

## Terms and Conditions

### Definitions of expressions used in these conditions:

'Contractor' means HR Facilities Ltd being the company who tenders for and performs the Works covered by these conditions.

'Contractor's Industry' means (unless otherwise agreed) the electrical contracting industry as represented for industrial working agreements by its Joint Industry Board.

'Customer' means the building owner, main contractor, or other party who directly contracts with the Contractor.

'Agent' means the Customer's agent specifically appointed to supervise and/or certify the Works.

'Daywork Rates' Means those rates stated in the latest published version of the ECA/RICS Definition of the Prime Cost of Dayworks. Failing any such Definition being available, those rates shall be: Labour cost plus 100%, Materials cost plus 50% and Plant cost plus 25%.

'Information' includes (without limitation) any specification, plans, drawings, other descriptive or technical indications or requirements, programme and critical dates, details of provided facilities and access, and insurance requirements or obligations, for the 'Works' to be performed by the Contractor. These conditions shall be read together with such information, subject to any agreed exclusions, as one contract.

### 1. The Contractor's tender price for the Works:

1.1 Unless otherwise expressly stated is exclusive of Value Added Tax ('VAT') and shall remain open for acceptance for 90 days, after which it shall be subject to confirmation by the Contractor when an order is received. It is based on the normal working hours, rates of pay and employee benefits of the Contractor's industry; overtime working will be charged extra at usual industry rates. Once accepted it becomes the 'Contract Price'.

1.2 Is based on the Information previously supplied or made available by the Customer to the Contractor. Any extra cost, or saving, caused by any subsequent change, delay, or resolution of any ambiguity in the information shall result in an appropriate adjustment of the Contract Price using Daywork Rates, unless other specific rates have been agreed beforehand.

1.3 Is also based on rates of tax and any other statutory obligations (current or forthcoming) known at its date. Any changes in those rates or obligations shall result in a corresponding adjustment of the Contract Price.

### 2. The Contractor's obligations:

2.1 The Contractor warrants that he will begin and diligently proceed to carry out the Works in accordance with the Information, with reasonable skill and care, in a proper and workmanlike manner conforming to best practice and statutory requirements, and using good quality materials (except where those are specified or provided by the customer without reliance on the contractor's skill and judgement).

2.2 Except to the extent prevented by unforeseeable events beyond the Contractor's control, the Contractor shall complete the Works within the time shown by the Information or otherwise agreed (failing which, a reasonable time) to the reasonable satisfaction of the Customer and/or any supervising agent identified in the Information ('the Agent').

2.3 If the Customer or the Agent issues an instruction changing the Works or anything in the Information, then the Contractor shall comply with it within a reasonable time. Any such instruction shall be given or subsequently confirmed in writing. An oral instruction confirmed by the Contractor to the Customer shall take effect if not disputed by the Customer within five days of receipt of the confirmation. The cost or saving of any resulting change etc. shall be fairly and reasonably valued by the Contractor and a suitable adjustment shall be made to the Contract Price.

2.4 In the event that goods or materials uniquely specified by the Customer become unavailable on the market, then the Contractor shall notify the Customer accordingly in writing and may propose a suitable alternative. The notification shall have the same effect and procedure as confirmation of an oral instruction.

2.5 The Contractor shall carry public liability insurance of at least £5,000,000 (or more if so required by the Information) and employers' liability insurance throughout the period of Works, as well as professional indemnity insurance if required by the Information.

### 3. Liabilities:

- 3.1 Unless expressly agreed in writing, the Contractor shall not be liable for economic loss, including loss of profit or of business, of the Customer or of any other party, either in negligence or in contract. The cost of any delay caused by the Customer shall be calculated as in condition 1.2 above and added to the Contract Price.
- 3.2 Unless otherwise agreed, the Customer shall provide secure storage for the Contractor's goods and materials on site for the Works that are not yet installed and permanently fixed to any structure for which they are destined. The Customer shall take reasonable care of them. Any loss, damage or theft of them shall be at the Customer's risk.
- 3.3 Unless otherwise agreed, or stipulated by the Information, installed and permanently fixed Works shall be at the Customer's risk, against all loss or damage howsoever arising. The Customer shall indemnify the Contractor against any rights of subrogation claimed by insurers.

### 4. Payment:

- 4.1 The Contractor shall make monthly interim applications for payment on the 1<sup>st</sup> of the month unless a different date is agreed.
- 4.2 Interim payments for work done and materials supplied by the Contractor in fulfilment of the Works, together with any applicable Value Added Tax, shall be made within twenty one days of each application by the Contractor or (if the Information so provides) the Agent's certificate. Any such certificate shall be issued within seven days of the Contractor's application.
- 4.3 The amount due, or certified as due, shall be the total value of the work properly executed (including adjustments made as in conditions 1.2 and 2.3 above) and of the materials and goods delivered to the site for the Works or held in store and clearly marked as destined for the Works, less the sum of amounts previously paid.
- 4.4 If the Customer fails to make any payment, or if the Agent fails to issue a certificate, then the Contractor shall, on giving the Customer seven days' written notice, have the right to suspend performance of all or part of the Works (without prejudice to any other remedy) until paid. Any date(s) for completion shall be extended for the period of any such suspension.
- 4.5 If the Customer fails to make payment of any amount due then interest shall be chargeable by the Contractor at a rate of 8% above Bank of England base rate current at the time.

### 5. Title to goods and materials:

- 5.1 Legal title to goods and materials supplied for the Works and in the Customer's possession, but not yet incorporated into the building or structure, shall not pass to the Customer (or any other party) until fully paid for, and until then shall be held in trust for the Contractor.
- 5.2 Whilst so held in trust until full payment, the goods and materials shall be kept physically safe and not treated in such a way as to appear to belong to any person other than the Contractor, who shall also have full access rights at reasonable times on reasonable notice to ascertain the state and condition of the goods and materials.

### 6. Adjudication and resolution of disputes:

- 6.1 Either party may give to the other written notice requiring any dispute and/or difference arising under this contract to be referred to an Adjudicator in accordance with the Housing Grants, Construction and Regeneration Act 1996 and the Scheme for Construction Contracts set out in the relevant statutory regulations in force at the date when this contract was made. The notice must be sent by recorded delivery mail to the other party's registered office (or, if none, then chief place of business).
- 6.2 The Adjudicator shall be Mr Paul Taplin a Fellow of the Royal Institution of Chartered Surveyors "RICS" (membership number 0851390). In the event that Mr Taplin is not able to act in this matter then the Adjudicator shall be a person nominated by the President for the time being of the RICS on the application of either party.

### 7. Other legal provisions:

- 7.1 Copyright in drawings and/or designs made by the Contractor for the Works remains with the Contractor but the Customer and building owner shall have licence to use and reproduce them solely for any purpose relating to the Works or the building or structure in which the Contractor's Works are incorporated.
- 7.2 The entire agreement between the parties is contained in these conditions together with the Information and the Contractor's tender. To be effective, any other obligation must be reduced to writing and clearly agreed by the Contractor and the Customer and included as part of the Information.
- 7.3 It is not intended to confer any rights under this agreement to any third parties.
- 7.4 The law and jurisdiction of England and Wales shall apply to this agreement.
- 8. 'Battle of the Forms'**
- 8.1 These Terms and Conditions shall prevail regardless of any attempt by the Customer to impose his own Terms and Conditions (or similarly worded provisions) unless expressly agreed by the Contractor in writing.