

Standard Conditions for Suppliers

Agreement:

1. These Standard Conditions, the Purchase Order ("Order") and the Documents listed in the Order, together "the Sub-Contract", are to be read as a whole but nothing contained in the Documents listed in the Order shall override or modify these Standard Conditions. The Works are those works, services or goods as set out in the Order and/or the Documents listed in the Order. The Sub-Contract constitutes the entire agreement between CPS Construction Services Limited ("CPS") and the Supplier.
2. In the event that there is conflict between any of the Documents that form part of the Sub-Contract, those documents are to be read in the following order of priority:
 - 2.1 These Standard Conditions
 - 2.2 The Order
 - 2.3 The Documents listed in the Order, in the order that they appear
3. Any reference to CPS shall include those agents, project managers and/or site managers so empowered by CPS.
4. Where required for whatever reason, the Supplier hereby agrees, as a pre-condition to payment, to provide the following within 5 working days of a request for the same by CPS:
 - 4.1 A parent company guarantee (if applicable)
 - 4.2 A performance bond
 - 4.3 Any warranties required by an employer, contractor, funder or purchaser
 - 4.4 Employers' Liability insurance
 - 4.5 Contractors' All Risk insurance
 - 4.6 CDM plan or other required H & S Information
 - 4.7 Manufacturers or other warranties

Commencement & Completion:

5. Time for completion is of the essence under this Sub-Contract. The Supplier shall commence and proceed regularly and diligently to complete the Works (including supplying any goods) in accordance with the dates stipulated on the front of the Order or any extended period or periods confirmed in writing by CPS.
6. Upon it becoming reasonably apparent to the Supplier that the Works are likely to be or are in delay, the Supplier shall forthwith notify CPS in writing of the reasons and giving an estimate of the extent of such delay, and use its best endeavours to mitigate the effect of the delay. The Supplier will regularly update CPS as to the extent of such delay and/or progress.
7. The Supplier shall indemnify CPS for any loss or damage suffered by CPS resulting from any failure by the Supplier to commence, proceed regularly and diligently and/or complete the Works. The Supplier acknowledges that CPS is entitled to employ other persons to carry out and/or supplement the Works in the event that it is deemed necessary by CPS. Goods delivered late may be rejected by CPS and CPS may purchase the goods elsewhere.
8. The Supplier is obliged to notify CPS as soon as it believes the Work to be complete. The date of practical completion shall be determined by CPS, at its reasonable discretion.

The Works:

9. The Supplier shall ensure that:
 - 9.1 It has visited the physical site, has carried out a survey and is content with the site before commencing the Works; and
 - 9.2 All works are constantly supervised by a competent person in charge.
 10. Plant, equipment, tools, materials and goods brought on site by the Supplier, including those supplied by CPS, shall be at the Supplier's sole risk.
 11. Equipment, materials and goods brought on site by the Supplier for incorporation in the works and for which the Supplier has been paid, shall be the property of CPS, however, the Supplier will be responsible for insuring, protecting and transporting until practical completion of the Works.
 12. The Supplier shall provide everything, including technical information, necessary for the proper execution of the Sub-Contract Works, save for materials supplied by CPS (if any) as set out in the Order. All delivery and advice notes will quote CPS' order number.
 13. The Supplier shall have such access as is necessary to carry out the Works and acknowledges that such access will be in common with CPS, its other contractors (if any) and any other artisans and tradesmen. Repeat visits to site may be necessary and CPS cannot guarantee a clear run of work.
 14. The Works carried out by the Supplier are to be carried out to the complete satisfaction of CPS and in accordance with any specification, current codes of practice and British and ISO Standards.
 15. The Supplier shall not assign or dispose by way of trust or other mechanism the benefit or burden of the Works, or parts thereof, without the express written agreement of the CPS.
 16. The Supplier shall indemnify and hold harmless CPS against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs, including any Health and Safety Executive fees and/or penalties) suffered or incurred by CPS arising out of or in connection with any claim made against CPS by a third party arising out of or in connection with the provision of the Works, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier, its employees, agents or sub-contractors, to the extent permitted by law.
- ## Instructions/Variations:
17. CPS has the authority to issue instructions to carry out work, which is part of the Supplier's scope of works, to omit work or to carry out additional works (variations). The Supplier shall ensure that any purported instructions by CPS are confirmed in writing by CPS. Such written confirmation shall be a condition precedent to payment.

Payment:

20. Unless expressly agreed in writing to the contrary, the works to be carried out by the Supplier are estimated to last for less than 45 days. Should the works be estimated to last longer than 45 days then any interim payments shall be made in accordance with a payment plan agreed between the parties and set out in the Order.
21. The Supplier shall render to CPS, upon completion of the Works, a VAT invoice for the Price, which is not subject to inflation, plus any variations as set out at clauses 17 to 19 above ("the Invoiced Sum"). The Invoiced Sum shall be paid within the number of days specified in the Order or if no such timescale is specified, within 30 days.
22. If the Supplier becomes insolvent or CPS has reason to think that the Supplier is or is about to be insolvent, CPS need not pay the Invoiced Sum to the Supplier.
23. The amounts referred to in these Standard Conditions are exclusive of VAT. Interest on late payments is simple interest, accruing daily, at a rate of 4% per annum over and above the current Bank of England base rate will be due. The Supplier acknowledges that this is a substantial remedy.
24. Retention may be deducted from all payments at a rate set out in the Order, or failing any such rate at 5%, until practical completion of the Works, reducing to half the retained amount upon practical completion of the Works. The remaining half shall be retained by CPS until the Defects Liability Period has expired. The Defects Liability Period is set out in the Order or failing such a period being specified, the Defects Liability Period shall be 12 months from the date of practical completion of the Works.
25. CPS may withhold, abate or set-off against any payment otherwise due to the Supplier, any sums or damages (or reasonable estimates thereof) due from the Supplier to CPS under or in connection with this Sub-Contract.
26. Payment of the Invoiced Sum less any retention and paying less/withholding/set off/abatement for defective and/or incomplete work under this Sub-Contract shall become due on the expiry of 30 days following practical completion of the work and receipt by CPS of a VAT invoice.

Termination:

27. Should the Supplier:
 - 27.1 without reasonable cause wholly or substantially suspend the carrying out of the Works, and/or
 - 27.2 fail to proceed regularly and diligently with the Works, and/or
 - 27.3 refuse or fail to remove defective work and/or materials, and/or
 - 27.4 is in breach of any clause of this Sub-Contract, and/or
 - 27.5 commits a criminal offence, and/or
 - 27.6 ceases normal trading due to actual or perceived insolvency,and the Supplier fails to redress the above for 7 days after written notice by CPS, then the Sub-Contract is terminated.
28. Termination of the Sub-Contract will result in the following:
 - 28.1 CPS may exclude the Supplier from the site and have beneficial use of the Supplier's plant and materials to complete the Works,
 - 28.2 The Supplier will not be entitled to payment of any sums due until all costs, damages, losses and expenses have been identified,
 - 28.3 CPS shall be liable to pay for works properly executed and the materials brought on site fit for incorporation in the works and which the Supplier has legal title to pass once CPS has established the costs of paying an alternative supplier to complete the Works,
 - 28.4 CPS shall be entitled to recovery of all costs, losses, damages, expenses, direct or indirect that result from the termination. The Supplier hereby agrees to CPS' legitimate right to set off.

Adjudication:

29. If a dispute or difference arises under this Sub-Contract which either party wishes to refer to adjudication, the Scheme for Construction Contracts ("the Scheme") shall apply, except, for the purposes of the Scheme, the Adjudicator shall be any person agreed between the parties, or, should the parties fail to agree, a person appointed by the President or Vice-President of the Royal Institute of British Architects or The Royal Institution of Chartered Surveyors or by the Chairman of the Technology and Construction Solicitors Association as the Referring Party may decide.

Arbitration

30. Any dispute which cannot be agreed between the parties shall, without prejudice to clause 29, be referred to arbitration, the decision of which both parties will accept as binding. Any arbitration shall be conducted in accordance with the JCT edition current at the time the Sub-Contract was entered into of the Construction Industry Model Arbitration Rules (CIMAR Rules). The parties may, by mutual agreement in writing, amend the CIMAR Rules as appropriate.
31. The Arbitrator shall be any person agreed between the parties, or, should the parties fail to agree, a person appointed by the Chartered Institute of Arbitrators or by the Chairman of the Technology and Construction Solicitors Association as the Referring Party may decide.

Severance, Jurisdiction and Non-Waiver

32. The invalidity, unenforceability or illegality of any part of this Sub-Contract under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.
33. Nothing in this Sub-Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
34. The failure by one party to require performance of any provision of this Sub-Contract shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Sub-Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

18. The parties will attempt to agree a price for the variation. If no such price is agreed, the Supplier agrees that CPS will value the work at its sole discretion acting reasonably. The Supplier hereby accepts that the basis for valuation of variations, in order of precedence, will be as follows:

18.1 Agreed fixed price,

18.2 Bill rates,

18.3 Bill rates adjusted to reflect changes in quantity, scope and nature of work,

18.4 Fair and reasonable rates based on current market rates,

18.5 Where Daywork has been approved by CPS in writing in advance, Daywork rates.

19. Should Daywork be instructed by CPS, a Daywork Sheet must be fully completed with details of date, work done, hours per man and any materials used. These must be signed by CPS. A signed Daywork sheet will be a record of work carried out and will not authorise a variation, instruction or guarantee payment. Daywork shall not be accepted if not instructed by CPS.

35. This Sub-Contract shall be governed by and construed in accordance with the law of England.