

CONDITIONS OF QUOTATION

1. Definitions:

(a) *The Specialist Contractor* means Dongor Limited,

(b) *The Customer* means any person or party who instructs the Specialist 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 and is the end user or intermediary supplier unless otherwise stated,

(c) *The Contract* means the Specialist 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 Specialist 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, or by the conduct of any party, it shall be a condition precedent to the existence of a legally enforceable Contract that the Specialist Contractor must issue his written Acknowledgement.

(d) *The Contract Sum* means the Specialist Contractor's Quotation and any adjustment thereto which may be agreed by the Specialist Contractor as being the value of the works. Where the Customer provides a Schedule of Work or Bills of Quantities then the Contract Sum shall be determined on the basis of the works as described and/or quantified therein including any adjustment which may be agreed by the Specialist Contractor. Works which the Customer requires the Specialist Contractor to execute which are not described and/or quantified in the Customer's Schedule of Work or Bills of Quantities will not be included in the Contract Sum unless such works are separately identified in the Contract.

(e) *Rates and prices* means the sums of money set out in the Specialist Contractor's Quotation whether or not such sums are itemised and included in a Schedule of Rates or Bills of Quantities, or Lump Sums, or amounts to be paid on a Daywork basis, or any other sum as may be determined from time to time,

(f) *The works* means the works described in the Specialist Contractor's Quotation and where relied upon as described and quantified in the Customer's Schedule of Work and/or Bills of Quantities including modified or additional work thereto as might occur from time to time. All the works as may be shown on the Customer's drawings or described in the Customer's specifications shall be those as described and quantified in the Customer's Schedule of Work and/or Bills of Quantities. Works shown on drawings or described in specifications but not described and quantified in the Customer's Schedule of Work and/or Bills of Quantities shall not form part of the works unless such works are identified in the Specialist Contractor's Quotation or written Acknowledgement,

(g) *The Site* means the land or place which is specified by the Customer as being the place or places to be used for the carrying out of all the works.

2. Pricing. The Specialist Contractor's Quotation is based on the rates and prices ruling at the date of the Quotation and is open for acceptance for 60 days from the date of the Quotation. The Specialist Contractor's Quotation is net unless stated otherwise.

3. Quantities. The Specialist Contractor's Quotation is based on the quantities set out in the Customer's Bills of Quantities and/or shown on the Customer's drawings, each of which shall show the true extent and scope of the works. Unless stated otherwise in the Quotation or written Acknowledgement, the works will be subject to re-measurement of the quantities at the completion of the works. If the quantities of work carried out by the Specialist Contractor are less than those contained in the Customer's Bills of Quantities or shown on the Customer's drawings, then the Specialist Contractor may increase any previously agreed rates and prices to take into account the lesser 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.

4. Variations. Any variations and additions to the works shall only be carried out after receipt by the Specialist 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 Specialist Contractor reserves the right not to carry out such works. The execution of varied or additional works by the Specialist Contractor shall not be an acceptance by the Specialist 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 Specialist Contractor shall be entitled to receive fair rates and prices for any varied work, taking into account all the circumstances.

5. Working Hours. Unless agreed otherwise the Specialist Contractor's Quotation includes for work being executed during normal working hours. Should it be necessary for work to be executed outside normal working hours then the Specialist Contractor shall be entitled to correspondingly increase the rates and prices for all work executed outside normal working hours. Normal working hours means 8am to 6pm Monday to Friday, except for Public Holidays.

6. Continuity of work. Unless agreed otherwise the Specialist Contractor's Quotation is based on the works being executed in one visit by the Specialist Contractor to the Site, with full continuity of work so as to allow the Specialist Contractor to comply with the period of the works as may have originally been agreed with the Customer. Whilst the Specialist Contractor will use his best endeavours to comply with the Customer's programme sequencing requirements if for whatever reason this cannot be achieved, the Specialist Contractor shall not be liable for any delays or costs,

incurred by any other party including the Customer. Should the Specialist 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

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with the Customer at the time of the creation of the Contract or if there is no Contract then at the time the works commenced, this includes any period of suspension of the works and related restart up period resulting from the provisions of Clause 19, then all such additional costs shall be recoverable either under the Contract as loss and expense or as common law damages.

7. Delays. 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 due to force majeure, the failure of the Customer to give in due time ingress to or egress from the site, exceptionally adverse weather conditions, loss or damage caused by any event covered by Clause 11 or 12 of these Conditions, civil commotion, strikes or lockouts or whatever sort, compliance with the Customer's (or his representative's) instructions, the Specialist Contractor not having received in due time the necessary instructions, drawings, details, schedules, or any other thing, delay on the part of Nominated or Named Sub-contractors or Nominated or Named Suppliers, the execution of works not forming part of the Contract by the Customer himself or persons employed or engaged by the Customer, the supply of goods and materials by the Customer or his agents whether or not they were part of the original Contract, the carrying out of works by any local authority or statutory undertaker or the failure to carry out such works, the Customer's or his other contractor's or the Specialist Contractor's inability for reasons beyond their control to secure such labour, plant, goods or materials as are essential for the carrying out of the works, the suspension of the works under Clause 19 due to the Customer's failure to make a payment in accordance with the provisions of Clause 18 or any other Condition of the Contract - including any related restart up period due to such suspension, then upon receipt of a written notice from the Specialist Contractor to that effect, the Customer shall in writing grant an extension of time to the Specialist Contractor as is fair and reasonable in all the circumstances for the completion of the works.

8. Advice. If and when the Specialist Contractor gives advice on the suitability of materials, or method of working, or any other thing whatsoever in connection with the works, then such advice shall not be a warranty or guarantee as to the suitability of materials, or method of working or any other thing whatsoever.

9. Defects. The Specialist 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 Specialist Contractor supplies unspecified materials the warranties and guarantees for such materials shall be as provided by the manufacturers and/or suppliers and no others.

10. Title to goods. The legal title to all goods and services provided by the Specialist Contractor shall remain with the Specialist Contractor until the Customer has fully discharged its indebtedness to the Specialist 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 Specialist Contractor's materials or any other thing shall be null and void in relation thereto.

11. Liability.

- (a) The Customer shall be responsible at all times for any loss, theft, damage howsoever arising to the goods and services provided by the Specialist Contractor. The Specialist contractor shall not be liable for any loss or consequential loss arising from a failure of the goods and services and provided by the Specialist Contractor. The Customer shall be responsible at all times for the safe storage of the Specialist Contractor's materials, plant and equipment, and vehicles whilst within the confines of the Site. The Customer shall reimburse the Specialist Contractor in full for any loss, theft, and damage howsoever arising to such materials, plant, equipment and
- (b) The Specialist Contractor expressly excludes any liability relating to Design Liability occurring as a result of any design failure relating to quality, usability, function, suitability or specification of the works.
- (c) The Customer acknowledges that it accepts the specific exclusion of design liability and that this exclusion is reasonable in that the Specialist Contractor's fees would inevitably be greater if liability were not excluded. The Specialist Contractor may be prepared to negotiate certain levels of liability in exchange for a higher fee.

12. Indemnity. The Customer shall indemnify the Specialist 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 caused by or arising out of the works other than that directly resulting from any negligent act by the Specialist Contractor and its employees.

13. Late delivery. The Specialist Contractor shall not be responsible for the late or non-delivery of goods or materials forming any part of the works, due to strikes, lock outs or other industrial action or any other cause beyond the Specialist Contractor's control.

14. Existing structures. 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 Specialist Contractor that the existing surfaces or structures are not within the specified and/or approved tolerances, then the Specialist Contractor is under no obligation to execute any of the works until the existing or structures are rectified. The Specialist Contractor shall not be responsible for any delays to the works by reason of defects in the existing surfaces or structures. If the Specialist 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 Specialist Contractor shall be null and void.

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15. Defects in existing structures. Where the works carried out by the Specialist Contractor are alterations, adaptations, modifications, or extensions to any existing works, the Specialist Contractor shall not be liable for any defect which may become apparent in the existing works by reason of the works executed by the Specialist Contractor.

16. Suspension of work. The Specialist 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 Specialist Contractor the full amount outstanding under the Contract or if there is no Contract, the amount due to the Specialist Contractor at the time, within 48 hours of receipt by the Customer of a written notification to do so from the Specialist Contractor. Thereafter the Specialist 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.

17. Interim payments. The Specialist Contractor shall issue interim applications for payment on the last working day of each month (the due date) commencing from the Specialist 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 Specialist Contractor before the Specialist Contractor can commence the works on site, then the Customer shall pay in full for such goods and materials as if the Specialist 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 Specialist Contractor's, supplier's or manufacturer's works or any other place, then the Specialist 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 Specialist Contractor shall within one month of the date of the practical completion of the works (the due date) issue a final application for payment.

18. Notification of payment. The Customer shall within 5 days of the due date, inform the Specialist Contractor in writing of the amount of the payment due and the basis on which the amount has been calculated. Payments shall not be subject to retention unless stated in the Contract.

19. Failure to make a payment in accordance with the provisions of Clauses 17 and 18 of these Conditions shall allow the Specialist 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 18, 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 Specialist Contractor to do so, the Customer shall be taken to have repudiated the Contract with all outstanding amounts owing to the Specialist Contractor becoming due as a debt.

20. Binding contract terms. 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.

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

22. Insolvency. 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 Specialist Contractor to determine the Contract at any time after it comes to the notice of the Specialist Contractor.

23. Adjudication. Should any difference or dispute arise at any time between the Specialist Contractor and the Customer relating to the Contract or any works carried out by the Specialist 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.

24. English Law. The proper law of this Contract or if there is no Contract any dispute arising from the carrying out of the works, shall be English Law.

