

TERMS AND CONDITIONS OF ENGAGEMENT OF SUPPLIERS & CONSULTANTS
C&D Access Ltd (hereinafter referred to as "the Contractor")

1. Interpretation

1.1 In these Conditions

'Conditions' means the standard terms and conditions of purchase set out herein

'Employer' means any party engaging the Contractor who may be a Main Contractor or Sub-Contractor

'Goods' means the goods (if any) described in the Order.

'Main Contract' means the contract and conditions imposed on the Contractor by any Authority, Developer, Builder or Employer (if any).

'Order' means the Contractor's purchase order to which these Conditions are annexed.

'Price' means the charge for the Services and/or the price of the Goods.

'Sub-Contract' means the contract for supply and acquisition of the Services and/or the sale and purchase of the Goods including the Order, these Conditions and annexed documentation.

'Supplier' is defined in the Order and, without prejudice to the generality of the term, may be a supplier, sub-contractor, sub-consultant or otherwise.

'Services' means the services described in the Order to include the supply of the Goods.

'Site' means the site specified in the Order.

'Specification' includes any plans, drawings, data or other information relating to the Services or Goods.

'Supervising Officer' means the Architect, Quantity Surveyor or other person appointed by the Employer (if any) to supervise and administer the Main Contract.

'Variation' means the alteration or modification of the design, quality or quantity of the Services included in the Contract and accompanying specification including the addition, omission or substitution of any work and the alteration of the kind or standard of any of the materials or Goods to be used in the work

'Writing' includes electronic mail.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2. Basis of purchase

2.1. The Supplier shall have deemed knowledge of the terms and conditions of the Main Contract in full and shall be bound by it on a 'back-to-back' basis. Where a discrepancy occurs between the provisions of the Main Contract and the Subcontract and these Conditions, the Subcontract and these Conditions shall prevail. A copy of the Main Contract can be viewed at Unit 2b Benton Business Park, Bellway Industrial Estate, Longbenton, Newcastle upon Tyne, NE12 9SA upon reasonable request.

2.2. If the Supervising Officer shall make any decision or award under the Main Contract affecting the Sub-Contract Works such decision or award shall be binding upon the Supplier and to the same extent that it is binding upon the Main Contractor under the Main Contract.

2.3. The Order constitutes an offer by the Contractor and commencement of Services or delivery of Goods by the Supplier constitutes acceptance of that offer subject to these Conditions and the Order.

2.4. These Conditions and the Order shall apply to the Sub-Contract to the exclusion of any other terms and conditions on which any quotation or tender has been given to the Contractor or subject to which the Order is accepted or purported to be accepted by the Supplier.

2.5. The Services shall be subject to a programme of works being agreed by the Contractor prior to the Supplier commencing the Services.

2.6. No variation shall be binding unless agreed in Writing between the authorised representatives of the Contractor and the Supplier.

3. Specifications

3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Contractor to the Supplier or agreed in Writing by the Contractor.

3.2 The Supplier shall provide all labour, plant and/or materials to carry out and complete the Services in accordance with the drawings, details and specifications described in the invitation to tender and any amendments thereto.

3.3 The Supplier shall provide, where expressly stated in the Sub-Contract, design services for the Services and shall include for the integration of his design with other designs required to complete the Main Contract.

3.4 Any Specification supplied by the Contractor to the Supplier, or specifically produced by the Supplier for the Contractor, in connection with the Sub-Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Contractor. The Supplier shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Sub-Contract.

3.5 The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

3.6 The Supplier shall comply in all respects with the Contractor and Employer's policies and procedures including current Health & Safety Policy and all relevant Acts, Regulations & Approved Code of Practice. On or before 7 days prior to the commencement of Services or delivery of Goods the Supplier is to provide the Contractor with a copy of the Supplier's Health & Safety Policy and the necessary Risk Assessments applicable to the scope of the Services.

3.7 The Supplier shall take out and keep in force insurance policies for Public Liability, Employers Liability, Contractors All Risks, Professional Indemnity where appropriate, and any other insurance defined in the Main Contract, and to the limits and time periods defined in the Main Contract. The Supplier is to provide on request documentary evidence to prove policies are in place.

4. Price of the goods and services

4.1 The Price shall be as stated in the Order and, unless otherwise so stated, shall be exclusive of any applicable value added tax (which shall be payable by the Contractor subject to receipt of a valid VAT invoice).

4.2 Variations shall be valued as agreed between the Contractor and the Supplier. In default of agreement, a reasonable sum shall be payable. The value of any Variation shall be included in the payments claimed by the Supplier in accordance with these terms.

4.3 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Contractor in Writing.

5. Terms of payment

5.1 The Supplier shall invoice the Contractor in accordance with the payment schedule annexed to the Order, in the absence of which he shall invoice at any time after performance of the Services or delivery of the goods, as the case may be, and each invoice shall quote the number of the Order.

5.2 Unless otherwise stated in the payment schedule, the Final Date for Payment shall be 45 days after the end of the month of receipt by the Contractor of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Contractor.

5.3 Payment is subject to, and will only be made when the Goods or Services have been inspected by the Contractor and are considered by the Contractor to have been completed to a satisfactory and acceptable standard and/or the Goods supplied are of expected and acceptable quality.

5.4 Orders for Services calculated on a time basis and considered by the Contractor to be based on an estimated rate, time or value shall be invoiced to the Contractor at the actual rate, time or value and must be agreed by the Contractor.

5.5 The Contractor shall be entitled to set off against the Price any sums owed to the Contractor by the Supplier.

5.6 Payments are made by cheque or bank transfer and payable to the Supplier as stated on the invoice unless otherwise notified to the Contractor in writing.

5.7 Notwithstanding any other provision of these Conditions, if a party to the Main Contract or the Employer or any other person responsible directly or indirectly for paying the main contractor is insolvent, the Contractor's obligation to pay the Supplier in accordance with the Sub-Contract shall be conditional on the Contractor's receiving payment specifically in relation to the Sub-Contract works from the main contractor or Employer as applicable. In this event, payment of the relevant amount under this Sub-Contract shall be due upon the Contractor's receiving such payment from the main contractor or Employer and the final date for such payment shall be 14 days thereafter. For the purpose of this clause, 'insolvent' has the meaning given to it in section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any re-enactment thereof.

6. Delivery>Returns

6.1 The Goods shall be delivered to, and the Services shall be performed at, the Site on the date or within the period stated in the Order, in either case during the Contractor's usual business hours.

6.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of Order, the Supplier shall give the Contractor reasonable notice of the specified date.

6.3 The time of performance of the Services and of delivery of the Goods is of the essence of the Sub-Contract.

6.4 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Sub-Contract will be treated as a single contract and not severable.

6.5 The Contractor shall be entitled to reject any Goods delivered which are not in accordance with the Sub-Contract, and shall not be deemed to have accepted any Goods until the Contractor has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

6.6 The Supplier shall supply the Contractor in good time with any instructions or other information required to enable the Contractor to accept delivery of the Goods and performance of the Services.

7. Property

The property in the Goods shall pass to the Contractor upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Contractor once payment has been made and the Goods have been appropriated to the Sub-Contract.

8. Warranties and liability

8.1 The Supplier warrants to the Contractor that the Goods (and Services):

8.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier in Writing at the time the Order is placed;

8.1.2 will be free from defects in design, material and workmanship;

8.1.3 will correspond with any relevant Specification or sample; and

8.1.4 will comply with all statutory requirements and regulations relating to their sale.

8.2 The Supplier warrants to the Contractor that the Services will be performed regularly and diligently by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Contractor to expect in all the circumstances.

8.3 Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Sub-Contract, then the Contractor is entitled:

8.3.1 to require the Supplier to repair the Goods or to supply replacement Goods or Services in accordance with the Sub-Contract within 7 days; or

8.3.2 at the Contractor's sole option, and whether or not the Contractor has previously required the Supplier to repair the Goods or to supply any replacement Goods or Services, to treat the Sub-Contract as discharged by the Supplier's breach and require the repayment of any part of the Price which has been paid.

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- 8.4 The Supplier indemnifies the Contractor against all liability, loss, damages, costs and expenses (including legal expenses) and consequential costs awarded against or incurred or paid by the Contractor as a result of or in connection with:
- 8.4.1 breach of any warranty given by the Supplier in relation to the Goods or the Services: any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Contractor;
- 9.4.2 any liability under the Consumer Protection Act 1987 in respect of the Goods;
- 9.4.3 any act or omission of the Supplier or its employees, agents or Suppliers in supplying, delivering and installing the Goods; and
- 9.4.4 any act or omission of any of the Supplier's personnel in connection with the performance of the Services.
- 9.5 If due to fire, strikes, lockout, pandemic, force majeure or to any other causes arising from any acts of demands of the British Government or any Government or as a consequence of war or outbreak of hostilities, work at the Contractor's premises where the goods the subject of the Order are required to be delivered, or work at the premises of a third party where the goods the subject thereof are required to be delivered cannot function normally, the Contractor reserves the right to cancel this Order or any part thereof uncompleted.
- 9.6 The Services shall be completed to the satisfaction of the Contractor and Supervising Officer. The Subcontract Sum shall include the cost of compliance with Local Authority regulations, by-laws, Acts of Parliament and Statutory Undertaker's requirements in connection with the Subcontract Works. No approval expressed or implied by the Contractor or Supervising Officer shall in any way relieve the Supplier of discharging its obligations.
- 9.7 The Services are to be executed as directed by the Contractor with due regard for the progress and sequencing of other services, if applicable. If as a consequence of the Supplier's failure to complete the Services, the completion of the Subcontract works and/or Main Contract works is delayed, the Supplier shall indemnify the Contractor for any direct or consequential loss or damages sustained or reasonably anticipated. The Contractor shall inform the Supplier in writing at the earliest opportunity when it becomes evident that damages have been levied and seek to recover the sums due from any monies outstanding to the Supplier.
- 9.8 If completion is delayed by the execution of any modified or additional work instructed by the Contractor or any act, neglect or default of the Contractor, Supervising Officer or Employer the Supplier shall be entitled to a fair extension of time for completion providing always that the Supplier gives written notice requesting an extension of time within 7 days of the Works being delayed or becoming apparent the Works will be delayed. The Supplier is responsible for providing full and detailed particulars in support of the extension claimed.
- 9.9 The Supplier shall keep the Contractor indemnified against all claims for loss, injury or damage as a consequence of the breach of contract, breach of statutory duty or negligence by the Supplier or their employees, servants or agents. The Supplier will further indemnify the Contractor against all costs, charges and expenses incurred by the Contractor as a consequence of the breach of contract, breach of statutory duty or negligence by the Supplier, their employees, servants or agents.
- 9.10 The Supplier undertakes to maintain at his own expense the Works both during progress and until the Supervising Officer has certified the Main Contract works complete, to make good at his own expense to the Supervising Officer's satisfaction any defects or other faults arising therein up to the expiry of the Defects Liability Period under the Main Contract.
- 10 Termination**
- 10.1 The Contractor shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Supplier at any time prior to delivery or performance, in which event the Contractor's sole liability shall be to pay to the Supplier the Price for the Goods or Services in respect of which the Contractor has exercised its right of cancellation, less the Supplier's net saving of cost arising from cancellation.
- 10.2 The Contractor may terminate the Sub-Contract without liability to the Supplier by giving notice to the Supplier at any time if the Main Contract is terminated or brought to an end or if the Supplier commits a material breach of the Sub-Contract including, but not limited to, if:
- 10.2.1 the Supplier makes any voluntary arrangement with creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);
- 10.2.2 an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Supplier;
- 10.2.3 the Supplier ceases, or threatens to cease, to carry on business;
- 10.2.4 a Creditor secures Judgment over the Supplier's major assets;
- 10.2.5 the Contractor reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly;
- 10.2.6 the Supplier repeatedly breaches any of the terms of the Sub-Contract in such a manner as to reasonably justify the opinion that the Supplier's conduct is inconsistent with it having the intention or ability to give effect to the terms of the Sub-Contract; or
- 10.2.7 the Supplier fails to comply with instructions or fails to proceed with the Services regularly and diligently.
- 11. General**
- 11.1 The Order is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-Sub-Contract any of its obligations under the Sub-Contract.
- 11.2 The Supplier agrees to comply with its obligations under the Construction (Design and Management) Regulations 2015 where applicable.
- 11.3 The Supplier agrees to provide collateral warranties if expressly required in accordance with the requirements of the Main Contract. Should the Supplier not provide such collateral warranties to the Contractor within 14 days of being requested to do so, the Contractor will be entitled to withhold all payments to the Supplier until such time as the relevant collateral warranty has been delivered.
- 11.4 Subject to the additional requirements for notices of adjudication at clause 11.5 below, any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notice shall be deemed served if by hand upon delivery, if by first class letter post 48 hours after posting, and if by electronic mail upon its transmission.
- 11.5 Notices of adjudication must be served by hand or by post. Any notice of adjudication purported to have been served by electronic mail is void, ineffective and would not grant appropriate jurisdiction to any adjudicator.
- 11.6 No waiver by the Contractor of any breach of the Sub-Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.7 If any provision herein is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions herein and the remainder of the provision in question shall not be affected thereby.
- 11.8 The Sub-Contract shall be governed by the laws of England, and the Supplier agrees to submit to the exclusive jurisdiction of the English courts.
- 12. Third Parties**
- A person who is not named as a party in the Order shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these conditions. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Act.