

# Works Order Terms and Conditions

## 1. DEFINITIONS

- 1.1 In these Terms, the following definitions apply:
- "Contract"** is the WO, these Terms and any documents referred to in them.
- "Contractor"** is the party identified as such in the WO.
- "Contract Documents"** are the documents detailed in the WO as such documents may be amended from time to time by the Employer.
- "Employer"** is the party identified as such in the WO.
- "FM"** is the party identified as such in the WO.
- "Requirements"** are the following requirements:
- (a) the Contractor Code of Practice and the Minimum Expectations which are included on the RO Group website at the date of this Contract;
  - (b) the sustainability, including living wage, requirements which are included on the RO Group website at the date of this Contract; and
  - (c) the modern slavery and human trafficking requirements which are included on the RO Group website at the date of this Contract.
- "Site"** is/are the site or sites where the Works are to be performed as is/are stated in the WO.
- "Statutory Requirements"** are any statute, statutory instrument, regulation, rule or order made under any statute or directive having force of law which affects the Works or the performance of any obligations under this Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the Works or part of the Works are or will be connected.
- "Sum"** the amount payable for the Works set out in the WO as is revised in accordance with the Terms.
- "Terms"** are these terms and conditions.
- "WO"** is the work order issued by Envirotech FM to which these Terms are attached or which is issued with, by the Employer or by the FM, to the Contractor with these Terms.
- "Works"** are the works to be undertaken by the Contractor as detailed in the WO and in accordance with the Contract Documents.
- "Works Insurance Policy"** the insurance policy to be maintained for the duration of the Works, the details of which have been provided to the Contractor.
- 1.2 Unless the context otherwise requires:
- (a) references to the singular shall include the plural;
  - (b) references to one gender shall include all the genders;
  - (c) references to a particular party shall include all that party's employees, successors, agents, assignees and sub-contractors;
  - (d) references to legislation are references to that legislation as in force at the relevant time; and
  - (e) use of the word 'include', and variations of it, shall be construed as if followed by the words 'without limitation'.
- ## 2. THE CONTRACT
- 2.1 The parties respectively acknowledge that this Contract represents the entire agreement between them in relation to the Works and supersedes all and any other agreements or arrangements that may have existed between them.
- 2.2 This Contract cannot be varied except in writing signed by both parties.
- ## 3. OBLIGATIONS
- 3.1 The Contractor shall:
- (a) carry out the Works in a proper and workmanlike manner and accordance with this Contract and all Statutory Requirements, approvals, by-law approvals, consents, licences and authorisations that apply to the Works;
  - (b) obtain any approvals, by-law approvals, and any other consents, licences and authorisations which the Employer is not required to obtain pursuant to sub-clause 3.2(c);

(c) where the CDM Regulations apply to the Works perform the duties of "principal contractor" and of a "contractor" as required by The CDM (Design & Management) Regulations 2015;

(d) at its own cost rectify any defects, shrinkages or other faults in the Works which appear up to 6 months following completion which are due to materials, goods or workmanship not being in accordance with this Contract;

(e) when performing its obligations under this Contract the Contractor shall comply with the Requirements; and

(f) be liable for and shall indemnify the Employer against all liabilities, costs, expenses, claims, damages, losses, demands, actions and proceedings suffered or incurred by the Employer arising out of or in connection with any breach or negligent performance or non-performance of its obligations in this Contract including (but not limited to) any claims for death, personal injury or damage to property.

3.2 The Employer shall:

(a) pay the Sum or any instalment of it in accordance with clause 5;

(b) allow the Contractor such access to the Site as is reasonably required to carry out the Works;

(c) obtain any approvals, by-law approvals, and any other consents, licences and authorisations which the WO states it is required to do so;

(d) co-operate with and provide reasonable assistance to the Contractor during the carrying out of the Works;

(e) promptly answer the Contractor's requests for further information in relation to the Works;

(f) not unreasonably interfere with or obstruct the Contractor's employees, agents and sub-contractors in the carrying out of the Works unless in an emergency.

## 4. TIME FOR PERFORMANCE

4.1 The Contractor shall use all reasonable endeavours to complete the Works by the date stated in the WO or any such revised date notified by it to the Employer.

4.2 If it becomes apparent that it will not be able to complete the Works by the date referred to in clause 4.1 the Contractor will notify the Employer giving details of any reason(s) for the delay and where a delay is due to any reason beyond the reasonable control of the Contractor the Employer shall provide the Contractor with a revised date for completion and clause 4.1 and this clause 4.2 shall apply to such revised date for completion.

## 5. SUM AND PAYMENT

5.1 Payment of the Sum or any instalment of the Sum is due on receipt by the Employer of the Contractor's invoice (the **'notified sum'**) which shall be issued in accordance with clause 5.2.

5.2 An invoice addressed to the Employer may be issued and shall be sent to the Employer in accordance with the billing frequency stated in the WO and by email to the email address stated in the WO and shall include any other details stated in the WO to be included in or stated on the invoice provided always that the notified sum shall be no greater than the state of completion of the Works at the date when the invoice is submitted to the Employer.

5.3 The due date for payment shall be the date of receipt by the Employer of the Contractor's invoice. The final date for payment shall be 21 days after the due date for payment. Subject to any valid pay less notice issued in relation to it the amount of the payment to be made on or before the final date for payment shall be the notified sum.

5.4 The Employer shall make payment of any amount payable to the Contractor under this Contract to the bank account stated in the invoice or to such other bank account notified to the Employer by the Contractor in writing.

5.5 A pay less notice shall be issued no less than 3 days before the final date for payment.

5.6 If the Employer fails to pay an amount due to the Contractor by the final date for payment and fails to give a pay less notice, simple interest shall be added to the unpaid amount from the final date for payment until the actual date of payment. This shall be calculated on a daily basis at the annual rate of 3% above the official lending rate of the Bank of England current at the date that a payment due under this Contract becomes overdue. The parties acknowledge that the Employer's liability under this clause 5.6 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

5.7 The Sum is exclusive of VAT and the Employer shall, taking into account any reverse charge that applies, pay any VAT properly chargeable in respect of each payment to the Contractor under this Contract.

## 6. VARIATION

6.1 The Employer may request the Contractor:

(a) to carry out any additional works not included in the Contract Documents; or

(b) to undertake the Works in a manner which is materially different to the manner in which the Contractor would reasonably expect to carry out the Works or as is stated in the Contract Documents; or

(c) to omit part or parts of the Works.

6.2 In respect of (a) and (b) in clause 6.1 the Sum shall be increased by an amount which is representative of any additional work to be undertaken or any additional time that the Contractor will require to complete the Works and in respect of (c) the Sum shall be reduced by an amount which is representative of any reduction of the work to be undertaken.

6.3 If any instruction pursuant to clause 6.1 is to omit part or parts of the Works the Contractor shall not have any claim against the Employer for any loss of profit, loss of business opportunity, loss of goodwill, loss of contract or any indirect or consequential loss as a consequence of any such instruction including if the Employer appoints another contractor to undertake all or part of any such omitted works.

## 7. INSURANCE

7.1 The Contractor shall maintain public liability insurance with a limit of cover of not less than £1,000,000 for the duration of the Works and for any period that the obligations in sub-clause 3.1(f) apply to.

7.2 The Employer shall ensure that the Works Insurance Policy is maintained until completion of the Works.

## 8. TERMINATION

8.1 The Employer may terminate this Contract on written notice to the Contractor.

8.2 Either party may immediately terminate this Contract on written notice to the other if:

(a) the other does not pay a sum to the other party after the final date for payment (and where the paying party has not served a valid pay less notice in relation to it) within 14 days of a written notice to do so;

(b) the other breaches one of its material obligations under this Contract, or breaches any other obligation under this Contract, and does not remedy such breach within 14 days of being required by written notice to do so;

(c) the other becomes bankrupt, insolvent or otherwise unable to pay its debts; and/or

(d) the Contractor cannot, due to any reason beyond its reasonable control, perform all or substantially all of its obligations under this Contract for a period of more than 4 weeks.

8.3 Subject always to clause 8.4, upon termination the Employer shall pay the Contractor the amount of any outstanding invoice, the cost/value of work undertaken by the Contractor not included in any invoice(s) submitted to the Employer at the date of termination and the Contractor's reasonable demobilisation costs (which demobilisation costs shall not be payable if this Contract is terminated by the Employer under either sub-clause 8.2(b) or sub-clause 8.2(c)). Clause 5 shall apply to any payment application made by the Contractor under this clause 8.3.

8.4 Termination of this Contract howsoever arising shall, subject to clause 8.3, be without prejudice to the rights and remedies of either party in relation to any negligence omission or default of the other prior to such termination.

## 9. DISPUTE RESOLUTION

9.1 The provisions of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 649) (as amended) shall apply to the adjudication of any dispute under this Contract. The body to appoint any adjudicator shall be the Chartered Institute of Arbitrators.

9.2 If either party intends to dispute the adjudicator's decision it must serve a notice on the other party stating its intention to refer the dispute for final determination by issuing court proceedings. If neither party serves such notice within 28 days of the adjudicator's decision, the adjudicator's decision shall be final and binding on the parties.

## 10. GENERAL

10.1 The Contractor hereby warrants that it has inspected the Site (including verification of any information provided to the Contractor by or on behalf of the Employer before the date of this Contract) and taken account of:

- (a) the location of the Site and the position and nature of any adjoining structures;
- (b) all relevant ground conditions and any existing site infrastructure and services;
- (c) the general condition of any existing buildings (having particular regard to structures and existing services); and
- (d) all factors likely to affect or restrict access to and use of the site and/or the carrying out and completion of the Works.

The Contractor further warrants that it has made all necessary allowances therein for all site conditions (including latent or unforeseen conditions), works and facilities required as shown or described in or reasonably implied from the documents showing and describing the Works and the Site and (for the avoidance of doubt) it is agreed by the Employer and the Contractor that no such conditions, works or facilities shall give entitle the Contractor to an extension of time, reimbursement of loss and/or expense or any other amount in addition to the Sum.

10.2 The Contractor may not assign or transfer the benefit of this Contract including any rights under it without the prior written consent of the Employer.

10.3 The FM is authorised to issue a Contract to the Contractor for and on behalf of the Employer.

10.4 If any provision of this Contract is found to be unenforceable or invalid it shall be deemed severed from this Contract, with the remaining provisions continuing in full force and effect.

10.5 Any notice given under this Contract must be in writing and emailed to the email address of the other party stated in the WO. A notice shall be deemed delivered on the day it is emailed to the correct email address of the other party provided that it is emailed before 17:30 on a working day. Any notice not emailed on a working day or which is emailed after 17:30 of a working day shall be deemed to have been delivered on the next working day after it has been emailed.

10.6 No third party has any right to enforce the terms of this Contract under the Contracts (Rights of Third Parties) Act 1999.

10.7 This 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 construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).