

ECK CIVIL ENGINEERING LIMITED STANDARD TERMS & CONDITIONS

1. DEFINITIONS

1.1. In these conditions:

“**Client**” means the person, firm or company named on the face of the Quotation and / or Order Acknowledgement to whom Goods and/or Services are to be provided by the Contractor.

“**Contractor**” means ECK Civil Engineering Limited, company number 10583808, whose registered office is Chandlers, Harbour Lane, Wheelton, Chorley, England, PR6 8JS.

“**Contract**” means this contract which shall include the Quotation, Order Acknowledgement and these Conditions.

“**Defects Liability Period**” means a period of 12 calendar months from the date of delivery of the Goods or practical completion of the Services.

“**Goods**” means the goods stated on the face of the Order Acknowledgement and / or the Quotation.

“**Services**” means the services to be provided to the Client as specified on the face of the Order Acknowledgement and / or the Quotation.

“**Designs**” means any designs submitted by the Client to the Contractor in connection with the Goods and/or Services.

“**Order Acknowledgement**” means the acknowledgement of purchase order for the Goods and Services provided by the Contractor to the Client.

“**Quotation**” any quotation given by the Contractor to the Client in response to a request for, or enquiry about, the Goods and/or Services.

“**Architect/Contract Administrator**” means the person, firm or company nominated by the Client as architect or contractor administrator to represent it.

“**Conditions**” means the terms and conditions of business set out in this document.

“**Force Majeure**” means any cause beyond the Contractor’s reasonable control including but not limited to acts of God, flood, storm, earthquake, epidemic, pandemic, war, terrorism, civil commotion, strikes, lockouts, labour disputes, fire, explosion, governmental actions, or any other event that could not reasonably have been foreseen or prevented.

“**Scheme**” means the Scheme for Construction Contracts (England and Wales) Regulations 1998 No. 649.

2. CONTRACTOR’S OBLIGATION

2.1. The Contractor shall with due diligence and in a good and workmanlike manner:

2.1.1. Supply the Goods,

2.1.2. Carry out and complete the Services in accordance with the Contract, and;

2.1.3. Use materials and workmanship of the quality and standards specified in this Contract.

3. COMMENCEMENT AND COMPLETION

3.1. Subject to clause 7.3, the Contract shall commence and complete on the date stated on the face of the Order Acknowledgement. If no date has been stated, the Contractor shall supply the Goods and complete the Services within a reasonable period.

3.2. The Client agrees that time is not of the essence and the Contractor shall have no liability for failing to supply the Goods and / or complete the Services by the completion date.

3.3. The Contractor shall be entitled to an extension of time for completion in the event of delays caused by adverse weather, variations, unforeseen site conditions, Force Majeure, or any act, omission, or default of the Client.

4. PRICE

- 4.1. Subject to clause 4.2, the price for the Goods and/or Services will be the agreed price as stated on the face of the Order Acknowledgement.
- 4.2. The Contractor shall be entitled to claim from the Client any additional costs over and above the price of the Goods and/or Services to reflect any increase in the cost to the Contractor which is due to any factor beyond the reasonable control of the Contractor, including (without limitation) due to:
 - 4.2.1. Any change in the law (not reasonably envisaged at the date of this Contract);
 - 4.2.2. Adjustments to completion dates, quantities, delivery dates, specifications for the Goods and/or Services, designs requested by the Client or its agents, employees or representatives;
 - 4.2.3. Changes to the working conditions; or
 - 4.2.4. any delay or disruption caused by any act, omission or default of the Client, its agents, employees, representatives or subcontractors (to include any instructions of the Client, failure of the Client to give the Contractor adequate information or instructions, or failure to provide access).
- 4.3. All prices shall exclude Value Added Tax which will be charged where applicable at the prevailing rate at the date of delivery of the Goods and/or performance of the Services.
- 4.4. Without prejudice to the generality of clause 4.2, variations to the Goods and / or Services whether given the Client or Architect/Contract Administrator or from Designs submitted by the Client to the Contractor after the date of this Contract shall be charged as an addition or omission to the Contract price whether or not confirmed in writing.

5. TERMS OF PAYMENT

- 5.1. Where the duration of the Services to be executed under the Contract is in excess of 28 days the Contractor shall be entitled to stage payments every 28 days from the date of the Contract and shall submit invoices (for works carried out during the relevant period) at the end of each 28-day period.
- 5.2. Subject to clause 5.2 the Contractor shall submit its invoices to the Client:
 - 5.2.1. Upon delivery or at any time after the Goods have been delivered and/or the Services have been completed; or
 - 5.2.2. If the Client without reasonable cause fails to take delivery of the Goods or fails to give the Contractor access to perform the Services the Contractor shall be entitled to invoice the Client for the price of the Contract at any time after the Contractor has tendered delivery of the Goods and/or given notice that it is ready to perform the Services and delivery has been refused or access to the Services fettered.
- 5.3. The due date for payment of the Contractor's invoice shall be the date of delivery of the invoice to the Client ("Due Date"). The Client shall pay for the Goods and Services in full without any withholding, deduction, set off, abatement, counterclaim or cross demand within 28 days of the Due Date ("Final Date for Payment").
- 5.4. If the Client fails to make any payment by the Final Date for Payment then, without prejudice to any other right or remedy available to the Contractor, the Contractor shall be entitled to:
 - 5.4.1. Suspend and / or cancel its obligations under this Contract on expiry of a 7-day notice of default to the Client; and
 - 5.4.2. Claim from the Client any charges, costs, fees (including storage and delivery costs) or expenses arising from the suspension and / or cancellation suffered by the Contractor or for which the Contractor will be liable as a result of the cancellation or suspension; and
 - 5.4.3. Charge the Client interest (both before and after any judgment) on the amount due at the rate of 5% above the bank of England base rate until payment in full is made and the Client indemnifies the Contractor in respect of any legal or other costs and expenses incurred or to be incurred in pursuing the outstanding monies whether by way of proceedings or otherwise.

6. RISK AND PROPERTY

- 6.1. Risk in the Goods shall pass to the Client on delivery. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Client until the Contractor has received payment for the Goods in full and in cleared funds.
- 6.2. Until such time as the title in the Goods passes to the Client, the Client shall hold the Goods as the Contractor's fiduciary agent and bailee and shall keep the Goods separate from those of the Client and third parties and properly stored, protected and insured and identified as the Contractor's property.
- 6.3. Until such time as the title in the Goods passes to the Client, and provided the Goods are still in existence and have not been resold, the Contractor shall be entitled at any time to require the Client to deliver up the Goods to the Contractor and, if the Client fails to do so forthwith, the Client grants an irrevocable licence (or shall procure the same) to enter upon any premises of the Client or any third party where the Goods are stored and repossess the Goods.
- 6.4. The Client shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Contractor, but if the Client does so all monies owing by the Client to the Contractor shall (without prejudice to any other right or remedy of the Contractor) forthwith become due and payable immediately.

7. WARRANTIES AND LIABILITIES (Duration of 12 months from date of completion of ECK works unless otherwise stated)

- 7.1. Except where the Client is dealing as a "consumer" (as defined in the Unfair Contract Terms Act 1977 s.12 or the Unfair Terms in Consumer Contract Regulations 1999) all warranties conditions or terms relating to satisfactory quality or condition of the Goods and whether implied by statute or common law or otherwise are excluded.
- 7.2. The Contractor may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements, or which do not materially affect the satisfactory quality of the Goods.
- 7.3. The Contractor shall not be liable to the Client 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 Goods and/or Services if the delay or failure was due to any reason outside of the Contractor's reasonable control. For the avoidance of doubt, the Contractor shall not be liable for delays arising from acts or omissions of the Client or his agents, employees, representatives, sub-contractors or the Contract Administrator; transport breakdowns or shipping delay; or Force Majeure.
- 7.4. Where any Goods and/or Services (or any part thereof) are shown to the reasonable satisfaction of the Contractor to be defective by reason of faulty materials (other than those supplied by the Client) or workmanship or design (other than a design submitted or specified by, or on behalf of, the Client) the Contractor shall at its absolute discretion:
 - 7.4.1. Deliver replacement Goods and/or supply further remedial Services to the Client free of charge; and/or
 - 7.4.2. Refund to the Client the price of such Goods and/or Services; and/or
 - 7.4.3. Require the Client to retain the Goods and/or Services and grant to the Client a reasonable allowance in respect of such defects.
- 7.5. The Client must notify the Contractor in writing, detailing the alleged defect, within seven days of the date upon which the Client shall reasonably have become aware of the defect. Following delivery of the Goods or completion of the Services, the Contractor shall be liable to rectify defects in the Goods or Services (for which it is responsible under the terms of this Contract) during the Defects Liability Period. Failure to provide such notice within this period shall constitute acceptance of the Goods and/or Services, and the Contractor shall have no further liability for defects subsequently discovered, except as required by law.

- 7.6. Where parts, materials or equipment are supplied by manufacturers to the Contractor, the Contractor may (at the Contractor's absolute discretion), so far as the same is assignable without consent or further payment (unless the Client is willing to pay such sum), assign the benefit of any warranty or guarantee given by the manufacturer to the Contractor.
- 7.7. The Client shall provide reasonable access to the Contractor to investigate and rectify any alleged defects. If so required by the Contractor all Goods alleged to be defective are to be made available for collection by the Contractor by the Client.
- 7.8. The liability of the Contractor under clause 7.4 shall be accepted by the Client in substitution for and to the exclusion of any other claims for direct loss or damage which the Client has or may have.
- 7.9. If only part of the Goods delivered or Services carried out are defective the Client shall accept the balance of the Goods and / or Services and be liable to pay the price for those Goods and / or Services reduced pro rata in accordance with the proportion of the Goods and /or Services which have been delivered and / or carried out in accordance with the Contract.
- 7.10. Any claim for missing Goods or non-delivery must be notified by the Client to the Contractor in writing within three days of receipt of the Goods or (as the case may be) the delivery documents or the relevant invoice and to the carrier (where relevant) within the carrier's specified time limit.
- 7.11. If delivery of Goods is not refused or notified in accordance with clause 7.10, and the Client does not notify the Contractor of any defects within seven days from the date of delivery, the Client shall be deemed to have accepted the delivery of the Goods.
- 7.12. Save where the Client is dealing as a "consumer" (as defined in the Unfair Contract Terms Act 1977 s.12 or the Unfair Terms in Consumer Contract Regulations 1999), and save for liability in respect of death and / or personal injury for which the Contractor is responsible, unless otherwise specified in the Contract or agreed by the Contractor in writing the total aggregate liability of the Contractor in respect of any claims or demands made by the Client under the Contract or otherwise in respect of the Goods and/or Services shall be limited to the amount of the price payable under the Contract to the Contractor in respect of the Goods and/or Services.
- 7.13. Notwithstanding any other clause of this Contract, the Contractor shall not be liable to the Client, whether under this Contract or otherwise at law, for:
- 7.13.1. Any loss of profit, economic loss, special, indirect or consequential loss or damages howsoever arising;
 - 7.13.2. Any liability to third parties incurred by the Client; or
 - 7.13.3. Any statement or representation made by any employee or agent of the Contractor unless such statement or representation is confirmed in writing on the Contractor's headed notepaper and approved by the Contractor.

8. TERMINATION

- 8.1. The Contractor may terminate the Contract if the Client fails to pay, breaches material terms, or becomes insolvent. Upon termination, the Contractor shall be entitled to payment for work completed and costs incurred up to the date of termination.

9. DISPUTE RESOLUTION

- 9.1. In the event of a dispute arising between the parties, the parties agree to enter into negotiations in good faith to try and resolve the dispute.
- 9.2. If the dispute is not resolved in accordance with clause 9.1 within 7 days, the parties may refer the dispute to mediation.

- 9.3. Clauses 9.1 and 9.2 shall not prejudice either party's right to seek interim injunctive relief or to commence summary judgment proceedings at any time.
- 9.4. Notwithstanding any other term of this Contract, in the event of a dispute either party may refer the dispute to an Adjudicator at any time in accordance with the Scheme. The Adjudicator shall be nominated by the Royal Institute of Chartered Surveyors.

10. INSOLVENCY OF CLIENT

- 10.1. Without prejudice to any other right or remedy available to the Contractor, the Contractor shall be entitled to immediately suspend its obligations under the Contract and / or cancel the Contract (save for the execution of these terms) without any liability to the Client (and if the Goods have been delivered and/or Services have been performed, but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary) in the event that:
- 10.1.1. The Client makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) has a petition for bankruptcy presented or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
 - 10.1.2. A petition is presented for an administration order or winding up order to be made in relation to the Client pursuant to the Insolvency Act 1986;
 - 10.1.3. An encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Client;
 - 10.1.4. The Client ceases or threatens to cease to carry on business; or
 - 10.1.5. The Contractor reasonably apprehends that any of the events mentioned above are about to occur in relation to the Client.
- 10.2. In the event of cancellation or suspension of the Contract in accordance with clause 10.1, clauses 5.4.1, 5.4.2 and 5.4.3 shall apply.

11. ASSIGNMENT

- 11.1. The Contractor may assign, transfer, or otherwise dispose of the benefit of this Contract, including any rights or obligations arising under it, to any third party at its sole discretion and without the prior consent of the Client. The Client shall not assign or transfer any of its rights or obligations under this Contract without the prior written consent of the Contractor.

12. INTELLECTUAL PROPERTY

- 12.1. The design of the Goods and Services, the systems and control processes and all intellectual property rights relating to the Goods and Services remain vested in the Contractor (or its subcontractors or suppliers) at all times.
- 12.2. The Contractor grants (so far as it is permitted to grant) a royalty free licence to the Client to use the intellectual property rights in the designs, drawings and calculations for all purposes relating to the Goods and Services. The Contractor shall not be responsible for use of the designs, drawings or calculations by the Client for any purpose other than that for which they were intended.

13. INSURANCE

- 13.1. The Client shall be responsible for insurance in respect of damage, destruction or loss of the Goods from the point of delivery of the Goods and for insurance of the site or premises at which the Services are carried out.

- 13.2. The Contractor shall take out and maintain public liability insurance whilst undertaking the Services.

14. SITE INFORMATION AND ACCESS

- 14.1. The Client shall provide the Contractor with all relevant and accurate information regarding the site, including but not limited to existing structures, utilities, ground conditions, and any known hazards. The Contractor shall be entitled to rely on the accuracy and completeness of such information without independent verification.
- 14.2. The Client shall ensure that the Contractor has safe, uninterrupted, and adequate access to the site during normal working hours (or as otherwise agreed in writing) to carry out the Services. This includes providing suitable areas for storage of materials, plant, and equipment.
- 14.3. The Client shall be responsible for ensuring that the site complies with all applicable health and safety regulations and that any necessary permits, consents, or approvals are obtained prior to commencement of the Services.
- 14.4. Any delay, additional cost, or loss incurred by the Contractor as a result of the Client's failure to provide accurate information or adequate access shall be treated as a variation and charged to the Client in accordance with this Contract.

15. GROUND CONDITIONS

- 15.1. The Client acknowledges that the Contractor has relied upon information provided by the Client regarding the site and its ground conditions, including any buried services.
- 15.2. The Client shall bear full responsibility and risk for the suitability, stability, and characteristics of the ground and any sub-surface conditions at the site including encountering buried services that are not included in or are incorrectly represented on any drawing or site information.
- 15.3. The Contractor shall not be liable for any loss, damage, delay, or additional costs arising from unforeseen or adverse ground conditions, including but not limited to contamination, water ingress, voids, obstructions, or variations in soil composition and the items covered in clause 15.2.
- 15.4. Any additional work, materials, or measures required as a result of such conditions shall be treated as a variation and charged to the Client in accordance with this Contract.

16. GENERAL

- 16.1. The Client shall be responsible for complying with all relevant planning, building, environmental and health and safety (including fire regulations), legislation, approvals and consents in respect of the Goods and Services and where applicable the Construction (Design and Management) Regulations 1999 or any re-enactment thereof or amendment thereto. The Client is responsible for arranging and obtaining all necessary consents and approvals (including building control consent), planning applications and permissions, licences, inspections and third-party wall agreements in respect of the Goods and Services. All duties, fees and expenses payable are the Client's responsibility.
- 16.2. Any notice required or permitted to be given by either party to the other under these conditions shall be in writing and may be sent by hand delivery, first class pre-paid post, or by email to the recipient's last notified email address. Notices shall be addressed to the other party at its registered office, principal place of business, or such other address (including email address) as may have been notified pursuant to this provision. If the notice is hand delivered, it shall be deemed served at the time of delivery. If sent by first class pre-paid post, it shall be deemed served two business days after posting. If sent by email, it shall be deemed served at the time of transmission, provided that no delivery failure notification is received.
- 16.3. The Contracts (Rights of Third Parties) Act 1999 does not apply so as to give to a person who is not a party to this agreement a right under it.

- 16.4. The Client shall ensure that the site is safe and complies with all relevant health and safety legislation. The Contractor may suspend work if site conditions are unsafe, without liability for delay.
- 16.5. The Client shall provide the Contractor with uninterrupted access to the site and adequate facilities, including welfare, storage, and utilities. Any delays or additional costs incurred due to restricted access or inadequate facilities shall entitle the Contractor to an extension of time and reimbursement of costs.
- 16.6. The Client shall indemnify the Contractor against any losses, costs, or claims arising from the Client's failure to obtain or comply with all necessary consents, approvals, or statutory requirements relating to the Goods and Services.

17. SEVERABILITY

- 17.1. If any clause or sub-clause of this Contract is found by a court to be invalid, void, or unenforceable, the remaining provisions of that clause and the rest of the Contract shall remain in full force and effect.

18. ENTIRE AGREEMENT

- 18.1. This Contract (and documents referred to herein) sets out the entire agreement between the parties in relation to its subject matter. Each party waives its entitlement to make a claim in relation to a representation which is not set out or referred to in this agreement but not so as to disentitle it to a remedy for fraudulent concealment or fraudulent misrepresentation.

19. GOVERNING LAW AND JURISDICTION

- 19.1. The Contract, 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 constructed in accordance with, English Law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.