

## Terms and Conditions

The Customer's attention is particularly drawn to the provisions of clause 8.

### 1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commencement Date:** has the meaning set out in clause **Error! Reference source not found..**

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 0.

**Contract:** the contract between the Supplier and the Customer for the supply of Services and/or Materials in accordance with these Conditions.

**Customer:** the company or person who purchases the Services from the Supplier.

**Deliverables:** the deliverables set out in the Quotation.

**Force Majeure Event:** has the meaning given to it in clause 0.

**Goods:** the goods (or any part of them) set out in the Quotation.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

**Order:** the Customer's order for the supply of Services and Materials/Goods, as set out in the Customer's purchase order form the Supplier's quotation.

**Supplier:** March Building Services Limited registered in England and Wales with Company number 02791621.

**Supplier Materials:** has the meaning set out in clause g).

1.2 **Construction** In these Conditions, the following rules apply:

- a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b) a reference to a party includes its successors or permitted assigns;
- c) a reference to **writing** or **written** includes faxes and e-mails.

## **2. BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Services and Materials in accordance with these Conditions (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 28 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## **3. MATERIALS**

- 3.1 The Materials are described in the Supplier's quotation.
- 3.2 The Supplier reserves the right to amend the specification of the Materials if required by any applicable statutory or regulatory requirements.

## **4. TITLE AND RISK**

- 4.1 The risk in the Materials shall pass to the Customer on completion of delivery to site.
- 4.2 Title to the Materials shall not pass to the Customer until the Supplier receives payment in full:
  - a) the Supplier receives payment in full (in cash or cleared funds) for the Materials and any other materials that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Materials shall pass at the time of payment of all such sums.
- 4.3 Until title to the Materials has passed to the Customer, the Customer shall:
  - a) store the Materials separately from all other materials held by the Customer so that they remain readily identifiable as the Supplier's property;
  - b) not remove, deface or obscure any identifying mark or packaging on or relating to the Materials;

- c) maintain the Materials in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
  - d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1(a) to clause 9.1(k); and
  - e) give the Supplier such information relating to the Materials as the Supplier may require from time to time.
- 4.4 If before title to the Materials passes to the Customer the Customer becomes subject to any of the events listed in clause 9, then, without limiting any other right or remedy the Supplier may have:
- a) the right to resell Materials or use them in the ordinary course of its business ceases immediately; and
  - b) the Supplier may at any time:
    - i) require the Customer or its representatives to deliver up all Materials in its possession which have not been used, or irrevocably incorporated into another product; and
    - ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Materials are stored in order to recover them.

## **5. SUPPLY OF SERVICES**

- 5.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 5.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services agreed between the parties, and time shall not be of the essence – specified in the Suppliers Quotation but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 5.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 5.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## **6. CUSTOMERS'S OBLIGATIONS**

6.1 The Customer shall:

- a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
- b) co-operate with the Supplier in all matters relating to the Services;
- c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- e) prepare the Customer's premises for the supply of the Services where necessary;
- f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

6.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 0; and
- c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

**7. CHARGES AND PAYMENT**

- 7.1 The price for Materials and Services shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's quotation as supplied to the Customer.
- 7.2 The Supplier reserves the right to:
- a) increase the price of the Materials and Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Materials to the Supplier that is due to:
    - i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
    - ii) any request by the Customer to change the contractual start date, quantities or types of Materials ordered, or the Materials Specification.
- 7.3 In respect of this Contract the Supplier shall invoice/apply for payment from the Customer either:
- a) Upon each calendar month or;
  - b) Upon completion of the Works as agreed in the Customer's Order.
- 7.4 The Customer shall pay each invoice/application submitted by the Supplier:
- a) within 30 days of the date of the invoice/application; and
  - b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and;

**Time for payment shall be of the essence of the Contract.**

- 7.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Materials at the same time as payment is due for the supply of the Services or Materials.
- 7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 10% per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.7 If the Supplier claims late interest under the Late Payment of Commercial Debts (interest) Act 1998 they will also charge such reasonable administrative charges as it incurs in order to collect any such debt.

7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

**8. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors
- b) fraud or fraudulent misrepresentation;
- c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

8.2 Subject to clause 0:

- a) the Supplier shall under no circumstances whatever be liable to the Customer, 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

8.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

**9. TERMINATION**

9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- a) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the

Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply];

- b) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
- c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- d) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days;
- e) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- f) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(a) to clause 9.1(k) (inclusive);
- i) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- j) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- k) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 9.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, the Supplier may suspend the provision of Services under this Contract if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 9.1(a) to clause 9.1(k), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 9.4 On termination of the Contract for any reason:
- a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **10. FORCE MAJEURE**

- 10.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 10.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

## 11. GENERAL

### 11.1 Assignment and other dealings.

The Supplier may at any time assign, transfer, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

### 11.2. Notices

- a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party via its email address provided at the start of this Contract.
- b) A notice or other communication shall be deemed to have been received if by email one Business Day after transmission.
- c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

### 11.3 Severance.

- a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

11.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 11.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.
- 11.8 **Governing law.** 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 governed by and construed in accordance with the law of England and Wales.
- 11.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).