

## TERMS AND CONDITIONS OF CONTRACT

### 1. Definitions

- 1.1 The Contractor means Central Power Limited.
- 1.2 The Customer means any person or party who instructs the Contractor to proceed with the ordering of goods and materials or the commencement of works on site whether or not the goods and materials or works on site form the subject of any quotation or other communication between any party.
- 1.3 The Contract means the Contractor's Quotation and the Conditions of Quotation, the Customer's instruction to proceed with the ordering of goods and materials or the commencement of works on site, and the Contractor's written Acknowledgement. Whatever may be implied or expressed from or in any representation, term or condition stated, or contained in any document created either before, the Customer's instruction to proceed, or at any time thereafter save for the Contractor's Quotation and Conditions of Quotation, or by the conduct of any party, it shall be a condition precedent to the existence of a Contract that the Contractor shall issue his written Acknowledgement.
- 1.4 The Contract Sum means the Contractor's Quotation and any adjustment thereto which may be agreed by the Contractor as being the value of the works. Where the Customer provides a Schedule of Work then the Contract Sum shall be determined on the basis of the works as described therein including any adjustment which may be agreed by the Contractor. Works which the Customer requires the Contractor to execute which are not described in the Customer's Schedule of Work will not be included in the Contract Sum unless such works are separately identified in the Contractor's Quotation.
- 1.5 The works means the works described in the Contractor's Quotation and where relied upon as described and quantified in the Customer's Schedule of Work including modified or additional work thereto as might occur from time to time. Works shown on drawings or described in specifications but not described and quantified in the Customer's Schedule of Work shall not form part of the works unless such works are identified in the Contractor's Quotation.

### 2. Price

- 2.1 Unless agreed otherwise the Contractor's Quotation is based on the rates and prices ruling at the date of the Quotation and is open for acceptance for 28 days therefrom. The Contractor's Quotation is net unless stated otherwise and any discount shall be for improved payment terms and nothing else.
- 2.2 The Contractor's Quotation includes only those works listed therein, or alternatively where agreed, is based on the works listed in the Customer's Schedule of Work which shall show the true extent and scope of the works. If the nature and extent of the work carried out by the Contractor varies to that listed in the Contractor's Quotation or the Customer's Schedule of Works then the Contractor shall be entitled to increase any previously agreed rates and prices to take into account the varied quantities. Unless agreed otherwise the Customer's Bills of Quantities and any other re-measurement of the works as might be necessary, shall be strictly in accordance with the current edition of the Standard Method of Measurement of Building Works as published jointly by the RICS and BEC.

### 3. Variations

- 3.1 No variation shall vitiate the Contract. Any variations and additions to the works shall only be carried out after receipt by the Contractor of the Customer's written instruction. If the Customer fails or refuses for whatever reason to issue a written instruction for any varied or additional work then the Contractor reserves the right not to carry out such works. The execution of varied or additional works by the Contractor shall not be an acceptance by the Contractor that any of the rates and prices as may have previously been agreed, shall apply to the varied or additional works. In any event the Contractor shall be entitled to receive fair rates and prices for any varied work, taking into account all the circumstances.

### 4. Performance

- 4.1 Unless agreed otherwise the Contractor's Quotation is based on the works being executed in one visit by the Contractor to the Site, with full continuity of work so as to allow the Contractor to carry out the works in an orderly manner and logical sequence to comply with any completion date agreed with the Customer. If and when it becomes reasonably apparent that the commencement, progress or completion of the works or any part thereof is being or is likely to be delayed for any reason at any time, then the Customer shall in writing grant an extension of time to the Contractor as is fair and reasonable in all the circumstances for the completion of the works.
- 4.2 Unless agreed otherwise the Contractor's Quotation includes for work being executed in normal working hours. Normal working hours means any 8 hour period at the Contractor's discretion between the hours of 7.30 am and 6.00pm Monday to Friday, except for Public Holidays.

### 5. Suitability of Site

- 5.1 Where applicable the Customer shall ensure that all existing surfaces and structures to which the works are to be applied, fixed or laid are true are even and within the specified and/or approved tolerances before the works are commenced. If it is found by the Contractor that the existing surfaces or structures are not within the specified and/or approved tolerances, then the Contractor is under no obligation to execute any of the works until such surfaces or structures are rectified. If the Contractor is instructed to proceed with the works regardless of the existence of defective surfaces or structures then the Customer shall be fully liable for the completed works and any warranties given by the Contractor shall be null and void. Where the works carried out by the Contractor are alterations, adaptations, modifications, or extensions to any existing works, the Contractor shall not be liable for any defect which may become apparent in the existing works by reason of the works executed by the Contractor.

### 6. Payment

- 6.1 Unless agreed otherwise the Contractor shall issue interim applications for payment at regular intervals of two weeks (the due dates) commencing from the Contractor's first day on site. If for any reason goods and materials required in the execution of the works are paid for by the Contractor before the Contractor can commence the works on site, then the Customer shall pay in full for such goods and materials as if the Contractor had commenced on site. If for any reason goods and materials for use in the works are required to be stored off site in either the Contractor's, supplier's or manufacturer's works or any other place, then the Contractor shall subject to providing proof of ownership be entitled to payment for such goods and materials including any storage and transport costs in relation thereto, as if such goods and materials are on site. The Contractor shall within one month of the date of the practical completion (the due date) of the works issue a final application for payment.
- 6.2 The Customer shall within 5 days of the due date, inform the Contractor in writing of the amount of the payment due and the basis on which the amount has been calculated. The Customer shall make payments in full against the Contractor's interim and final applications within 14 days of the due dates.
- 6.3 The Contractor will use his best endeavours to comply with the Customer's programme sequencing requirements. If for whatever reason this cannot be achieved, the Contractor shall not be liable for any delays or costs, incurred by any other party including the Customer. Should the Contractor incur additional costs by reason of being required to execute the works in a different and/or uneconomic sequence to that which was agreed with the Customer at the time of the creation of the Contract or when the works commenced, (this includes any period of suspension of the works and related restart up period resulting from the provisions of Clause 10 herein), then all such additional costs shall be recoverable either under the Contract as loss and expense or as common law damages.
- 6.4 The Contractor shall be entitled to compound interest or finance charges calculated on the basis of quarterly rests commencing on 1 April at the rate of 5% over the average rate charged in the relevant period by the clearing banks, on all sums not paid by the Customer in accordance with the Contract or if there is no Contract, then as may become due from time to time. Finance charges shall be calculated as a percentage of the amounts which should have been paid to the Contractor from the time when such amounts were due.

### 7. Title

- 7.1 The legal title to all goods and services provided by the Contractor shall remain with the Contractor until the Customer has fully discharged its indebtedness to the Contractor under the Contract or any other contract or agreement between the parties which may exist at the same time. Any rights which any other party may have with the Customer either under any contract or in common law to take possession of or create a lien over the Contractor's materials or any other thing shall be null and void in relation thereto.

### 8. Defects

- 8.1 The Contractor shall not be responsible for any defects of whatever nature, type and extent in materials specified by the Customer and used in the execution of the works. Where the Contractor supplies unspecified materials the warranties and guarantees for such materials shall be as provided by the manufacturers and/or suppliers and no others.
- 8.2 When the works includes any element of design then the Contractor warrants that such design will be carried with all due care and skill. For the avoidance of doubt at no time shall any design work carried out by the Contractor be fit for any intended purpose notwithstanding that the purpose shall be known to the Contractor.

### 9. Indemnities

- 9.1 The Customer shall be responsible at all times for any loss, theft, damage howsoever arising to the goods and services provided by the Contractor. The Contractor shall not be liable for any consequential loss arising from a failure of the goods and services and provided by the Contractor. The Customer shall be responsible at all times for the safe storage of the Contractor's materials, plant and equipment, and vehicles whilst within the area of the works. The Customer shall reimburse the Contractor in full for any loss, theft, damage howsoever arising to such materials, plant, equipment and vehicles.
- 9.2 The Customer shall indemnify the Contractor against all claims, proceedings, costs and expenses incurred by reason of any injury or death of any person or damage to any property or any loss or damage of any kind caused by or arising out of the works other than that directly resulting from any negligent act by the Contractor and its employees.

### 10. Copyright

- 10.1 Unless agreed otherwise any design, drawing, specification or any other thing prepared or produced by the Contractor shall remain at all times the exclusive property of the Contractor. The Buyer shall not disclose any design, drawing, specification or any other thing to any third party without the Contractor's written consent.

### 11. Third Party Rights

- 11.1 For the avoidance of doubt nothing in these Conditions of Quotation and/or any resulting Contract, shall confer or purport to confer on any third party any benefit or gain, or the right to enforce any condition, term or remedy of any description, or any other thing as may be contained in the Conditions of Quotation and/or any resulting Contract.

### 12. Suspension

- 12.1 The Contractor reserves the right to suspend work at any time without being in breach of the Contract or any other agreement that may be in force at the time if it becomes apparent that the Customer's credit rating or credit worthiness is unsatisfactory. Should this occur the Customer shall pay the Contractor the full amount outstanding under the Contract or if there is no Contract, the amount due to the Contractor at the time, within 48 hours of receipt by the Customer of a written notification to do so from the Contractor. Thereafter the Contractor shall be paid by the Customer on a pro forma basis for executing the remainder of the work under the Contract, or if there is no Contract, then for executing any further work.
- 12.2 Failure to make a payment in accordance with the provisions of Clause 6 of these Conditions shall allow the Contractor at any time after the date of the issue of the 5 day notice, or the date when such notice should have been issued had the Customer complied with Clause 6, to issue a notice of Adjudication in accordance with the Scheme for Construction Contracts 1998 and/or to enter the site and remove all goods and materials whether fixed or otherwise and/or upon the giving of a 7 day notice of the intention to suspend work, immediately suspend work upon the expiration of the 7 days without being in breach of the Contract with any delay so caused being added to the previously agreed completion date and/or period for the works. Should the Customer fail to rectify his breach/s of the Contract within 48 hours of the receipt of a written notification from the Contractor to do so, the Customer shall be taken to have repudiated the Contract with all outstanding amounts owing to the Contractor becoming due as a debt.

### 13. Termination

- 13.1 Where the Customer is (i) a registered company, the passing of any resolution or the making of any application to the Court for the winding up of the company, the making of any arrangement with creditors, the appointment of a receiver or manager on behalf of a creditor, or the occurrence of any circumstances which entitle any creditor to appoint a receiver or manager or the Court to make a winding up order, or (ii) an individual, the insolvency of whom or any partner in a partnership or firm (insolvency means the presentation of any bankruptcy petition under the Insolvency Acts or the making of any conveyance or assignment for the benefit of creditors), shall allow the Contractor to determine the Contract at any time after it comes to the notice of the Contractor.

### 14. Assignment

- 14.1 The Customer shall not without the consent in writing from the Contractor, assign or transfer the Contract or the works or any part thereof.

### 15. Adjudication

- 15.1 No decision, notice, certificate or any other thing given to or received by any party named in the Contract shall be binding and conclusive so as to prevent such decision, notice, certificate or any other thing from being fully opened up, reviewed and revised by the Adjudicator.
- 15.2 Should any difference or dispute arise at any time between the Contractor and the Customer relating to the Contract or any works carried out by the Contractor, whether under the Contract or otherwise, then such dispute or difference shall be referred to the Adjudicator named in the Contract, or if no Adjudicator is so named then to an Adjudicator named by the President or Vice-President of the Chartered Institute of Arbitrators. The appointment of the Adjudicator, the powers of the Adjudicator and the effects of the Adjudicator's decision shall be in accordance with those set out and included in the Housing Grants, Construction and Regeneration Act 1996 - Section 108, and the Scheme for Construction contracts 1998, Part 1 - Adjudication. The Adjudicator's decision shall be binding until the date of practical completion of the works.

### 16. Law

- 16.1 The proper law of these Conditions of Quotation and any resulting Contract, or any dispute arising from the carrying out of the works, shall be English Law.

### 17. VAT

- 17.1 The Quotation, Contract Sum, rates and prices or any other amount stated from time to time, are exclusive of Value Added Tax.