

CONDITIONS OF SALE – INSTALLATIONS

1. PERIOD OF TENDER

Unless previously withdrawn this tender is open for acceptance in writing within 30 days of the date hereof or such longer period as may be agreed in writing.

2. BASIS OF TENDER

- (a) This tender is conditional upon the Employer having supplied us with adequate drawings (where we are not responsible for design) and with such information regarding construction details and site conditions (including the availability of working and storage areas with suitable access roads, the existence of any abnormalities such as heat, fumes, dust etc.) as will enable us to make a reasonable estimate of the cost of the supply and erection of the installation and the work to which this tender relates (hereafter referred to as "the Installation") and the time for its completion. In the event of the Employer supplying inadequate or inaccurate drawings, information or details, we shall not be bound by this tender.
- (b) This tender does not include the cost of any Value Added Tax properly chargeable on the work. The net cost of any such VAT shall be reimbursed to us.
- (c) Any additional work or increase in cost (other than Tax items as defined in clause 4) shall be charged together with an allowance for overheads and profit.
- (d) Any omissions from the work or decreases in cost (other than Tax items as defined in clause 4) shall be allowed at net cost subject to a reduction for overheads and profit.
- (e) The additional cost caused by working overtime at the request of the employer shall be charged as an extra. The Employer shall make the site available for us to work overtime when we wish.
- (f) We shall be entitled to bring on to the site in advance of actual requirement any materials needed for use in carrying out the Installation and the Employer shall free of cost to us:
 - (i) make available to us adequate storage facilities for such materials and
 - (ii) be responsible for off loading and placing such materials in store.
- (g) This tender covers the items of the specification only and, unless expressly stated, does not include the following items:
 - (i) building, plumbing and electrical work or the associated works of other trades.
 - (ii) the supply and erection of scaffolding, ladders, moveable platforms, hoisting and lowering gear, necessary for placing in position and erecting plant and equipment properly on site for use on the contract.
 - (iii) the cost of operating any part of the Installation, other than attendance necessary for commissioning and testing.
 - (iv) the cost of any fuel, water or electricity used on the site.
 Any cost incurred by us in providing any of these items to be reimbursed to us, as an extra to the contract.
- (h) Any fees incidental to the work which are compulsory payable by reason of any statute, by-law or regulations are to be paid by the Employer.

3. FLUCTUATIONS

- (a) Unless expressly stated to be on a firm price basis, this tender is (subject to clause 2b) based on the following items (referred to in these conditions as the "Fluctuating Items") namely:
 - (i) the rates of wages, fares, lodging allowances, holiday credits, other allowances and expenses payable to or in respect of our workpeople, and the workpeople of our sub-contractors (if any).
 - (ii) the market price of materials (including any taxes or duties relating hereto).
 - (iii) the cost of transport (including the cost of fuel).
 - (iv) the rates of SET, National Insurance Contributions, Redundancy Fund Contributions and Graduated Pension Contributions payable in respect of our workpeople as aforesaid.
 which are current and ruling at the date of this tender.
- (b) If between the date of tender and the date of completion of the Installation there is any increase or decrease in the cost to us of carrying out the Installation caused by any change in any one or more of the Fluctuating Items or by the introduction of any new tax, statutory contribution or levy payable by us then the tender price shall be adjusted accordingly to take account of such increase or decrease, subject to clauses 2c and 2d.

4. FIRM PRICE BASIS

- (a) Where expressly stated to be on a firm price basis, this tender is (subject to clause 2b) based on the following items in these conditions (referred to as the Tax Items) namely:
 - (i) the rates of SET, National Insurance Contributions, Redundancy Fund Contributions and Graduated Pension Contributions payable in respect of our workpeople and the workpeople of our sub-contractors (if any).
 - (ii) the rates of taxes and duties payable in respect of materials, which are current and ruling at the date of this tender.
- (b) If between the date of tender and the date of completion of the Installation there is any increase or decrease in the cost to us of carrying out the Installation caused by any change in any one or more of the Tax Items or by the introduction of any new tax statutory contribution or levy payable by us the tender price shall be adjusted accordingly to take account of such increase or decrease.

5. DELAY

If for any reason beyond our reasonable control we are not able to carry out the Installation in accordance with the programme referred to in the tender, or other such programme as may be accepted by us, our time for completion shall be extended accordingly and we shall be paid as an addition to the tender price, such extra cost (including direct costs, overheads and loss of profit) as may be attributable to such delay.

Under no circumstances should we be responsible for delays due to acts of force majeure, Governmental actions, industrial strikes, war, quarantine or lack of materials and goods due to the above and/or delivery restrictions. The above list should not be considered definitive.

6. VARIATIONS

The Employer or his agent may authorise the carrying out of extra work and of variations to the Installation but we shall not be obliged to do any extra work or to make any variations until:

- (a) the same shall first have been authorised in writing by the Employer or his agent and
- (b) the value thereof has been agreed where it is reasonably possible to estimate the same. If it shall not be possible to estimate the value thereof before the extra or varied work is carried out or if the extra or varied work shall be commenced before the valuation thereof has been agreed, a fair valuation shall be made after it has been carried out. In the absence of any other agreement on the subject such extra or varied work shall be charged at its prime cost calculated in accordance with the definition of prime cost of daywork carried out under a heating and ventilating contract agreed between the Royal Institution of Chartered Surveyors and the Heating and Ventilating Contractors' Association, together with such percentage additions on the prime cost as are stated in the tender or if not so stated as are appropriate.

7. PAYMENT

- (a) We shall be entitled to be paid by instalments during the execution of the works (in accordance with terms stated in our quotation) and if any such payment is not made on the due date then without prejudice to other remedies we may suspend or abandon the work and remove materials, tools and other equipment from the site.

- (b) If circumstances beyond our control necessitate material or equipment ordered for use on this contract being retained in a completed condition at manufacturer's works, the value thereof may be charged in any following application for payments as if the same had been delivered on to the site.

8. PROPERTY IN MATERIALS AND RESPONSIBILITY FOR DAMAGE

- (a) All equipment and materials required for the Installation shall remain our property until we receive payment in full for the same, notwithstanding the fact that the equipment may be suspended or attached within a building.
- (b) Executed work and all materials on the site fixed or unfixed together with any plant, tools or equipment brought on the site in connection with the Installation shall be at the sole risk of the Employer. Subject to clause 8c hereof, if any such work, materials, plant, tools or equipment shall be destroyed, damaged or lost from any cause (unless solely caused by the negligence of ourselves or our sub-contractors) we shall be entitled to payment by the Employer in accordance with these Conditions for all such work and materials and to reimbursement in full by the Employer for all such plant tools and equipment and to charge as an extra to the contract for the restoration of any work or replacement of any materials, so destroyed, damaged or lost.
- (c) The Employer shall be solely responsible for all loss or damage to the work or to any plant, tools, equipment and unfixed materials properly on the site for the purpose of carrying out the work arising from fire, storm, tempest, lightning, flood, explosion and bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft or anything dropped therefrom, aerial objects, riot and civil commotion even if such peril was caused or contributed to by negligence by ourselves or by our Sub-contractors.

9. THIRD PART/PUBLIC LIABILITY

The Employer shall indemnify us and our employees against all claims (including the cost of any legal proceedings) for the death of or injury to any person or for the damage to or loss of any property made by any person against us or the Employer either under any statute or at common law which may arise out of or be in anyway connected with the execution of our work or the Installation except where the same is due to negligence, omission or default by ourselves or by our Sub-contractors.

10. GUARANTEE AND LIMIT OF LIABILITY

- (a) In place of any other conditions and warranties otherwise imposed or implied by statute or as a matter of law, we undertake that we will make good any defect in the Installation which is caused by our faulty design thereof or by defective or unsuitable materials or by bad workmanship if the same is brought to our attention within twelve months of the completion of the Installation provided that:
 - (i) in the case of materials or equipment supplied and fixed but not manufactured by us, the extent of our liability in respect thereof shall not exceed the extent of our liability in respect thereof shall not exceed the extent of the manufacturer's liability to us.
 - (ii) we shall not be liable to make good any defect if the Installation or any part thereof shall be operated by the Employer or his agent before it is handed over or deemed to be handed over for beneficial use nor shall we be liable for any loss or damage arising directly or indirectly as a consequence of such operation or for the cost of any extra work thereby involved.
- (b) Completion of the work shall be deemed to have occurred and the guarantee period to have commenced on the date on which we shall give notice in writing to the Employer or his agent that the Installation is ready for beneficial use. In the event of the Installation being required for the provision of temporary heat or other temporary use, the Installation shall be deemed to be complete and handed over for beneficial use and the guarantee period shall commence from the date when the operation of the Installation for that purpose shall commence with our written consent.
- (c) We shall not be liable for any loss or damage arising directly or indirectly as a consequence of any defect in the Installation except when such loss or damage is occasioned solely by ourselves or by our Sub-contractors, and we shall not be liable in respect of any defect which may occur in any previously existing installation to which the Installation may be connected.
- (d) Warranty will not apply where equipment is installed in any environment containing harmful or hazardous chemicals, and in particular if held or used in an environment containing halogenated hydrocarbons or other volatile solvents.

11. DESIGN LIABILITY

- (a) When we are responsible for the whole design of the Installation we shall be liable, subject to clause 10c hereof, for damage or personal injury resulting from any defects in the design.
- (b) When we are partly responsible for design of the Installation we shall be entitled to accept the design of the other part or parts as being without defect and shall only be
- (c) liable, subject to clause 10c hereof, for damage or personal injury resulting directly from any defects in our part of the design.

12. DRAWINGS

- (a) Where the Employer is responsible for the design of the Installation in whole or in part the employer shall provide us with adequate drawings and details to enable us to prepare installation drawings.
- (b) Unless otherwise agreed our responsibility for drawings shall be to provide the Employer with two sets of installation and record drawings.
- (c) Unless expressly stated, drawings (other than record drawings) submitted by us shall be regarded as general arrangement drawings only and shall not be binding as to detail. The copyright in any drawings submitted by us shall remain our property.

13. COMPLIANCE WITH LAW AND GOVERNMENT REGULATIONS

Acceptance of this tender constitutes a warranty and representation by the Employer that he or his agent has complied and will comply with applicable Statute, Order-in-Council, Regulation or Direction By-Law or other lawful requirement or instruction, whether of the Government or any local or other lawful authority, and in particular that he has lawfully obtained every licence, permit or authority that may be required in connection with the Installation.

14. GENERAL

- (a) The above conditions shall apply to all work covered by our tender and to all orders subsequently placed with us by the Employer or his agent in connection with the Installation.
- (b) All quotations are strictly net unless otherwise stated and do not provide for discounts.
- (c) Unless agreed by us in writing our standard Conditions of Sale as above will override customer conditions of purchase and any offer made by us is given strictly under these conditions.