

TERMS & CONDITIONS OF TENDER / ESTIMATE / QUOTATION / WORKS

DEFINITIONS

Contractor: Cube Construction (Southern) Limited trading as Spiller Builders.

Employer: The person or company for whom the works are being carried out as detailed overleaf, or elsewhere.

Works: Only those works as described overleaf and as detailed in the Contract Documents specified overleaf.

Contract Documents: This document and any further documents and/or plans as detailed overleaf.

Conditions: These standard conditions of contract and any specific terms and conditions detailed in the covering letter overleaf which in the event of conflict shall take precedence over these conditions.

Tender: The offer to carry out the Works for the Price as detailed in the estimate and/or quotation and/or letter provided, subject to the Conditions.

Price: The sum or sums of money specified overleaf to be paid to the Contractor in consideration for its performance of the works, subject to the Conditions.

TENDER

2.1 This Tender constitutes an offer open for acceptance for a period of 8 weeks from the date of this letter, unless otherwise withdrawn.

2.2 The Contractor reserves the right to amend the Price should the required commencement date for the Works be after a period of 8 weeks from the date of this letter.

2.3 Unless otherwise stated the price is exclusive of VAT, and VAT shall be levied at the standard rate prevalent at the date of each invoice.

2.4 Unless otherwise specified, credit has been allowed for any materials removed to allow the execution of the work.

2.5 Unless otherwise stated in the Tender any/all excavations are deemed to be in normal soil and not exceeding a depth of 1.00m. Any variation thereto to be dealt with as per Section 6 of the Conditions.

2.6 Allowance has only been made for those works as specifically detailed within the Tender. Any additional or subsequent works will be dealt with in accordance with Section 6 of these conditions. Unless otherwise stated allowance has been made for construction, finishes and details in their simplest form.

2.7 The Tender as detailed overleaf, unless otherwise stated, is based upon the Contractor's visual inspection and assessment of the works as directed by the Employer and/or their agent. As such it is possible that further works may be necessary in order to satisfactorily complete the Works as and when works have been opened up/exposed. Any additional/subsequent works will be dealt with in accordance with Section 6 of these Conditions.

CONTRACTOR'S OBLIGATIONS

3.1 The Contractor shall carry out and complete the Works in accordance with the Contract Documents using reasonable skill and care and materials, so far as procurable, and workmanship of a satisfactory quality and as described in the Contract Documents.

3.2 The Contractor shall comply with all statutory requirements in force as at the date of the tender. Any change to statutory requirements after the date of contract formation which may affect in any way the Works shall constitute a variation as per the Conditions.

3.3 The Contractor shall throughout the contract period adequately protect the works and maintain the site in a clean and tidy condition removing all excess materials, plant and facilities upon completion.

3.4 Defects which exist at or may appear within three months from the completion / occupation of the Works if proved to arise from workmanship or materials not in accordance with the Contract Documents will be made good by the Contractor at his own costs provided a notice in writing of such defects was given to the Contractor before the expiry of that three month period.

EMPLOYER'S OBLIGATIONS

4.1 The Employer shall make payments to the Contractor strictly in accordance with the Conditions.

4.2 The Employer shall provide continuous and unhindered access to all areas of the site as is reasonably necessary for the Contractor to carry out and complete the Works.

4.3 The Employer shall provide, free of charge. Water, electricity, gas, oil, welfare, facilities and storage as is reasonably necessary for the Contractor to carry out and complete the works.

4.4 The Employer shall be responsible for and shall ensure that all valuable items, together with all or any items that could be damaged or contaminated by the Works are removed from the working areas/or are adequately protected, until such time that the Works are to be performed, but no liability is accepted by the Contractor for the ingress of any such dust.

COMMENCEMENT AND COMPLETION

5.1 The Contractor shall commence the works on the date detailed overleaf or as otherwise may be agreed by the parties.

5.2 The Contractor shall carry out and complete the Works within a reasonable time, unless a completion date is otherwise agreed.

5.3 Where a completion date is agreed, that date will be extended by a reasonable period in the event that the Works are delayed for any reason beyond the Contractor's control, including but not limited to variations and/or delay caused by statutory undertakers.

INSTRUCTIONS AND VARIATIONS

1.1 The Employer may issue reasonable instructions including ordering of any variation to the works and the Contractor shall forthwith comply with the same save where the Contractor considers such instructions to be unreasonable and the Contractor has so notified the Employer of this objection in writing. Any disagreement as to the reasonableness or otherwise of any instruction shall constitute a dispute.

6.2 No instructions for variations by the Employer shall vitiate this contract.

6.3 Any variations to the Works either by way of additions, omissions or change shall be valued in accordance with the valuation procedure below as work proceeds and such valuations shall be incorporated into the next following interim payment and/or final account:-

(i) A lump sum price for any variations may be agreed in advance. Such a price will not include for any loss and/or expense incurred by the Contractor which will be claimed separately, as per Section 8 of the conditions.

(ii) Failing the agreement in advance of any lump sum prices, variations, excluding claims for loss and expense which shall be claimed as per Section 8 of the Conditions, will be recorded and valued on a day works basis, as follows:-

Unskilled operatives: £20.00 per hour

Tradesmen: £25.00 per hour

Electrician /Plumber £35.00 per hour

Materials, Plant & Sub Contractors: Cost plus 33%

Scaffolding Cost plus 33%

1.4 The Employer may issue oral instructions but only to the designated site contracts manager, and such will constitute a valid instruction in accordance with this contract and the Contractor shall record and notify the Employer in writing of any such oral instruction within subsequent interim valuations/applications/final account.

7. PAYMENTS

7.1 Where the contract period exceeds a period of two weeks from the commencement date to completion the Contractor shall be entitled to issue interim invoices.

7.2 The Contractor shall retain title to all material delivered onto the site whether or not incorporated into the Works until payment for the same is received by the Contractor in full.

7.3 Following completion of the Works the Contractor shall prepare and submit a final account in which all variations shall be accounted for.

7.4 All interim invoices and the final account shall become due for payment upon the date of issue, the final date for payment being 7 days thereafter.

7.5 Should the Employer fail to make full payment due by the final date for payment then the Employer shall pay to the Contractor compounding interest on the overdue sum at 8% over the base rate as is applicable at that time until such payment is made, such interest sum being immediately due to the Contractor as a debt. Payment of interest due as above shall not be construed as a waiver by the Contractor of his right to proper payment in accordance with the Conditions.

7.6 Without prejudice to the above if the Employer fails to make any payment due by the final date for payment then the Contractor may forthwith suspend the performance of his obligations under this contract until such payment is made in full. This right of suspension is without prejudice to any other rights arising by way of this contract or common law.

7.7 Where payment is not received in accordance with the Conditions, the Contractor reserves the right to refer the account to a credit collection agency and any costs incurred in collecting the account will be added to the account for recovery. This provision is without prejudice to any other rights or entitlements as may exist through these Conditions, Common Law or Statute.

8. LOSS AND EXPENSE

8.1 If the Contractor's normal sequence of operations is in any way delayed or disrupted through compliance with the Employer's instructions or any other reason beyond the control of the Contractor, then the Contractor shall be entitled to recover any loss and expense so caused. Any claim for loss and expense is to be accounted for in the Contractor's interim invoices and/or final account.

INSURANCE

9.1 The Contractor shall be liable for and shall indemnify the Employer against any expense liability, loss or proceedings howsoever arising under any statute or common law in respect of personal injury to or death of any person whomsoever arising out of or in the course of or caused by the carrying out of the works except to the extent the same is due to any act or neglect of the Employer or any person for whom the Employer is responsible.

9.2 The Contractor shall be liable for and shall indemnify the Employer against any expense liability loss claim or proceedings in respect of any loss injury or damage to any property real or personal (other than loss detailed in 9.3 below) insofar as such loss injury or damage arises out of or in the course of or by reason of the carrying out of the works and to the extent that the same is due to any negligence breach of statutory duty omission or default of the Contractor his servants agents or any person employed by the Contractor in connection with the works.

9.3 The Employer shall be liable for and indemnify the Contractor against any loss or damage to any existing structures (together with the contents owned by him or for which he is responsible) and to the Works and all unfixed materials and goods delivered to, placed upon or adjacent to the Works by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing water tanks, apparatus or pipes, earthquake, aircraft, and other aerial devices or articles dropped therefrom, riot and civil commotion.

9.4 Without prejudice to either parties' obligations to indemnify the other as detailed above, both the Employer and the Contractor shall take out and maintain such insurance in respect of the liabilities referred to above and shall maintain the same as is necessary to comply with its obligations under the Conditions.

10 DETERMINATION

10.1 If before completion of the Works the Contractor shall remain in default of any of the following circumstances 10 days after a receipt of a formal written notice from the Employer specifying such default and requiring the Contractor to remedy the same then the Employer may, by a further written notice to the Contractor forthwith determine its employment under this contract:-

- i) Without reasonable cause, the Contractor wholly or substantially suspends the carrying out of the works: or
- ii) Without reasonable cause, the Contractor fails to proceed regularly and diligently with the works: or
- iii) The Contractor refuses or neglects to comply with a written instruction from the Employer requiring him to remove and/or to replace defective works.
- iv) The Contractor consistently fails to comply with the requirements of the CDM regulations.

10.2 If before the completion of the Works, the Employer remains in default of any of the following circumstances 10 days after receipt of a formal written notice from the Contractor specifying such default and requiring the Employer to remedy the same then the Contractor may by further written notice to the Employer forthwith determine its employment under this contract:-

- i) The Employer fails to make payment in accordance with the contract Conditions: or
- ii) The Employer or any other person for whom he is responsible, interferes with or obstructs or otherwise suspends the carrying out of the works: or
- iii) The Employer fails to comply with the requirements of the CDM regulations.

10.3 In the event of determination of the employment of the Contractor under this contract the Contractor shall with all reasonable speed remove from site all its plant, materials, facilities and goods.

10.4 In the event of determination of the employment of the Contractor then the Contractor shall thereafter produce a termination final account properly valuing the works and all variations thereto and such a sum shall become due for payment upon the date of the termination final account, the final date for payment being 7 days thereafter. Interest on late payment of sums due in accordance with the termination final account to be levied at 8% over base rate, as per Section 7.5 of these Conditions.

11 DISPUTES

11.1 Either party may at any time refer any dispute or difference arising under this contract to adjudication, said adjudication to be run in accordance with Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998, save that the adjudicator shall have jurisdiction to consider and award in the decision payment of some or all of a party's costs caused by and/or arising from the reference to adjudication and any such award shall constitute a valid part and said decision.

11.2 Subject to clause 11.1 above, any dispute or difference as to any matter or thing arising under this contract or in connection of the same arising between the parties during the progress of the Works or after completion, abandonment or determination shall be determined by legal proceedings under the jurisdiction of English Law.

12 GENERAL ITEMS

12.1 This contract constitutes the entire agreement between the parties with regard to the works and supersedes and replaces all prior communications, agreements, representations, draft documents, warranties and agreements of whatsoever nature whether oral or written between the parties.

12.2 Any notices given under this contract shall be in writing and made by Recorded Delivery.

12.3 In the event that the parties waive any breach of the conditions then such waiver shall not be construed as a waiver of any subsequent breach whether of the same or any other term or condition.

12.4 Notwithstanding any other provisions of this contract nothing in these Conditions confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

12.5 This contract shall be governed by and construed in accordance with English Law.

13. SUNDRY ITEMS

13.1 If you have provided us with architectural plans and/or drawings and our tender specifically incorporates such documents in whole or in part then such become contract documents. If you have not provided us with any architectural plans or drawings then our tender has been prepared on the basis of a visual inspection only and discussions with you. Should any changes be required to the works set out within our tender as a result of design changes, or changes in the scope, quantity or quality of the works then such will be charged as a variation. Further, if additional works are required as a result of defects or other matters being discovered during the course of the works, which could not have been reasonably foreseen from our visual inspection, then such will also constitute changes which are to be priced as a variation under the contract.

13.2 Insofar as our tender includes for the price of scaffolding then such will have been based upon a reasonable period for the carrying out and completion of the works detailed in the tender which require scaffolding. If for any reason beyond our control, including variations, the period of time included by us for scaffolding hire is extended, then an additional charge will be made as per the dayworks set out at Section 3 above.

13.3 Unless specifically identified within our tender no allowance has been made for any statutory fees or attendance nor has any allowance been made for any costs and/or fees associated with the provision of incoming services, statutory undertakers, building control, planning permissions, listed building consent, party wall notices, or any fees relating to any other professional services, included but not limited to architectural, engineering, planning etc. Any such costs or fees incurred by us on your behalf will be charged as an extra, costs as per section 6.3(ii) above, fees at cost plus 33%.

13.4 In the event that we provide any professional services, including but not limited to architecture, engineering, interior design, surveying etc, then such will be charged at cost plus 33%.

13.5 Any works carried out on a time and material basis (dayworks) will be charged at the rates set out at Section 6.3(ii) of the Conditions.

13.6 The tender may contain provisional sums (P.Sum) or prime cost sum (P.C. Sum). Such provisional figures are for work or supply items where the full extent of the work or material cost/identity to be supplied is not yet known or has not yet been agreed. When the works and/or materials have been decided upon then either a price will be agreed in advance, or failing that the price for said works and/or materials will be charged in accordance with the rates set out at Section 6.3(ii) above.

An enlarged version of our Terms & Conditions are available upon request.

E.& O.E.

May 2006