

## Terms and Conditions

### General

1. Any order based on or resulting from this or any other quotation or tender given by Lubet Engineering ("the Company") shall be deemed to incorporate these Terms and Conditions unless specifically otherwise agreed by the parties in writing. All standard terms or conditions of the person, firm or company for whom this quotation or tender is prepared or to whom it is addressed or whoever accepts the quotation or tender or whoever otherwise enters into this contract ("the Employer") or any other terms or conditions appended to or forming part of any order or request shall be deemed to be Null and Void and no terms or conditions other than those expressed herein shall be incorporated into this Contract unless expressly agreed to by the Company in writing.

1.1 In some instances, alternative Terms and Conditions exclusively for Clause 10 and Clause 12 may have been previously agreed in writing, said alternative Terms and Conditions will take precedent over Clause 10 and Clause 12 in these Terms and Conditions only if:

1.1.1. A copy of the alternative Terms and Conditions are available; within any expiration date noted on the terms and signed by the Company and the Employer in writing.

### Operation

2. The Company shall with due diligence and in a good and workmanlike manner carry out the works stated in the Contract documentation ("the works") in accordance with the Contract documentation.

### Time

3. Any time stated in the Contract for the carrying out or completion of the works shall be the Company's best estimate only and it is hereby agreed that time shall not be of the essence of this Contract and the Company shall not be liable for any loss consequent upon any delay in commencing, carrying out or completing the works. However, the Company shall use reasonable endeavours to perform within the time estimated. Any delivery dates given by the Company are subject to amendment due to strikes, lock-outs or any other cause beyond the reasonable control of the Company.

### Delay by Employer

4. In the event of the Employer or other trades on site delaying the commencement, progress or completion of the work for any reason which is beyond the reasonable control of the Company, the Employer shall be liable for any loss or expense suffered or incurred by the Company by reason of such delay.

### Protection of Works

5. The Employer shall take all reasonable steps to protect any works carried out and any materials delivered to the site from damage or loss from any cause including damage or loss caused by other persons working on the site.

### Access & Safety of Site

6. The Employer shall ensure that the site, where the works are to be carried out (hereinafter called "the Site"), is sufficiently and adequately clear and accessible to the Company in all aspects of the carrying out of the works. The Employer shall ensure that the Site is free from hazardous items and substances.

### Working Hours

7. The works shall be carried out during normal working hours unless otherwise agreed by the parties in writing.

### Services

8. The Employer shall provide free of all charge or cost to the Company all light, heat, power and water as shall be necessary for the carrying out of the works.

**Environmental Protection**

9. Where the quotation includes the removal of waste, it shall not include the removal of any waste that is defined as hazardous under the Environmental Protection Act 1990 or any re-enactment thereof.

**Payment**

10. These payment terms have to comply with legal requirements, we apologise if they seem complicated.

10.1 Where the contract period is one calendar month or less, all invoices submitted by the Company to the Employer shall be due for payment within 30 days (the "Due Date" for payment) from the date of invoice and must be paid not more than 7 days later (the "Final Date" for payment).

10.2 Where the contract period is more than one calendar month, payment for the works will be broken down into calendar monthly instalment periods and invoicing and payment will be as follows:

10.2.1. Interim Payments: at the end of each calendar month the Company will submit an invoice for the value of the work carried out, including materials and anything else payable, during that month. The Due Date for payment of any such invoice shall be 30 days from the date of the invoice. The Final Date for payment of any such invoice (which is the date by which it must have been paid) shall be 7 days after the Due Date for payment.

10.2.2. Final Payment: when the works are completed, the Company will submit an invoice for the final payment. The Due Date for payment of the final invoice shall be 30 days from the date of the invoice. The Final Date for payment of the final invoice (which is the date by which it must have been paid) shall be 7 days after the Due Date for payment.

10.2.3. The Due Dates and Final Dates for payment under this clause 10 do not apply to any payment under Clause 25

The following clauses 10.3 to 10.5 do not apply to residential occupiers:

10.3 In respect of each interim invoice and the final invoice under clause 10.2 the Employer must give a notice to the Company not later than 5 days after the Due Date for payment (stated in clauses 10.2.1 and 10.2.2). The notice must state the amount that the Employer considers to be or has been due to the Company at the Due Date for payment and the basis on which that amount is calculated (a "Payment Notice"). A Payment Notice must be given in respect of all invoices. If the Employer is unsure about this notice, the Company would be please to assist.

10.4 If the Employer fails to give a Payment Notice to the Company in accordance with Clause 10.3, the amount to be paid by the Employer shall, subject to any Pay Less Notice given under Clause 10.5. be the amount specified in the interim invoice or final invoice as the case may be.

10.5 If the Employer intends to pay less than the amount stated as due from him in the Payment Notice or interim invoice or final invoice as the case may be, then the Employer must give a notice to the Company no later than 2 days before the Final Date for payment specifying the amount that he considers to be due to the Company at the date the notice is given and the basis on which that amount has been calculated (a "Pay Less Notice").

**Set Off**

11. The Employer shall not have the right to set off any sums payable or due under this contract or any other contract with the Company.

**Interest**

12. If any sums are not paid in accordance with the payment provisions herein the Employer shall pay to the Company interest on such sums for so long as they shall remain or have remained unpaid such interest to be calculated at 8% over the base rate of the National Westminster Bank Plc from time to time, per annum, or (at the Company's election) the rate of interest specified under the Late Payment of Commercial Debts (Interest) Act 1998 calculated from the Final Date payment until payment, together with any further amount payable pursuant to the said legislation.

**Suspension of the Works**

13. The Company shall be entitled to suspend the carrying out of the works or any part thereof and/or performance of any obligation of the Company under the Contract if any payment shall not have been paid in full, including any V.A.T. properly payable, by the Final Date for payment (in accordance with clause 10.2.1, 10.2.2 or 10.2.3 as the case may be). The Company shall give to the

Employer written notice of such intention to suspend the carrying out of the works or part thereof and/or performance of any obligation, specifying the grounds for such intention, not less than 7 days prior to the commencement of the suspension. In the event that the works or any part of them are recommenced after being so suspended, and/or performance of any obligation is re-commenced, the Company shall have the right to amend any completion date or time stated in the contract for the carrying out or completion of the works. In addition, the Employer shall be responsible for and shall pay to the Company any costs and expenses incurred by the Company by reason of the suspension of the work or part thereof and/or performance of any obligation. This provision shall not affect the Company's other rights in the event of late or non payment by the Employer.

#### **Additional Work**

14. The Company shall be entitled to charge extra for any work and/or materials which were not reasonably foreseeable by the Company on entry into the Contract, or for any variation to the works and/or materials, or additional work and/or materials which may be requested by the Employer. Any work and/or materials which are not already included in the quotation shall be deemed additional and shall be subject to an additional quotation by the Company and written order/variation order from the Employer. The Company shall not be obliged to carry out such works unless such quotation is provided and order/variation order received.

#### **Title To Goods And Materials**

15. Title to all goods and materials delivered to the site shall remain vested in the Company until such time as full payment has been made for the same by the Employer. Until full payment has been received the Employer shall be fully responsible to the Company for the safekeeping of any such goods and materials in the Employer's possession and the Company shall have the right to enter the Employer's site or premises to recover any such goods and/or materials. The Employer shall have a fiduciary obligation to the Company and in the event of re-sale of the said goods and materials by the Employer the proceeds of such re-sale shall be kept separate and identifiable and the entitlement of the Company shall attach to the proceeds of the said re-sale.

#### **Design Responsibility**

16. The Company's design responsibility shall be limited to items designed wholly by the Company. Replication and modification of existing designs, systems and components in a like-for-like manner are done so under the direction of the Employer. The Company will not be liable for un-satisfactory performance, design errors or any loss associated with the above replication and modification work.

16.1 In so far as any design of the Works or any part thereof is to be carried out by the Company including any design which the Company is to carry out as a result of additional works, the Company shall have in respect of any defect or insufficiency in such design the like liability to the Employer, whether under statute or otherwise, as would an architect or, as the case may be, other appropriate professional designer holding himself out as competent to take on work for such design who, acting independently under a separate contract with the Employer, had supplied such design for or in connection with the Works where the Works are carried out by a building contractor not being the supplier of the design.

#### **Manufacturer's Recommendations and Warranties**

17. Materials and goods supplied by the Company shall be installed, operated and maintained in accordance with the manufacturer's recommendations. The materials and goods itemised within the quotation are subject to the terms & conditions of any warranties offered by the suppliers or manufacturers.

#### **Insurance**

18. The Company's standard public liability policy provides for an Indemnity limit of £5 million. If the Employer requires the Company to provide public liability insurance cover in excess of that limit, any additional policy premiums and administrative costs shall be paid by the Employer.

**Indemnity**

19. The Employer shall be responsible for and hereby agrees to indemnify and keep indemnified the Company against any claim, liability, expense, cost, damage or loss whatsoever arising under any Statute or at Common law in respect of any/all of the following:

- i) personal injury to or the death of any person whomsoever
- ii) loss of or physical damage to any physical property whatsoever arising out of or in the course of or in connection with the carrying out of the works under this Contract, unless due to the negligence or breach of the Company or any person for whom the Company is responsible.

Notwithstanding the above provisions of clause 18, the Company shall take out and maintain for the necessary period contractor's all risks insurance in respect of the works unless it is stated in the Company's Quotation that the Employer shall take out such insurance in which case the Employer shall take out and maintain such insurance for the necessary period.

**Professional Indemnity Insurance**

20. Where the Company is carrying out design work, the Company shall:

- i) forthwith take out (unless he has already done so) a Professional Indemnity insurance policy with a limit of indemnity of the type and in an amount not less than £2,000,000.00 (Two Million British Pounds);
- ii) Provided it remains available at commercially reasonable rates and terms, maintain such insurance at all times until 6 years after the date of Practical Completion of the whole of the Works; and
- iii) as and when reasonable requested to do so by the Employer, send to the Employer documentary evidence that such insurance has been effected and/or is being maintained.

**Retention**

21. The Company does not accept the deduction of retention unless the Company specifically agrees with the Employer that retention will be deducted. Where retention is deducted the following will apply:

- i) the Employer's interest in the retention is fiduciary as trustee for the Company (but without obligation to invest);
- ii) the Employer shall, if the Company so requests at any time, place any retention withheld by the Employer in a separate banking account and inform the Company in writing that the retention has been so placed.
- iii) The Employer shall be entitled to the full beneficial interest in any interest accruing on the separate banking account and shall be under no duty to account for any such interest to the Company.

**Liability For Damages**

22. The Company shall not in any circumstances be liable for any damages, whether liquidated or not which exceeds an amount equal to 50% of the value of the works.

**Safety**

23. The Company will provide risk assessments and a method statement in which a proposed safe method of working will be described. This statement will be incorporated into the Contract documents.

**Termination**

24. Either the Employer or the Company may forthwith terminate the Contract in the following circumstances:-

- i) In the event of the other Party becoming insolvent, bankrupt or making a composition or arrangement with its creditors or having a winding-up order made or a resolution for voluntary winding-up made (except for the purpose of reconstruction) or a Receiver, Manager or Liquidator appointed. The Contract may be reinstated and continued if both the Parties, Trustees in bankruptcy, Receiver, Manager or Liquidator as the case may be shall so agree and a suitable guarantee as to payment/performance given to the terminating Party.
- ii) In the event of any material breach of the Contract by the other Party

24.1 The Company may forthwith terminate the Contract in the following circumstances (in addition to the provisions of Clause 24 (i) & (ii)):-

- i) In the event that the Company has been entitled to suspend the works or part thereof under the Contract for a period of 21 days (whether or not the works or part thereof were actually suspended)
- ii) In the event that the Employer or anyone for whom the Employer is responsible interferes with or obstructs the carrying out of the works or fails to make the site available for the Company to carry out the works or fails to remove any hazardous items or substances from the Site (not being hazardous items or substances brought to the Site by the Company).
- iii) In the event of failure by the Employer to comply with the provisions of Clause 26.

#### **Sums Payable upon Termination by the Company**

25. In the event that the Contract is terminated by the Company all sums under the Contract including any extras shall be immediately due and payable without any deduction or set off of any kind. For the purposes of this clause the Due Date for payment of such sums shall be the date of termination and the Final Date for payment shall be 4 days after the Due Date.

#### **Anti-Corruption and Bribery**

26. The Company is committed to zero tolerance in relation to corruption and bribery. The Company's anti-bribery policy is available on request.

26.1 The Employer undertakes to the Company that:

- i) It has not engaged in any corrupt activity and it will use reasonable due diligence to ensure that its Directors, officers; and employees have not and shall not engage in any corrupt activity,
- ii) It will use reasonable due diligence to ensure that its directors, officers and employees have not and will not act or conduct themselves in any manner that would constitute a breach of the Bribery Act 2010.

26.2 The Employer shall indemnify and hold harmless the Company from and against any loss, damage, expense, costs or other liabilities suffered or incurred by the Company as a result of the breach by the Employer or by any person for whom the Employer is responsible of the undertakings contained in this clause 26.

#### **Adjudication and Arbitration**

27. English Law shall be the proper law of the Contract and all claims under or in connection with the Contract shall be settled by reference to the English legal system.

27.1 If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with this clause. For the purposes of Adjudication pursuant to the Housing Grants, Construction and Regeneration Act 1996(a) as amended by the Local Democracy, Economic Development and Construction Act 2009, The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 Part I shall apply and the nominating body is hereby specified as The Royal Institute of Chartered Surveyors.

#### **Third Parties**

28. The Parties hereby confirm that notwithstanding any other provision of this Contract the Contract shall not and shall not purport to confer on any third party any right to enforce any term or condition of the Contract for the purposes of the Contracts (Rights of Third Parties) Act 1999. Any Terms and Conditions provided to us by you will be superseded by these terms and Conditions.