

Background

1. The Quotation and these Terms and Conditions and any appendices thereto together form the contract between the Client and the Contractor ("**Contract**").
2. These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

Contractor's Obligations

3. The Contractor will upon and subject to the conditions and documents referred to in the Contract provide everything which is necessary for the proper and timeous execution and completion of the works set out in the Quotation ("**Works**") in accordance with all drawings, specifications, requirements and/or instructions and deliver up the Works to the Client.
4. Any tender Quotation or estimate issued by the Contractor is subject to acceptance by the Client.
5. Any conduct of the Client in relation to the execution of all or part of the Works shall be deemed to be an acceptance of the willingness to comply with these Terms and Conditions and in any event no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
6. The Contractor shall carry out and complete the Works in a proper and workmanlike manner (all workmanship to be of a satisfactory quality) and in compliance with any plans and/or specification produced in respect of the Works and shall select suitable materials that comply with any higher specifications of materials or workmanship contained in the description of the Works.

Access and Carrying out the Works

7. The Contractor, its staff and all sub-contractors shall comply with the Client's policies with regard to areas of work, security, fire, safety, evacuation, smoking, lifting, manual handling (copies of which shall be provided to the Contractor prior to commencing the Works) whilst carrying out the Works.
8. The Contractor is entitled to continuity of work in a logical sequence and without obstruction or restriction. If for any reason beyond the Contractor's control such continuity is broken or the Site working hours are restricted in any way or if overtime is required to recover lost time for such reasons, the Contractor shall be entitled to claim it additional costs and losses so caused. The Contractor's hours of working are 8.30am - 6.30pm Monday to Friday. Working outside these hours will be by agreement only. Any additional cost for working outside of these hours shall be agreed in advance with the Client.
9. The Contractor shall keep noise and vibration to a minimum.
10. The Contractor warrants that it has not used and/or specified and shall not use and/or specify for use in relation to the Works any products or materials which do not conform to British and European Standards or Codes of Practice; or are generally known within the industry to be deleterious, in the particular circumstances in which they are specified for use, to

health and safety and/or durability of the building or structure; or contravene the recommendations of British Council for Offices publication "Good Practice in the Selection of Construction Materials" current at the date of the Quotation.

11. Where the Contractor has been involved in any design aspects of the Works or has selected materials for incorporation therein, the Contractor shall use the reasonable skill and care as may be expected of a competent designer of the appropriate discipline with experience in carrying out works of a similar size, scope and complexity to the Works.
12. The Contractor shall comply with any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under the Contract together with any regulation or bye-law of any local authority or statutory undertaker which has jurisdiction with regard to the Works or with those systems the Works are, or are to be, connected, including any statutory provisions and/or any decision of a relevant local authority which control the right to develop the Site.
13. Each party acknowledges that it is aware of and undertakes to the other that in relation to the Works and/or the Site it will duly comply with the Construction (Design and Management) Regulations 2015.
14. On completion of the Works the Contractor shall leave the area of the Works clean and tidy and shall make good at its own cost all damage caused by the Contractor.
15. The Contractor shall advise the Client in writing of all work involving an addition to the Works within 14 days of such addition becoming reasonably apparent and at the same time submitting detailed and priced calculations based upon the contract price showing such price and programme adjustments, if any. The Contractor shall not be obliged to undertake, and the Client shall not be obliged to pay for, the additions to the Works unless and until the parties agree the price and programme implications.

Commencement and Completion of the Works

16. The Contractor shall commence the Works on the commencement date set out in the Quotation ("**Commencement Date**") and shall thereafter proceed with the same without delay.
17. The Contractor shall complete the Works by the completion date set out in the Quotation ("**Completion Date**"), or if sectional completion applies, each section shall be completed by the relevant sectional completion date set out in the Quotation ("**Sectional Completion Date**").
18. If it becomes reasonably apparent to the Contractor that completion of the Works will not be completed by the Completion Date or, if applicable, a section of the Works shall not be completed by the relevant Sectional Completion Date, for any reason whatsoever beyond the Contractor's control, including any instruction of the Client, the Contractor will notify the Client of the cause of delay and likely delay to the

Works. Within 14 days from the date of the notice the Client shall respond either accepting the delay to the Works and extension to the Completion Date or if applicable Sectional Completion Date, or propose such other delay to the Works and extension to the Completion Date or if applicable Sectional Completion Date, for agreement by the Contractor. In the event that the Client does not respond within 14 days of such notice such delay to the Works and extension to the Completion Date or if applicable Sectional Completion Date, will be deemed to have been accepted by the Client.

19. Where liquidated damages are agreed and set out in the Quotation, it will be limited in total to no more than 2.5% of the Contract Sum and is deemed to be the full cost of the LADs and include site and head office on-cost overheads and profit and all other costs that may be incurred by the Client, howsoever arising. Provided that LADs shall not be deducted or claimed from the Contractor by the Client where there is an outstanding notice of delay to the Works and extension to the Completion Date not agreed or deemed agreed.

Title and risk

20. The risk in any goods and materials for the Works shall pass to the Client on delivery to site.
21. Title to any goods and materials shall not pass to the Client until the Contractor has received payment in full for the goods and materials that the Contractor has supplied to the Client.
22. Until title to the goods and materials has passed to the Client, the Client shall:
- (a) hold the goods and materials on a fiduciary basis as bailee for the Contractor;
 - (b) store the goods and materials separately from all other goods held by the Client so that they remain readily identifiable as the Contractor's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the goods and materials;
 - (d) maintain the goods and materials in satisfactory condition and keep them insured against all risks for their full price on the Contractor's behalf from the date of delivery;
 - (e) notify the Contractor immediately if it becomes subject to any event of insolvency; and
 - (f) give the Contractor such information relating to the goods and materials as the Contractor may require from time to time.
23. If before title to the goods and materials passes to the Client the Client becomes subject to any event of insolvency then, without limiting any other right or remedy the Contractor may have:
- (a) the Client's right to resell the goods and materials or use them in the ordinary course of its business ceases immediately; and
 - (b) the Contractor may at any time require the Client to deliver up all goods and materials in

its possession which have not been resold, or irrevocably incorporated into another product and if the Client fails to do so promptly, the Client expressly gives the Contractor consent to enter any premises of the Client or of any third party where the goods and materials are stored in order to recover them.

Defects

24. The defect rectification period shall be 12 months from the date of completion of the Works in accordance with the Quotation ("**Practical Completion**"), ("**Defect Rectification Period**"). The Contractor shall issue a notice to the Client as to when the Contractor believes that Practical Completion has occurred.
25. If any defects, shrinkages or other faults in the Works appear within the Defect Rectification Period these shall be specified in a schedule of defects produced and delivered to the Contractor by the Client requiring such defects, shrinkages or other faults to be made good.
26. The Contractor shall, within a reasonable time after receipt of such schedule of defects, at no cost to the Client make good any such defects, shrinkages or other faults identified and notify the Client when such defects have been rectified.
27. The Client shall issue a notice of completion of making good when all defects, shrinkages or other faults notified during the Defect Rectification Period have been remedied.

Insurance

28. The Contractor confirms that adequate insurance is in place to cover the Works including Clients Liability, Public Liability, Contractors All Risk and Professional Indemnity (where appropriate) insurance policies for such amounts as may be detailed in the Quotation.
29. As and when reasonably required by the Client, the Contractor shall produce for inspection satisfactory documentary evidence that such insurance is being maintained.
30. The Contractor shall be liable for any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury or death of any person arising out of or in the course of or caused by the carrying out of the Works.
31. The Contractor shall be liable for any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor, its sub-contractors or suppliers.

Copyright

32. The copyright in all plans/drawings, reports, specifications, calculations and other documents/information prepared by or on behalf of the Contractor in connection with the Works ("**the Documents**") shall remain vested in the Contractor but the Contractor hereby grants to the Client subject to receiving paying in full of any monies due and

payable to it a revocable licence to copy and use the Documents and to reproduce the designs and contents of them for any purpose relating to the Works including but without limitation the construction, completion, maintenance, extension, letting, promotion, advertisement, reinstatement and repair of the Works. The Client shall be entitled to assign the licence or grant sub-licences to any person without the consent of the Contractor being required. Such licence shall subsist notwithstanding the expiry or termination of the Contract.

Liability and Third-Party Rights

33. The Contractor's liability for any breach of the terms of the Contract shall cease upon the expiry of 6 years after the date of Practical Completion, or Sectional Completion of a section, of the Works except where proceedings have been commenced before the expiry of that period in respect of any such breach.
34. Subject to clause 31:
- (a) the Contractor shall under no circumstances whatsoever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Contractor's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 25% of the Contract Sum.
35. Notwithstanding any other provision of the Contract, nothing in the Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

Payment Obligations

36. Where the Contract is a Construction Contract pursuant to the Housing Grant Construction and Regeneration Act 1996, as amended, and if the duration of the Works will be, or is estimated to be, less than 45 days, the following clauses 38(a) to 38(g) shall not apply and the Contractor shall be paid on completion of the Works.
37. Where the Contract is a Construction Contract pursuant to the Housing Grant Construction and Regeneration Act 1996, as amended, payment shall be made to the Contractor by monthly instalments in accordance with the provisions of this clause 38.
- (a) The Contractor shall submit a VAT invoice for payment to the Client in respect of each instalment. The invoice for payment shall be supported by all relevant documentary evidence including a statement showing how the total amount claimed in the invoice has been calculated. The invoice for payment shall set out in full the name of the contract and the contract order number.
 - (b) The first invoice for payment shall be made on the last working day in the month during which the Works were commenced.

Thereafter invoices for payment shall be made at monthly intervals on the last working day in the month.

- (c) The payment due date shall be 7 days from the date of the invoice for payment ("**Due Date**").
- (d) The final date for payment shall be 21 days from the Due Date.
- (e) Not later than 5 days after the Due Date the Client shall notify the Contractor of the sum it considers to have been due at the payment due date (or "zero" if no payment is due), and the basis on which that sum is calculated ("**Payment Notice**").
- (f) Unless the Client has served a notice under clause 38(g), it shall pay the Contractor the sum referred to in the Payment Notice or if the Client has not served a Payment Notice, the sum referred to in the Contractor's invoice ("**Notified Sum**") on or before the final date for payment.
- (g) Not less than 5 days before the final date for payment ("**Prescribed Period**"), the Client may give the Contractor notice that it intends to pay less than the Notified Sum ("**Pay Less Notice**"). Any Pay Less Notice shall specify the sum the Client considers to be due on the date the notice is served; and the basis on which the sum is calculated.
- (h) The contract sum is exclusive of VAT and in relation to any payment to the Contractor under the Quotation, the Client shall in addition pay the amount of any VAT properly chargeable in respect of it.

38. Where the Contract is **not** a Construction Contract pursuant to the Housing Grant Construction and Regeneration Act 1996, as amended, the Contractor shall issue an invoice to the Client at regular intervals of no more than 1 month in respect of Works completed by the Contractor as at the date of the invoice, ("**Notified Sum**"). The final date for payment of the Notified Sum and any VAT due shall be 28 days from the date of the invoice.
39. The Client shall not be entitled to retain by way of retention any sum due to the Contractor.
40. If the Client fails to make any payment due to the Contractor under the Contract by the final date for payment, the Client shall pay to the Contractor interest at the rate of 4% per annum above the Bank of England base rate from time to time. Such interest to accrue on a daily basis from the final date for payment until payment in full has been received.

Termination and Suspension

41. Where the Client has failed to pay a Notified Sum by the final date for payment, the Contractor may suspend all or part of its performance of its obligations under the Contract but not before first giving the Client at least 7 days' notice of its intention to suspend performance, stating the ground or grounds on which it is intended to suspend performance.
42. The right to suspend ceases where the Client makes payment in full of the amount due together with the

Contractor's demobilisation and mobilisation costs consequent upon the suspension.

43. Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 21 days written notice.
44. Either party may without prejudice to any other of its rights or remedies terminate the Contract with immediate effect if:
- (a) Either party, or any persons employed, engaged or connected to either party commits an offence under the Bribery Act 2010;
 - (b) Either party becomes aware of any cessation of trading, intention to cease operations, notice of Insolvency (as defined by s.113 of the Housing Grants Construction and Regeneration Act 1996, as amended or re-enacted), Administration or Receivership;
 - (c) The other party commits a material breach of any term of the Contract and (if such breach is capable of being remedied) fails to remedy that breach within 14 days of that party being notified in writing to do so.
45. Upon termination of the Contract for any reason:
- (a) The Client shall immediately pay to the Contractor all of the Contractor's unpaid invoices and interest and, in respect of the Works undertaken but for which no invoice has been submitted, the Contractor may submit an invoice, which shall be payable immediately on receipt;
 - (b) The rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall be unaffected.

Notices.

46. Any notice or other communication given to or by a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing, and shall be delivered personally, or sent by pre-paid first-class post or other next working day delivery service, or commercial courier.
47. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 48; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
48. The provisions of clause 47 and 48 shall not apply to the service of any proceedings or other documents in any legal action.

Disputes and Governing Law

49. If any dispute or difference arises under the Contract, then either party may refer it to adjudication. The

adjudication procedures and the agreement for the appointment of an Adjudicator shall be as set out in the Scheme for Construction Contracts (England) Regulations 2011.

50. The Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree to submit to the exclusive jurisdiction of the Courts of England and Wales.
51. If any term or condition of the Contract is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from the Contract and the validity and enforceability of the remainder of the Contract shall not be affected or impaired thereby.

General

52. **Assignment.** Neither party shall assign the Contract without prior written consent first being obtained from the other party.
53. **Entire Agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
54. **Force Majeure.** The Contractor shall not be liable for any default beyond the reasonable control of the Contractor, for:
- 54.1 fire, storm, tempest and other extreme adverse weather conditions;
 - 54.2 war, hostilities, rebellion, revolution, insurrection, military or usurped power, civil war, riot, commotion, disorder; or
 - 54.3 pandemic, epidemic or other public health emergency (in either case whether national or international) and any public health measures (or reasonably expected public health measures) taken in connection with any of them.
55. **Reckoning Periods of days.** Where under this Contract an act is required to be done within a specified period of days or from a specified date the period shall begin immediately after that date. Where the period would include a day which is a public holiday that day shall be excluded.
56. **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- (a) waive that or any other right or remedy; or
 - (b) prevent or restrict the further exercise of that or any other right or remedy.