

1. Definitions

In these terms and conditions:

- 1.1. **'Company'** means the Alfred Bagnall and Sons subsidiary company, as named on the quotation and whose registered office is at Penkridge, Dyehouse Drive, West 26 Industrial Estate, Cleckheaton, BD19 4TY.
- 1.2. **'Customer'** means the person firm or Company to which the Quotation is addressed.
- 1.3. **'Quotation'** means these conditions together with the particulars and referred documents forming part of the Company's offer.
- 1.4. **'Works'** means the work as described or referred to within the Quotation and any variations thereto which may be carried out by the Company.
- 1.5. **'Contract Sum'** means the VAT exclusive amount payable to the Company for the execution of the Works adjusted for any variations and other compensatory payments mentioned herein. VAT is chargeable in addition as required by the regulations current at the relevant time. No discount is allowable unless shown in the Quotation.
- 1.6. **'Site'** means the agreed area of land and/or buildings to be occupied by the Company for the purpose of carrying out the Works.

2. General

- 2.1. The Company is entitled to continuity of work in a logical sequence without obstruction or restriction during normal working hours. If for any reason beyond the Company's control such continuity is broken or the Site working hours are restricted in any way or if overtime is required to recover lost time for such reasons, the Company shall be entitled to reimbursement from the Customer of any additional costs and losses so caused. The Company's normal working hours are 08.00 to 16.00 hours Monday to Thursday inclusive and 08.00 to 16.00 hours on Friday.
- 2.2. The Customer may, without invalidating the Contract, instruct a variation to the Works. The valuation of a variation instructed by the Customer shall be agreed prior to the Company being obliged to undertake the additional works as instructed. Where no price is agreed, and the Company undertakes the work at their discretion, the varied work shall be valued on a daywork basis using the Company's current schedule of daywork rates.

3. Commencement and completion

- 3.1. The Works will be commenced and completed within a reasonable time after the acceptance of the Quotation or, if there is a period or periods agreed in writing for the execution of the Works, within the period(s) so agreed.
- 3.2. The Company shall not be responsible for, and no liability shall accrue to the Company for delays in the completion of the Works due to causes beyond its control. Where a period for performance is agreed in accordance with 3.1, the Company will be entitled to an extension of time for any delays due to causes beyond the control of the Company and for any suspension brought about under clause 4.5.
- 3.3. If the Company is delayed or disrupted in the execution of the Works due to any acts or omissions of the Customer, his servants, agents or other contractors appointed by him, then the Company shall be entitled to reimbursement from the Customer of any additional loss and or expense arising from such delay or disruption.
- 3.4. If the Company fails to complete the Works within the period for performance and such failure is not attributable to matters referred to in 3.2 and/or 3.3, the Company will not be liable for any loss, expense, cost or liability incurred or sustained by the Customer unless an agreed rate of liquidated damages forms part of this contract. Such rate will be deemed to be inclusive of all the Customer's losses, expenses, costs and liabilities attached to any such delay. In any event, the total amount of liquidated damages (if agreed) that can be claimed by the Customer shall not exceed an amount which is equivalent to 10% of original tender sum as included in the Quotation.

4. Payment

- 4.1. If the Works are to be undertaken over a period in excess of 4 weeks from the commencement of the Works, the Company will be entitled to stage payments. In circumstances where the Works are to be completed in a period up to 4 weeks then the Company will issue an invoice upon completion of the Works.
- 4.2. Where the Company is entitled to stage payments they shall be issued at intervals of not less than four weeks calculated from the date of commencement of the Works. The interim invoice for payment shall indicate the value of work performed together with the value of any unfixed materials delivered to the Site and any other sum to which the Company is entitled under these conditions, less any previous payments. The date of such invoice is the due date.
- 4.3. The final date for payment of the notified sum shall be 30 days from the due date.
- 4.4. After completion of the Works the Company shall submit a final invoice for payment indicating the total value of work executed and any other amounts to which the Company is entitled under these conditions, less any previous payments. The due date for this final invoice is the date the invoice is made and the final date for payment is 30 days after the due date.
- 4.5. If the Customer fails to make payment by the final date for payment, the Company, subject to giving 7 days' notice, shall be entitled to suspend the execution of the Works. The Company shall not be obliged to re-commence the execution of the Works until the Customer has made payment of any of

the amount due in full. The Company will be entitled to reimbursement from the Customer of any additional costs and losses so incurred as a result of such suspension.

5. Risk

- 5.1. The risk of damage or loss in unfixed materials shall pass to the Customer immediately on delivery to the Site. Unfixed materials that have been delivered to site shall remain the property of the Company including the right to dispose thereof, until the Company has received payment in full in respect of those materials.
- 5.2. The risk of damage to materials incorporated into the Works and the cost of replacement or repair of such materials lies with the Customer, except where such damage is caused by the negligence of the Company.

6. Statutory requirements, fees and charges

- 6.1. The Customer shall be responsible for obtaining all statutory consents, permissions and approvals necessary for the execution of the Works unless otherwise expressly stated in the Quotation.
- 6.2. All fees and charges paid by the Company in compliance with statutory requirements applicable to the Works will be reimbursed by the Customer which will be in addition to the Contract Sum.

7. Insurance

- 7.1. The Customer shall insure against loss or damage arising from any cause whatsoever to the Works and unfixed materials and any existing structures together with all contents.
- 7.2. If any loss or damage as referred to in 7.1 occurs, the Customer shall issue instructions for the reinstatement and making good of such loss or damage as a variation and such instructions shall be valued under 2.2.

8. Existing structures and attendances

- 8.1. If during the execution of the Works the Company encounters unforeseen conditions or obstructions of any kind which result in the incurrance of additional costs and losses by the Company, then such additional costs and losses shall be paid by the Customer to the Company.
- 8.2. All water and power required for the execution of the Works will be provided free of charge by the Customer to the Company.

9. Exclusions

- 9.1. Unless stated in the Quotation the following work, facilities, attendances, etc are excluded from the Works: providing electrical power supplies; fixed scaffolds or other access systems; safety lighting; removing waste from site; skips; providing a performance bond; acting as Principal Contractor in connection with CDM Regulations.

10. Termination

- 10.1. Any breach whatsoever of these conditions by the Customer shall entitle the Company to terminate its employment forthwith.
- 10.2. If the Customer shall become bankrupt or have a Receiver or Administrator appointed or go into liquidation or have a receiving order made or make a composition with its creditors, then the Company may by written notice terminate its employment forthwith.
- 10.3. In the event of termination under 11.1 the Company, in addition to the value of the work executed and the amount of any other monetary entitlement under these conditions, shall be entitled to be reimbursed any loss of profit on the unexecuted work and any other additional costs and losses arising from such termination.
- 10.4. If for whatever reason the employment of the Company is terminated, the Customer hereby agrees to permit the Company entry to the Site to retake possession of its unfixed materials, plant and equipment.

11. Limit of Liability

- 11.1. Insofar as the applicable law permits the Company's liability for any matter that is its risk under the contract shall be no greater than 10% of the tender sum as included in the Quotation.

12. Applicable Law

- 12.1. This agreement is subject to the law of England and Wales.

13. Dispute Resolution

- 13.1. If a dispute arises under this Contract, the Senior Representatives of the Parties to this contract shall meet in good faith in an attempt to resolve the dispute. If the Senior Representatives cannot resolve such dispute within 10 days, then the dispute shall be referred to Managing Directors of the Customer and Contractor who shall meet in good faith in an attempt to resolve the dispute within a further 10 days.
- 13.2. However, either party, at any time, may refer any dispute arising under or in connection with the Contract to Adjudication in accordance with Part I of the Scheme for Construction Contracts (England and Wales) Regulation 1998 (Amendment) (England) Regulation 2011.
- 13.3. The Adjudicator shall be nominated by the President or Vice President of the Royal Institute of Chartered Surveyors.
- 13.4. All disputes arising under or in connection with the Contract shall be finally decided by litigation.