



## **STANDARD TERMS AND CONDITIONS OF CONTRACT**

Constructeco UK Ltd – Park 5 – Parkway Business Centre – Princes Way – Manchester – M14 7HU

### **1 General**

1.1 Any contract between CONSTRUCTECO UK LTD ("the Company") and any of its customers ("the Customers") for the supply of work and materials ("the Work" and "the Materials") shall incorporate these terms and conditions which shall prevail over any other terms or conditions contained in the Customer's order form or offer or in any other oral written intimation which shall not be incorporated into any contract made by the Company unless otherwise agreed in writing by the Company.

1.2 The waiver of any terms or conditions herein by the Company shall only be effective if recorded in writing signed by the Company and shall constitute a waiver for the purposes of that particular transaction only and all other terms and conditions shall remain in full force and effect.

1.3 The Contract ("the Contract") shall be deemed to be concluded only upon the written acceptance by the Company of the Customer's order or offer and subject to clause 1.5 below.

1.4 All quotations may be revised or withdrawn unless an order or offer is received from the Customer within 30 days of the date thereof.

1.5 All acceptances of the Customer's order are subject to the approval by the Company of the Customer's credit worthiness. If it is not approved then the Company shall have the right to cancel the Contract (without incurring any liability in respect thereof) by notice in writing sent to the Customer within 28 days after the date of acceptance of the Customer's order whereupon the obligations of both the parties under the Contract shall cease.

### **2. Limits of Contract**

The Customer acknowledges that he is entering into this Contract without placing any reliance upon any representation (written or oral) which may have been made by the Company or any agent, advisor or any other person acting for the Company except such representations as may be made in this Contract.

### **3. Commencement and completion dates**

Any dates specified for the commencement or completion of the Work are estimates only and the Company shall not be liable for any delays in commencing or completing the Work nor shall the Customer be entitled to cancel any Contract because of such delays. The Work

shall be carried out as expeditiously as reasonably practicable having regard to availability of labour and the Materials and to weather conditions.

#### **4. Matters relating to carrying out of work**

4.1 The execution of any of the Work is contingent upon the Customer securing any necessary licenses, authorities and consents.

4.2 The method of carrying out the Work is restricted to the instructions issued by the Company to its workmen and no instructions are permissible by the Customer.

4.3 Adequate and safe storage accommodation for the Materials is to be provided by the Customer free of charge in close proximity to the site and the Customer shall allow delivery of Materials to the site at a reasonable time before the Work is started.

#### **5. Price ("The Contract Sum")**

5.1 The Contract Sum is based on

(a) the present cost of the Materials, labour and transport.

(b) the Work being executed during normal working hours unless otherwise agreed.

5.2 Should any variations occur in the above mentioned costs prior to delivery of the Materials or completion of the Work, the Company reserves the right to amend the Contract Sum correspondingly without previous notice.

5.3 The Contract Sum quoted is exclusive of Value Added Tax which will be charged in accordance with applicable regulations.

#### **6 Terms of payment**

6.1 The Company will submit interim invoices for payment ("Interim Invoices") on a monthly basis during the period from commencement to completion of the work.

6.2 The following provisions will apply with regard to the payment in instalments of the Contract Sum by the Customer to the Company.

6.3 The Company shall submit the first interim invoice at the end of the calendar month during which the commencement of the Work on site occurs (such month and each subsequent month until completion of the Work being referred to hereafter as a "relevant Period") and shall submit further interim invoices at monthly intervals thereafter.

6.4 The Payment applied for in an interim invoice shall be the total of the amounts determined in accordance with sub clauses 6.4.1, 6.4.2 and 6.4.3 less the amount determined in accordance with sub-clause 6.5:-

6.4.1 The value of work properly executed in accordance with these terms and conditions during the period from the commencement of the Work up to the end of the Relevant Period; and

6.4.2 the value of materials and goods delivered to the site for the purposes of the Work during the period from commencement of the Work up to the end of the Relevant Period; and

6.4.3 any other amount or sum which these terms and conditions specify shall be payable during or in respect of the period from the commencement of the Works up to the end of the Relevant Period.

6.5 The aggregate of any sums which have been included in previous Interim Invoices.

6.6 The amount stated as due in an Interim Invoice ("the Interim Payment") shall become due for payment on the due date which shall be the date of the Interim Invoice ("the Due Date")

6.7 Subject to clause 6.9 the Customer shall pay the Interim Payment no later than the final date which shall be 30 days after the Due Date ("the Final Date").

6.8 The Customer shall not later than 5 days after the Due Date or the date on which any Interim Payment would have become due if:- the Company had carried out its obligations under the Contract; and no set off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts; give notice to the Company specifying the amount (if any) of the payment which the Customer has made or proposes to make and the basis on which that amount is calculated.

6.9 The Customer shall not withhold the whole or part of any monies due under the Contract.

6.10 The provisions of clauses 6.6, 6.7, 6.8 and 6.9 shall apply to the Final Invoice as if it were an Interim Invoice.

6.11 Where a sum due to the Company for the Work is not paid in full by the final date for payment and no effective notice to withhold payment has been given, the Company has the right (without prejudice to any other right or remedy) to suspend performance of its obligations under this Contract. This right may not be exercised without first giving to the Customer at least 7 days' notice of the Company's intention to suspend performance, stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance ceases when the Customer makes payment in full of the amount due. The Contract completion period specified herein shall be extended to include any period during which performance is suspended in pursuance of the right conferred by the clause. Any losses and expenses incurred by the Company due to this suspension and extension of the Contract completion period including remobilisation costs will become due to the Company from the Customer.

6.12 The Materials delivered to the site by or on behalf of the Company for use on the Contract work shall remain the property of the Company until all sums owing by the Customer to the Company whether under this Contract or any other contract made at any time between the Company and the Customer have been paid in full by the Customer or until the Materials become fixed to the building works which are the subject of the Contract. Upon the happening of any of the events specified below ("the Events") the Company shall have the right at any time thereafter to enter onto any premises or land in the ownership control or possession of the Customer for the purposes of re-possessing the Materials and the Customer shall indemnify the Company on a full indemnity basis against all loss, damage, costs or expenses so arising including loss, damage, costs or expenses in respect of third party claims.

The Events are

(i) the appointment over the Customer's assets or business of a Receiver, Administrative Receiver or Administrator;

(ii) if the Customer enters into any arrangement with its creditors generally;

(iii) if the Customer appears unable to pay its debts as they fall due;

(iv) if any distress or execution is levied or threatened to be levied over any assets or property of the Customer. For the avoidance of

doubt, the Customer hereby unconditionally and irrevocably authorises the Company or its nominated agents or representatives to enter into or upon premises or land in the ownership, possession or control of the Customer for the purpose of taking possession of the Materials.

## **7 Default by customer**

If the Customer (being a limited Company) goes into liquidation (except for the purposes of reconstruction or reorganisation) or suffers the appointment of a receiver or administrator over any of its assets, or (being an individual) becomes subject to a bankruptcy order, or in either case ceases to trade or enters into a Scheme of Agreement, or if the Customer fails to pay for any of the Materials or the Work in accordance with the terms of the Contract then, without prejudice to any other rights and remedies herein the Company may rescind this and every or any other contract with the Customer or alternatively suspend the Work or suspend or cancel delivery of any of the Materials to be supplied thereunder.

## **8. Limitations of Liability**

8.1 In the event of any defect in the Work or the Materials then subject to the remainder of this Clause the liability of the Company shall be limited to repairing or replacing the defective Work or Materials.

8.2 Without prejudice to the remainder of Clause 8 the Company shall be liable for defects for a period of 90 days from the date of substantial completion of the Company's Work. Subject to the aforementioned time period, upon written notification to the Company of a defect the Company shall be granted full and unhindered access within a reasonable period of time to rectify such defect any failure to allow this shall relieve the Company of all liability.

8.3 In the case of any failure by the Company to perform any of its obligations to the Customer in connection with the Work its liability shall not, subject to the remainder of this clause, exceed the amount due for the Customer to the Company under the Contract.

8A The Company shall not in any event be liable for any consequential, economic, direct or indirect loss to the Customer or any third party arising out of the Contract except subject to Clause 8.8 insofar as the Company is insured therefore pursuant to Clause 9 below

8.5 The Customer shall indemnify and keep indemnified the Company against any liability to third parties (including servants or agents of the Customer) arising out of or in connection with the Contract and the Work or Materials except insofar as such liability is covered by the Company's insurance pursuant to Clause 9 below.

8.6 The Company's obligations to the Customer shall not apply:

(a) to damage or misuse of the Work or the Materials caused by any act or default of the Customer or any third party or by

failure to follow any instructions supplied in connection with the Work or the Materials;

(b) if the Work or the Materials are altered, modified or repaired other than by the Company or by persons not expressly nominated or approved in writing by the Company;

(c) if the Customer shall not have paid for any of the Work or the Materials whether under the Contract or under any other contract between the Company and the Customer.

8.7 Without prejudice to the above the Company shall not be liable for any damage to valuable equipment or material at or near the site of the Contract howsoever caused unless such liability is not otherwise expressly excluded hereunder and the Customer has previously notified the Company in writing of the existence of such equipment and materials.

8.8 Nothing herein shall preclude the Company's liability (if proved) for death or personal injury arising from the Company's negligence or arising under the Consumer Protection Act 1987.

## **9. Insurance**

Full details of the cover held by the Company will be supplied to the Customer upon written request. It is the Customer's responsibility at all times to ensure the said insurance is adequate to cover all costs, claims and demands arising directly or indirectly out of or in relation to the Contract.

## **10. Industrial Property Rights**

The Industrial Property Rights (including copyright and design rights) in all specifications and all reports, drawings and estimates (including this document) with regard to the Work and the Materials belong to the Company and are supplied to the Customer for its exclusive use. Specifications and other data concerning the Work and the Materials may not be disclosed in whole or in part to any third parties without the prior express authority of the Company in writing.

## **11. Indemnity regarding employees**

11.1 For the purpose of clauses 11.2 to 11.4 below the following definitions apply:

(a) Employees: those employees whose contracts of employment transfer to the Company from the Customer or any Outgoing Supplier as at the commencement of the Contract or the Work under TUPE,

(b) Employee Liability Information: in respect of each of the Employees:

I. the identity and age of the Employee;

II. the Employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996) together with full details of the pay and benefits to which the Employee is currently entitled and of any discretionary benefits and of their length of continuous service for statutory purposes;

III. information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;

IV. information about any court or tribunal case, claim or action either brought by the Employee against the Customer within the previous two years or where the Customer has reasonable grounds to believe that such action may be brought against the Company arising out of the Employee's employment with the Customer; and

V. information about any collective agreement which will have effect after the Effective Date in relation to the Employee pursuant to regulation 5(a) of TUPE.

(c) **Outgoing Supplier:** Any legal or natural person who is the immediate predecessor of the Company in the provision of services to the Customer of the same or substantially similar nature to those provided by or to be provided by the Company under the Contract or all or part of whose workforce transfers to the Customer under TUPE on the of the commencement of the Work or otherwise by virtue of the Contract

(d) **TUPE: Transfer of Undertakings (Protection of Employment)**

Regulations 2006 or any subsequent re-enactment thereof

11.2 The Customer shall provide the Company and/or as appropriate shall procure that the Outgoing Supplier provides the Company with the

Employee Liability Information in relation to the Employees

11.3 The Customer shall indemnify the Company in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Company including without limitation all legal expenses and other professional fees together with any VAT thereon in relation to:

(a) The termination by the Customer or the Outgoing Supplier of the employment of any of the Employees;

(b) Anything done or omitted to be done by the Customer or the Outgoing Supplier in respect of any of the Employees which is deemed to have been done by the Company by virtue of TUPE;

(c) Any claim against the Company made at any time by any Employee arising under TUPE or by virtue of any right transferring under TUPE.

(d) Any claim made at any time against the Company by any employee of the Customer or the Outgoing Supplier other than the Employees who claims to have become an employee or to have rights against the Company under TUPE whether or not such claim is capable of being established at law.

11.4 In the event that any claim referred to in Clause 11.3 above is made against the Company by any Employee the Customer shall provide free of charge such information and assistance as the Company reasonably requests in relation to any such claim and the circumstances giving rise to it.

## **12. Force majeure**

All Contracts are subject to the Company's right to cancel the same in whole or in part without in any case being liable for any loss occasioned thereby in the event of any circumstances which are not within the Company's immediate control including, but without limiting the generality of the foregoing, strikes, lockouts, labour disputes of any kind, delay or interruption of transport, unavailability of materials, war, rebellion, hostilities or any local or national emergency, accidents to or breakdowns of plant or machinery, force majeure or compliance with any order or request of Government or other public authority which affects or interferes with the Work to be done.

## **13. Adjudication**

13.1 Either party to the Contract may give notice ("Notice of Intention to Refer to Adjudication") of its intention to refer a dispute, difference or question arising under, out of, or relating to the Contract to adjudication at any time and within 7 days of such Notice of Intention to Refer to Adjudication refer the same by notice of referral ("Notice of Referral") to the Adjudicator specified in the Appendix hereto ("the Appendix"). The party referring such dispute shall be called the "Referrer" and the party responding shall be called the "Respondent", collectively referred to as

### **"the parties"**

13.2 The Notice of Referral shall specify particulars of the dispute or difference together with a summary of the principle facts and arguments relating to it. Copies of all relevant documents in the possession of the Referrer shall be enclosed with the Notice of Referral and a copy of the Notice of Referral and the enclosures shall be sent to the Respondent at the same time as it is sent to the Adjudicator.

13.3 The Adjudicator to decide the dispute or difference shall be in accordance with the Appendix, or an individual agreed by the parties provided that where either party has given Notice of Intention to Refer to Adjudication then:

13.31 Any application to the individuals named in paragraph 1 of the Appendix must be made with the object or securing appointment of, and referral of the dispute or difference to, the Adjudicator within 7 days of the date of the Notice of Intention to Refer to Adjudication.

13.32 Any agreement by the parties on the appointment of an Adjudicator must be reached and the appointment made in sufficient time so that the dispute or difference can be referred to the Adjudicator within 7 days of the date of the Notice of Intention to Refer to Adjudication;

13.4 Upon the appointment of the Adjudicator the parties shall comply with all the directions which he may issue for the purposes of considering the facts and issues in the dispute and so that the Adjudicator shall notify his decision to the parties not later than 28 days from the date of referral or such longer period as is agreed by the parties after the dispute has been referred and the Adjudicator may extend the period of 28 days by up to 14 days with the Referrer's consent where the period would include Christmas Day, Good Friday or a day which under the (1971 c. 80) Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales or as the case maybe, in Scotland, that day shall be excluded. The Adjudicator's decision shall nevertheless be valid if issued after the time allowed. The Adjudicator's decision shall state how the cost of the Adjudicator's fee shall be apportioned between the parties, and whether one party is to bear the whole or part of the reasonable legal and other costs and expenses of the other party, relating to the adjudication. It shall be

a condition precedent to the appointment of an Adjudicator that he shall notify the parties that he will comply with this condition and its time limits.

13.5 The notice of a party's intention to refer a dispute or difference to adjudication shall state that it is a "Notice of Intention to Refer to Adjudication". Any notice or other document required or authorised to be served in pursuance of the clause shall be served by a party by pre-paid first class post on the other party at the other party's registered office if it is a body corporate or if it is not a body corporate, at its last known principal place of business or principal residence.

13.6 The Respondent may submit representations to the Adjudicator not later than 7 days from the receipt of the Notice of Referral.

13.7 The Adjudicator shall act impartially and shall take the Initiative in ascertaining the facts and the law and the parties shall enable him to do so. The Adjudicator shall have the power to assess and award damages and legal and other costs and expenses and simple interest at such rates and for such periods as he considers just. In addition to his other powers the Adjudicator shall have the power to open up, review and revise any certificate, opinion, decision, requirement or notice issued given or made previously under the Contract.

13.8 The decision of the Adjudicator is binding upon the parties until the dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration), or by agreement.

13.9 The parties hereby agree that the Adjudicator (including any employee or agent of the Adjudicator) Shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith

13.10 The Customer and the Company shall comply forthwith with any decision of the Adjudicator, and if either party does not comply with the decision of the Adjudicator the other party shall be entitled to take legal proceedings to secure such compliance pending any final determination of the referred dispute or difference and shall submit to summary judgment an enforcement of all decisions; in each case, without any defence, set-off, counterclaim, abatement or deduction.

## **The Appendix**

1. Under Clause 13 the Adjudicator shall be such person as may be chosen by the President or a Vice President or Chairman or a Vice Chairman of the Royal Institution of Chartered Surveyors at the request of either the Customer or the Company.

## **New Customers**

We require a 50% deposit on initial orders prior to commencing works and we require full and final payment upon completion of works unless otherwise agreed in writing.

**Please note that are standard terms & conditions of contract are to be confirmed & agreed in writing before acceptance of any contract or purchase order.**



