

Standard Conditions of order (Scottish Law)

1.0 General Conditions

- 1.1 In these Conditions the following expressions shall have the following meanings:
- (a) 'the Contractor' means BAM Construction Ltd as identified in the Order;
 - (b) 'the Employer' means the person or company with whom the Contractor has contracted to carry out the works of construction;
 - (c) 'the Goods' means all or any part of the materials articles and things of all kinds to be supplied by the Supplier;
 - (d) 'the Main Contract' means the agreement entered into between the Contractor and the Employer under the terms of which the Contractor has agreed to carry out works of construction;
 - (e) 'the Order' shall mean the Contractor's official order in the Contractor's standard form current for the time being giving full particulars of the Goods to be supplied and delivered;
 - (f) 'the Site' means the place or places at which the Goods are to be delivered in accordance with the Order.
- 1.2 These Conditions shall form the basis of the contract between the Contractor and the Supplier. Notwithstanding anything to the contrary in the Supplier's standard conditions or in any tender, quotation, advice note, invoice, acknowledgement, letter, confirmation of order or any other document issued by the Supplier, these conditions shall prevail except in so far as expressly agreed in writing by the Contractor. No servant or agent of the Contractor has the authority to vary these conditions orally. If the Supplier shall not previously have accepted these conditions, then delivery by him or payment for the Goods by the Contractor, whichever is earlier, shall constitute acceptance. These general conditions shall be subject to such further special conditions as may be stated in writing by the Contractor and accepted by the Supplier. In the event of any conflict, or apparent conflict between the special conditions and these general conditions, the special conditions shall prevail.
- 1.3 The Supplier shall be deemed to have notice of all the provisions of the Main Contract (except those that relate to rates or prices. The Supplier may inspect the Main Contract by appointment at the Contractor's Registered Office.
- 1.4 The Supplier shall supply and deliver the Goods at the price or prices specified in the Order. Such price or prices shall be deemed to cover all the Supplier's obligations under the Order.
- 1.5 Any breach by the Supplier of any terms of the Order, either as regards time of delivery or otherwise shall (whether the Contractor has accepted the goods or any part thereof or not and whether the property in the goods has passed to the Contractor or not) entitle the Contractor at his option either to treat the Order as repudiated or to treat any such breach as a breach of warranty giving rise to a claim for damages.
- 1.6 No variation in price will be accepted by the Contractor unless the Supplier has given notice to the Contractor of such variation and obtained the Contractor's written approval thereto prior to execution.
- 1.7 The Supplier will insure the Goods against Employer's Liability and all Third Party Risks, and produce receipts for premiums when called on and indemnify the Contractor and the Employer together with the Architect, Engineer or Employer's Agent against all claims. This clause is also applicable to any road transport or other vehicles hired from the Supplier by the Contractor for use in the Contractor's service.

2.0 Specification

- 2.1 The Goods shall comply in all respect with the specifications provided in the Order and with any statements or undertakings made by the Supplier, or by his servants or agents, prior to the giving of the order. The Supplier undertakes that all goods and services supplied by him shall be new and of the required quality and fit for the purpose or purposes for which they are intended. The Supplier recognises that the Contractor has placed the Order relying upon the skill and expertise of the Supplier and statements and representations made by him.
- 2.2 Sections 12, 13, 14 and 15 of the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994 ('the Act') shall apply to the Order save that Section 15A of the Act shall not apply. Where Goods are supplied following approval of a sample such Goods shall be free from defects whether or not any defects would have been disclosed by examination of the sample.
- 2.3 The Goods shall be to the reasonable satisfaction of the Contractor and the Architect, Engineer, Supervising Officer or Employer's Representative (as appropriate) under the Main Contract and (unless otherwise agreed) in accordance with any relevant British Standard Specification and/or Code of Practice.
- 2.4 The Supplier will comply in every respect with the Contractor's Environmental Policy Statement current at the date of the Order.

3.0 Delivery

- 3.1 The Goods are to be consigned 'Carriage Paid' whatever the mode of transit and whether or not the cost of carriage constitutes an extra to the Contract rate or sum and the goods are to remain at the Supplier's risk as regards deterioration, damage or loss until they are actually delivered to and accepted by the Contractor. The acceptance of the Order by the Supplier constitutes a warranty that if the goods are carried in any road transport vehicle or vehicles such vehicles are properly licensed under the Road Traffic Acts and Regulations for the time being in force.
- 3.2 It is a condition of the Order that a Delivery Ticket giving detailed particulars of the Goods shall accompany each consignment irrespective of the mode of transit. Advice Notes of Despatch are to be sent (in duplicate) to the Site.

- 3.3 No receipt of goods delivered under the Order will be recognised unless it bears the clear signature of the appointed responsible BAM Construction Ltd employee.
- 3.4 If the instructions in clauses 3.1 to 3.3 regarding delivery are adhered to by the Supplier, the Contractor undertakes to advise the Supplier of any shortage, loss or damage within 14 days and in the absence of a proper Credit Note the Contractor reserves the right to deduct the value thereof from any monies due to the Supplier.
- 3.5 Where Goods have been exported from their country of origin to the United Kingdom, export packaging must be suitable to stand rough handling and, if necessary, it must have additional waterproof protection in order to stand sea atmosphere.

4.0 Indemnity

- 4.1 The Supplier shall indemnify the Contractor against any action, claim, demand, costs, charges or expenses arising directly or indirectly in connection with the purchase, use, functioning or state of the Goods or their incorporation into any Works. The Supplier shall indemnify the Contractor against any action, claim, demand, costs, charges or expenses arising out of or in connection with any infringement or alleged infringement of any letters patent, registered design, trade mark or trade name by reason of the Contractor's use or sale of the Goods.

5.0 Health & Safety

- 5.1 The Supplier's attention is drawn to its responsibilities under the Consumer Protection Act 1987 the Health and Safety at Work etc Act 1974 and all other relevant health and safety legislation. The Supplier must comply fully with these responsibilities in respect of the Goods supplied and keep the Contractor indemnified against all claims and liabilities arising from any breach of them.
- 5.2 Substances, materials and products which may contribute a hazard to health, as defined by the Control of Substances Hazardous to Health Regulations 1999, must be accompanied to the point of delivery by the hazard data information sheet that is relevant to the substance, material or product and its use, handling or storage. In addition the Supplier will provide, immediately following the Contractor's request, any other supporting documentation for the substance, material or product that the Contractor may require.

6.0 Payment

- 6.1 Where goods are subject to VAT the Contractor shall pay the amount of VAT properly chargeable and rendered as a separate item of account, or if applicable, the Supplier shall produce bona fide evidence of the amount paid or to be paid by him in respect thereof.
- 6.2 If the Contractor fails to pay any amount properly due to the Supplier by the final date for its payment the Contractor shall pay in addition to the amount not properly paid interest thereon for the period until such payment is made. The rate of interest shall be two percent (2%) above the Base Rate of the Bank of England which is current at the date the payment by the Contractor became overdue.

- 6.3 In the case of goods prefabricated or manufactured or work executed especially for this Order the Contractor's liability for payment to the Supplier is limited to such amounts as the Contractor is entitled to receive from the Employer in respect of such goods or work.

- 6.4 The Contractor reserves the right to deduct from any monies due or becoming due to the Supplier the amount of any bona fide contra accounts which the Contractor may have against the Supplier for materials supplied or services rendered by the Contractor to the Supplier in connection with this or any other contract.

7.0 Drawings and manuals

- 7.1 The Supplier is to supply free of charge within five days all such accessories, tools, manuals and information as may be necessary for the proper installation and use of the Goods.

8.0 Variations

- 8.1 The Order may be cancelled or the quantity of Goods stated herein may be reduced by the Contractor at the Contractor's sole discretion. The Contractor shall not be liable to make payment whatsoever in connection therewith whether by way of compensation or for any loss or profit or otherwise in respect of or in relation to such cancellation or any reduction so caused unless and to the extent that the Contractor is entitled to secure from the Employer under the Main Contract such payment or compensation.

9.0 Property

- 9.1 The property in any Goods supplied hereunder shall pass to the Contractor upon delivery unless payment for the Goods is made prior to delivery in which case the property passes to the Contractor immediately upon payment.
- 9.2 The Supplier shall when from time to time so requested provide reasonable evidence that prior to such delivery or payment, whichever is earlier, the property in the Goods has vested in the Supplier.

10.0 Law

- 10.1 These Conditions and the Order shall in all respects be governed by and construed in accordance with Scottish Law and the parties hereby agree to submit to the jurisdiction of the Scottish Courts.
- 10.2 Notwithstanding any other provision of these Conditions 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.