimate only and time shall not be of the essence, unless otherwise agreed in writing by the Contractor’s Representative. The Contractor will not be liable for any loss attributable to any delay in respect of the commencement or completion of the Contract Works or the lack of co-ordination and integration between the Contract Works and any works undertaken by a third party.

5 Confidentiality

The Customer shall treat the contract and the subject matter thereof as confidential and shall not disclose the same or any part thereof without the written consent of the Contractor’s Representative.

6 Time extension

Notwithstanding Clause 4, the estimated period for the duration of the contract will be extended by a reasonable period to take account of:

- .1 the Customer’s instructions and/or delayed instructions, or insufficient, or a failure to provide, instructions to the Contractor in respect of any variation, addition or omission to the scope of the Contract Works;
- .2 obstructions to the contract by any person(s) not under the control of the Contractor;
- .3 adverse weather conditions detrimental to the continuance of the Contract Works;

- .4 any of the causes beyond the Contractor's reasonable control specified in clause 19; and
- .5 any suspension under clause 8.

7 Payment

The payment due date ("*the payment due date*") shall be 14 days from the date of the Contractor's application for payment or invoice. The final date for payment ("*the final date*") shall be 14 days from the payment due date subject to the provisions of clauses 7A and 7B.

7A Notices

Customer Notice

.1 In relation to every payment provided for by this contract: the Customer shall give a notice complying with 7A.2 to the Contractor not later than 5 days after the Payment Due Date ("*the Customer Notice*").

.2 A Customer Notice complies with 7A.1 if it specifies:

- (i) the sum that the Customer considers to be or to have been due at the Payment Due Date in respect of the payment; and
- (ii) the basis on which that sum is calculated.

.3 For the purposes of this clause, it is immaterial that the sum referred to in clause 7A.2 may be zero.

Contractor Notice

.4 If the Customer does not give a Customer Notice as required in 7A.1 and 7A.2 the Contractor may give to the Customer a notice specifying:-

- (i) the sum that the Contractor considers to be or to have been due at the Payment Due Date in respect of the payment; and
- (ii) the basis on which that sum is calculated

at any time after the date on which the Customer Notice was required by the contract to be given ("*the Contractor Notice*").

.5 Where pursuant to clause 7A.4 the Contractor gives a Contractor Notice complying with clause 7A.4(i) and (ii), the final date for payment of the sum specified in the Contractor Notice shall for all purposes be regarded as postponed by the same number of days as the number of days after the date referred to in 7A.4 that the Contractor Notice was given.

7B Requirement to pay notified sum determined under clause 7A

.1 The Customer must pay the notified sum (to the extent not already paid) on or before the Final Date for Payment.

.2 For the purposes of this clause, the "notified sum" in relation to any payment provided for by this contract means any sum notified in accordance with clause 7A by the valid Customer Notice or the valid Contractor Notice whichever is applicable.

Pay Less Notice

.3 The Customer may in accordance with this clause 7B give to the Contractor a notice of the Customer's intention to pay less than the notified sum ("*Pay Less Notice*").

.4 A Pay Less Notice under clause 7B.3 must specify:-

- (a) the sum that the Customer considers to be due on the date the notice is served; and
- (b) the basis on which that sum is calculated.

It is immaterial for the purposes of this clause 7B that the sum referred to in 7B.4 (a) may be zero.

.5 A Pay Less Notice under clause 7B.3:-

- (a) must be given not later than 3 days before the Final Date for Payment; and
- (b) may not be given before the notice (comprising either the Customer Notice or the Contractor Notice) by reference to which the notified sum is determined.

- .6 Where a Pay Less Notice is given under clause 7B.3, clause 7B.1 applies only in respect of the sum specified pursuant to clause 7B.4(a) i.e. the sum stated in the Customer's Pay Less Notice.
- .7 Clause 7B.8 applies where in respect of a payment:-
- (a) a notice complying with clause 7A.1 (the Customer Notice) has been given pursuant to and in accordance with the requirements of this contract (and no Pay Less Notice under clause 7B is given); or
- (b) a notice under clause 7B.3 (a Pay Less Notice) is given in accordance with this clause
- but on the matter being referred to adjudication the adjudicator decides that more than the sum specified in the Customer Notice or the Pay Less Notice should be paid.
- .8 In a case where this clause applies, the decision of the adjudicator referred to in clause 7B.7 shall be construed as requiring payment of the additional amount not later than:-
- (a) 7 days from the date of the decision; or
- (b) the date which apart from the notice would have been the final date for payment, whichever is the later.
- .9 Clause 7B.1 does not apply in relation to a payment provided by this contract where:-
- (a) the Contractor becomes insolvent then the Customer need not pay any sum due in respect of payment; and
- (b) the Contractor has become insolvent after the prescribed period referred to in clause 7B.5(a).
- .10 The Contractor is entitled to charge interest at the rate of 5% per annum over the base rate of Barclay's Bank Plc on all outstanding accounts, accruing from the day after the final date until payment. Outstanding accounts and interest thereon shall be due as a debt and payable on demand. For the avoidance of doubt, the Contract Price is exclusive of Value Added Tax ("VAT") at the appropriate rate.

8 Suspension

In the event that the Customer fails to make payment pursuant to the Conditions, the Contractor reserves the right to suspend the performance of the Contract Works in whole or part upon not less than 7 days written notice to the Customer ("*suspension notice*") and/or withhold materials delivered to, or remaining on the Site, inclusive of any related contract entered into between the Contractor and the Customer, until payment is made in full for all services and/or goods provided under the contract and/or for any other related contract between the Contractor and the Customer. The suspension notice shall state the ground(s) on which it is intended to suspend performance of the Contract Works in whole or part and/or withhold materials delivered to or remaining on site. The Customer shall be liable to pay to the Contractor a reasonable amount in respect of costs and expenses reasonably incurred by the Contractor as a result of suspending performance including de-mobilisation and re-mobilisation costs.

9 Termination

In the event that the Customer:-

- fails to make payment pursuant to the Conditions;
- commits an act of insolvency as defined in clause 15; or
- otherwise is in material breach of the provisions of this agreement

the Contractor reserves the right to provide the Customer with a written notice of its intention to terminate the contract ("*termination notice*"). In the event that the Contractor elects to terminate the contract, termination will take effect 14 days from the date of issue of the termination notice.

10 Insurance

The Customer shall ensure at all times that the Site is insured against the risk of fire, storm, high winds, gales and other foreseeable risks or hazards.

11 Preparation of Site

Prior to the commencement of the Contract Works and for the duration thereof, it shall be the responsibility of the Customer to provide protection and/or remove all satellite, television or radio equipment and any other fixtures, fittings attached thereto or in close proximity to the site. The Customer shall also be responsible for the condition of the Site.

12 Notice of structures

Prior to the commencement of the Contract Works and for the duration thereof, the Customer shall provide written notice to the Contractor informing it of any glass roofs, glasshouses or neighbouring glass structures. Any such structures shall be incorporated into the contract between the parties. Nonetheless, it is the discretion of the contractor to determine

whether any of the aforementioned structures should be protected from damage resulting from the execution of the Contract Works. The Contractor shall not be liable, whether direct or otherwise, for any loss or damage sustained to any glass structure not specified within the contract. The Customer shall provide at no charge to the Contractor adequate electrical and water supplies accessible at the Site to enable the Contractor to execute the Contract Works.

13 Commencement of Work

Any order received from the Customer to the Contractor to commence the Contract Works by a certain date shall include a representation to the Contractor that the Site is ready for the Contractor to commence the Contract Works in an uninterrupted manner at that date. The Customer shall give the Contractor not less than 28 days notice of the date upon which the Customer requires the materials to be on the Site or such other notice period as agreed between the Customer Representative and the Contractor Representative. Where applicable, on delivery of the materials to the Site, the Customer shall at its own cost immediately unload and store the materials in a suitably dry and secure place of storage. The Customer shall inspect and be deemed to have accepted the materials while unloading unless the Customer has reported in writing any damage to the same to the carrier and to the Contractor within 7 days of the date of unloading of the materials.

14 Existing defects and water penetration to premises

The Contractor shall not be liable for any damage or loss attributable to any existing defect(s) in the structure of the Site. The Contractor shall not be liable for any damage or loss attributable to the Site and/or any of the Customer's premises by reason of water penetration or otherwise.

15 Insolvency of Customer

If the Customer becomes insolvent (for the purpose of Customer insolvency the Insolvency Act 1986 including any amendment or re-enactment thereof shall apply) the Contractor shall be at liberty (but not bound) at any time thereafter:

- .1to cancel the contract forthwith by written notice pursuant to clause 9 and to collect forthwith all materials, goods, tools or articles of any description including any sent to the Customer (save those already fixed, fitted and/or installed to the property to which the Contract Works are being carried out) for any purpose; or
- .2to give the appointed insolvency practitioner or other person the option of carrying on with the contract subject to it providing a guarantee up to the amount to be agreed for the due and faithful execution of the contract.

16 Third party contracts

The Contractor is not bound expressly or impliedly by the terms of any third party contract and shall have no obligation (express or implied) other than to carry out its obligations under the contract pursuant to the Conditions.

17 Total liability of the Contractor

Notwithstanding any breach of the contract by the Contractor, the total liability (whether in contract, tort, negligence, non-fraudulent misrepresentation, breach of statutory duty or otherwise) of the Contractor arising under and/or in connection with the contract shall not exceed the reasonable cost of any remedial works or the total value of the contract, which ever shall be the lesser. The Customer acknowledges that the limitations and exclusions of the obligations and liabilities of the Contractor set out herein are reasonable; and the Customer shall accept the risk and/or insure accordingly. PROVIDED THAT nothing herein shall be construed as purporting to exclude or restrict any liability of the Contractor to the Customer for personal injury or death emanating from negligence (as defined by the Unfair Contract Terms Act 1997, including any amendment or re-enactment thereof), statutory liability or any exclusion or limitation that is prohibited by law.

18 Third party rights

The contract is for the sole benefit of the parties to the contract and terms that make reference to third parties are not to be construed as terms purporting to confer benefits upon third parties. It is not the intention of the parties to the contract that any terms hereof should be enforceable by anyone other than the parties to the contract.

19 Delay or failure of performance

The Contractor shall not be liable to the Customer or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of the Contractor's obligations in relation to the services, if the delay or failure was due to any cause beyond the Contractor's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Contractor's reasonable control:

- .1force majeure including, but not limited to, Acts of God, explosions, floods, earthquakes, tempest, fires, lightning, accidents, thefts, epidemics, aircraft and other aerial devices or articles dropped therefrom or exceptionally adverse weather conditions;
- .2war/conflict or threat of war/conflict, sabotage, insurrection, civil disturbance, riot, civil commotion or requisition;
- .3acts, restrictions, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

- .4 import or export regulations or embargoes; or
- .5 strikes, lockouts or other industrial actions or trade disputes, whether involving employees of the Contractor or of a third party.

20 Design, selection of materials and design co-ordination

The Contractor covenants that:-

- (a) Insofar as the Contract Works comprise any design; and
 - (b) In selecting and using materials and products and the mixing of compounds (including mortar mixes)
- the Contractor shall exercise the reasonable skill and as would be expected of a qualified and competent designer designing works of a similar size, cost and complexity as the Contract Works or selecting materials and products and / or mixing compounds PROVIDED ALWAYS that the Contractor shall not be responsible for co-ordinating the design of the Contract Works with the works of any third party.

21 Workmanship

The Contractor will carry out the Contract Works in a good and workmanlike manner.

22 Assignment

Neither party shall assign its respective rights under the contract without the written consent of the Customer Representative and the Contractor Representative.

23 Title to the goods

Title to goods and materials required for the purposes of the Contract Works shall not pass to the Customer until such time as the Customer has paid to the Contractor the Contract Price in full.

24 Copyright

Copyright in all quotations, plans, drawings, specifications, reports, schedules and other documentation produced by the Contractor for the purposes of the Contract Works shall remain vested in the Contractor.

25 Construction (Design and Management) Regulations 2007

The Customer shall discharge all duties under the Construction (Design and Management) Regulations 2007 or any amendment or modification thereto and under all applicable Health and Safety legislation and the Customer shall indemnify and hold harmless the Contractor against and from any claims, costs, damages, expenses, liabilities and losses suffered or incurred by it, howsoever and whensoever arising, from the Customer's failure to do so.

26 Waiver

No failure or delay by either the Contractor or the Customer in exercising any right, power or privilege under the contract shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

27 Conflict of documents

In the event of any conflict arising between the contract documentation, the Conditions will prevail.

28 Severability

If any of the Conditions shall in whole or in part be held to be illegal or unenforceable under any enactment or rule of law that condition or part thereof shall be deemed not to form part of the Conditions and the enforceability of the remainder of the Conditions shall not be affected.

29 Governing law

The contract shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England to determine any claim, debt, dispute and/or difference arising under and/or in connection with the contract (inclusive of questions of construction/interpretation).

30 Mediation

The parties to the contract shall endeavour to resolve in good faith any dispute and/or difference arising under and/or in connection with the contract by mediation. In the event that the parties refer any dispute to mediation then it shall be administered by the Centre for Dispute Resolution ("CEDR"). The mediation shall be conducted in accordance with CEDR's mediation rules/guidelines (current at the date of the contract), which sets out the procedures to be adopted and the process for selection of a mediator, and which terms are hereby deemed incorporated.

31 Adjudication

Where the contract is a construction contract within the meaning of the Housing Grants Construction and Regeneration Act 1996 (including any amendment or re-enactment thereof) either party may, at any time, refer any dispute and/or difference arising out of and/or in connection with the contract to adjudication in accordance with the Scheme for Construction Contracts (England & Wales) Regulations 1998 (including any amendment thereto) ("*the Scheme*") and any such adjudication shall be conducted in accordance with the provisions of the Scheme.

32 Service of notices

Any notice to be served pursuant to these terms and conditions must be in writing and must be served by hand, fax, or pre-paid post, and marked for the attention of the Customer Representative or Contractor Representative, as appropriate. In the case of a corporation it must be served at its registered office. Service shall take effect, if given by hand, with immediate effect, or if sent by fax, 1 working day after transmission or if given by post, 2 Working Days after posting.