

## **TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES**

### **1. DEFINITIONS**

**1.1** “Contract” shall mean this agreement between the Client and the Company for the provision of the Services together with the Schedules. The contract is held specifically with the business with which the contract is placed. Any other parent or associated company is completely removed and carries no interest or liability. For the avoidance of doubt ‘Ainscough Industrial Services Limited’ does not accept or engage in any contracts with any client at any time.

**1.2** “Charges” shall mean the charges specified in Schedule 1 together with any additions thereto or deductions therefrom agreed in writing.

**1.3** “Services” shall mean the services set out in Schedule 2.

**1.4** “Machinery” when used below means all machinery or other property provided by the Client, including, but not limited to steelwork, supports, pipework, electrical equipment, machinery and equipment, plant, cladding etc (including materials or works supplied by the Company) or dealt with pursuant to the Contract.

**1.5** “Company” shall mean only the registered contracted business to whom the order is addressed , not ‘Ainscough Industrial Services Limited’ registered company number 08447836 or any of it’s other subsidiary businesses or associated businesses. For the avoidance of doubt , Ainscough Industrial Services Limited company registration number 08447836 does not at any time engage in contracts of any time with any client and orders referring to this business will not be accepted.

### **2. MISTAKES IN INFORMATION**

**2.1** If additional costs or delay are directly occasioned by any discrepancies, errors or omissions in the information and decisions supplied to the Company by the Client, the Client shall pay any such additional costs to the Company and shall allow an extension of any time specified in Schedule 2 to complete the Services.

### **3. PREMISES AND FACILITIES**

**3.1** The Client shall arrange for or grant the Company access at all reasonable times to premises as may be necessary for the provision of the Services and shall provide the Company with the facilities as set out in Schedule 3 – Facilities provided by the Client.

### **4. VARIATIONS**

**4.1** If the Client requires any reasonable alteration, addition or omission to the works comprised within the Contract Price (hereinafter referred to as a “Variation”) the Company shall identify the impact of the Variation on the work scope and the Contract Price in writing within a reasonable period of his/her receipt of the Client’s written request. The Contract shall remain unchanged unless and until the parties agree any Variation in writing.

**4.2** Where the Company identifies the impact of a Variation on the works comprised within the Contract Price and the Contract Price in writing any price or prices contained therein shall, unless otherwise stated, be valid for a period of 30 days and thereafter the Company shall retain the right to increase such price or prices to take into account any increased cost of materials, labour and/or plant that it may suffer or incur.

**4.3** In the event that the Company identifies the impact of a Variation on the works comprised within the Contract Price and the Contract Price in writing and the parties fail to agree any Variation in writing, the impact of the Variation on the work scope and the Contract Price identified by the Company in writing shall be deemed for all purposes to be agreed between the parties.

## **5. COMPANY'S OBLIGATIONS**

**5.1** The Company shall exercise reasonable skill and care in the performance of the Services and agreed Variations.

**5.2** The Nothing in this agreement will create any relationship of employer/employee. The Company is not the servant or agent of the Client.

**5.3** This agreement, together with Schedules 1 to 3 shall constitute the entire agreement between the Client and the Company and no other representations made by either the Client or the Company shall be effectively incorporated in the agreement unless such representations are recorded in writing in a document signed by a Director of the Client and the Company.

## **6. EXTENSION OF TIME AND ADDITIONAL COST**

**6.1** The Company shall collaborate with the Client as required, to establish a programme for the works that the Company has undertaken to carry out and comprised within the Contract Price. The Company shall use reasonable endeavours to carry out its works within the established programme and the Parties agree that time is not of the essence for the carrying out of the works by the Company. For the sake of clarity, the Parties agree that:

- a) the Client is not entitled to terminate this Contract in the event that the works is not progressed and/or completed by the Company in strict accordance with any programme agreed for its completion;
- and
- b) the Company will not be or become liable for the payment of any damages, consequential loss or other costs or losses for any delay, howsoever caused, whether this be as a result of the Company not progressing or completing the works in accordance with any agreed programme, or otherwise.

**6.2** Without prejudice to any other exclusions or limitations of liability herein, the Company shall not be liable for any delay or failure to perform any of its obligations under these Conditions insofar as the delay or failure is due to industrial action of any kind, acts of God, fire, flood or bad weather, failure or breakdown of plant, machinery or vehicles, theft, malicious damage or by any event whatsoever beyond the reasonable control of the Company. If for any of these reasons the contract is not completed the Client shall pay the Company the contract price less the cost of labour, material and other services not expended.

**6.3** If the Company is delayed or impeded in the performance of its obligations by:

- a) any act or omission of the Client, its servants or agents,
- or

- b) by any circumstance that is outside the Company's control,

the Company shall be entitled to be paid any additional costs thereby incurred by it with an allowance for profit and, where appropriate, be allowed an extension of time within which to complete any

outstanding Services.

## **7. CHARGES AND TERMS OF PAYMENT**

**7.1** Unless otherwise agreed by the Company in writing, the due date for the payment of each of the Company's invoices shall be the date of the invoice and the final date for payment of each invoice shall be 30 days after the invoice date. The Client shall pay the Company's invoices in full without deduction, set-off or counterclaim. Time shall be of the essence for payment by the Client for all monies between the Company and the Client to which these Conditions apply.

**7.2** If the payment of any sum due under this Contract is not made by the final date for its payment, the Company shall be entitled to charge interest of 6% above the base rate for the time being in force. The Parties agree that this is a substantial remedy for late payment of any sum due. In addition to its right to receive interest for late payment, the Company shall also be entitled to suspend performance of its obligations, or performance of part of its obligations under the Contract provided that no such suspension may take place unless the Company shall have given written notice requiring payment on an overdue sum within 7 days and the Client shall have failed to comply with the notice. The Client shall pay the interest on demand. The Scheme for Construction Contracts (England and Wales) Regulations 1998 shall apply to all payments.

## **8. RISK AND RETENTION OF TITLE**

**8.1** Risk of damage to or loss of the Goods shall pass to the Client at:

- a) in the case of Goods to be collected from the Company's premises, at the time when the Company notifies the Client that the Goods are available for collection;
- b) in the case of Goods to be delivered otherwise than at the Company's premises, the time of delivery or, if the Client wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.

**8.2** Notwithstanding delivery and the passing of risk in the Goods, or any other provision of this Contract, legal and beneficial title to the Goods shall not pass to the Client until the Company has received in cash or cleared funds payment in full of the Contract Price.

**8.3** Until payment has been made to the Company in accordance with this Contract and title in the Goods has passed to the Client, the Client shall be in possession of the Goods as bailee for the Company and the Client shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by the Company and shall insure the Goods against all reasonable risks.

**8.4** The Client shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Client does so all money owing by the Client to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

**8.5** The Company reserves the right to repossess any Goods in which the Company retains title without notice. The Client irrevocably authorises the Company to enter the Client's premises during normal business hours for the purpose of repossessing the Goods in which the Company retains title and inspecting the Goods to ensure compliance with the storage and identification requirements of the Contract.

## **9. LIMIT OF LIABILITY FOR CLIENT'S MACHINERY**

**9.1** Unless otherwise specifically agreed in writing pursuant to:

- a) during the term of a Contract and including whenever the Machinery is in the care, custody or control of the Company, risk in all Machinery remains with the Client;

and

- b) the Company shall not be liable for or on account of any loss or damage to the Machinery howsoever caused unless such loss or damage is attributable to the negligence or any failure to exercise reasonable skill or care on the part of the Company, in which case the liability of the Company will be limited to a total of £25,000. For the avoidance of doubt, this clause 9.1 is subject to clause 11 below; and should for any reason whatsoever the limitation of liability in this clause 9.1 not be valid or not apply to limit the Company's liability to £25,000 as aforesaid, the limits stated below shall apply.

**9.2** Clause 9.1 will not apply to the Contract only if the Client and Company agrees in writing, in the manner set out in clauses 9.3 to 9.4 below, that clause 9.4 shall instead apply to the Contract.

**9.3** Upon written request by the Client, and upon provision by the Client to the Company of such written details of the value of the Machinery (which shall not exceed in the case of brand new Machinery its replacement cost or for second hand machinery its second hand value) as the Company may require (the accuracy of which details is warranted by the Client), the Company will provide an alternative and increased Contract price quotation to the Client on the basis that clause 9.4 applies to the Contract

**9.4** If the Client accepts in writing a quotation expressly given on the basis that this clause 9.4 applies to the Contract than the Company will be liable for any loss of or damage to the Machinery occurring whilst the Machinery is in the custody care or control of the Company, howsoever caused, unless caused in whole or in part by any of the causes set out in clause 9.5 below. For the avoidance of doubt, the acceptance of liability under this clause 9.4 is subject to clauses 9.5, 9.6 and 9.7 below.

**9.5** Under no circumstances whatsoever, and irrespective of the basis of the quotation provided by the Company and accepted by the Client, will the Company be liable for any loss or damage to the Machinery:

- a) caused directly or indirectly by or consequence of mechanical or electrical breakdown or derangement, wear, tear, gradual deterioration, corrosion, erosion, rust, oxidation, mildew however the same may arise; disappearance or shortage revealed when a routine inventory is made or is not traceable to an individual event or occurrence; pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds; the cost of normal upkeep or normal making good ; contamination of asbestos or asbestos dust; the wilful, reckless or grossly negligent act of the Client, his employees, subcontractors or anyone acting for him; the inevitable or unavoidable consequence of the performance of the Contract; ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; any weapon of war employing atomic or nuclear fusion or fusion or like reaction or radioactive force or matter, war invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection,

military or usurped power, confiscation, commandeering, nationalisation or requisition or destruction of or damage by or under the order of any government de jure or de facto or public or local authority; any act of terrorism or any action taken in controlling, preventing or suppressing or in any way related to any act of terrorism; the failure of any electronic systems, loss or damage to data, virus, unauthorised access to electronic systems, interruption or interference with any electronic means of communication.

- b) arising if the Machinery: is in transit by sea or air; due to the Machinery being in a defective condition or any defect in design, plan, specification, materials or workmanship; after the Machinery has been handed over to or taken into use by the Client; contains refractory linings.
- c) caused directly or indirectly by or in consequence of any other cause whatsoever which is excluded by the Company's own insurance policy or policies.

**9.6** Under no circumstances whatsoever, and irrespective of the basis of the quotation provided by the Company and accepted by the Client, will the Company's liability for loss of or damage to the Machinery exceed for any one occurrence £100,000 any one item or if more than one item is lost or damaged by the same occurrence £100,000 any one item but £1,000,000 in the aggregate.

**9.7** Under no circumstances whatsoever, and irrespective of the basis of the quotation provided by the Company and accepted by the Client, will the Company be liable for direct or indirect consequential losses (including economic loss and loss of profit) attributable to loss of or damage to the Machinery.

**9.8** The Client will not in all circumstances be entitled to compensation, or to full compensation, for any loss or damage. In particular please note that unless specifically agreed in writing pursuant to clauses 9.2 to 9.4 above, liability for any loss or damage to Machinery, even if caused by negligence or a failure to exercise reasonable skill or care on the part of the Company, is limited to £25,000. The Client is therefore recommended to seek professional advice as to appropriate insurance cover to be maintained in respect of the Machinery

## **10. LIMIT OF LIABILITY FOR PROPERTY OR PREMISES**

**10.1** The Company shall be under no liability in respect of loss of or damage to the Client's or other premises in which the Company is providing services and the contents thereof (other than the Machinery, in respect of which liability is governed inter alia by clause 9 above) unless such loss or damage is caused by any negligence or omission by the Company or by failure on the part of the Company to exercise reasonable skill and care.

**10.2** The Company's liability in respect of loss or damage to the Client's or other premises in which the Company is providing services and the contents thereof (other than Machinery, in respect of which liability is governed inter alia by clause 9 above), and for direct or indirect consequential losses (including economic loss and loss of profit) arising therefrom shall be limited in all circumstances to £5,000,000 and the Company will maintain public liability insurance. The Company shall under no circumstances whatsoever be liable for any loss or damage caused directly or indirectly or in consequence of : pollution or contamination; terrorism; exposure or alleged exposure to asbestos or materials containing asbestos; war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or destruction or damage by order of any Government de jure or de facto or by any public or local authority; ionising radiations or contamination by



radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; radioactive toxic explosive or other hazardous properties of any explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; the inevitable or unavoidable consequence of the performance of the Contract; any inconvenience or social environmental or commercial disturbance which is the unavoidable result of carrying out the Contract. Further, the Company shall under no circumstances whatsoever be liable for any loss or damage caused directly or indirectly or in consequence of any other cause whatsoever which is excluded by the Company's own insurance policy or policies.

**10.3** The Client shall hold harmless and indemnify the Company for all claims or demands by whomsoever made in excess of the Company's liability under this clause 10.

## **11. LIMIT OF LIABILITY FOR LOSS GENERALLY**

**11.1** Except as referred to in clause 8 and 9 above the Company shall not under any circumstances whatsoever be liable for any direct or indirect consequential loss (including economic loss and loss of profit) howsoever whensoever and wheresoever arising and whether or not attributable to the negligent act or omission of the Company. Nothing in these Conditions shall exclude or limit the Company's liability for death or personal injury caused by negligence.

## **12. PROVISION OF DAY WORKERS**

**12.1** All employees or sub-contractors provided by the Company to the Client on a day work basis ("Day Workers") shall be under the Client's sole direction and control. The Client shall indemnify and hold the Company harmless in respect of all claims, liabilities, costs and expenses whatsoever incurred by the Company as a result of or in connection with any act or omission of the Day Workers. No claim will be accepted that Day Workers had worked inefficiently or weren't suitable for purpose once they have commenced work for any client at any time.

## **13. SUPPLY OF GOODS**

**13.1** If the services to be undertaken require goods or components to be purchased for incorporation in any work to be carried out by the Company in relation to the Machinery (the "Works") such purchase will be made by the Company as agents of the Client and subject to Sale Conditions of the manufacturer or supplier. The Company shall have no contractual relationship with the manufacturer or supplier and the Client shall be liable in respect of anything arising out of or in connection with the contract.

**13.2** In the event that the Company is required to provide goods or components as part of the work scope comprised within the Contract Price or a Variation, then the warranty given by the Company for the materials or goods supplied shall be equivalent to the period of warranty that the manufacturer of said goods or components shall provide, together with any restrictions, conditions, limit or otherwise that the manufacturer specifies.

**13.3** In the event that the Company provides labour to assemble or install any materials, goods or components as part of the work scope comprised within the Contract Price or a Variation, then the warranty for the workmanship shall be the same period as the manufacturer shall provide for the said materials, goods or components. Where the manufacturer's warranty for materials, goods or components exceeds a period of 12 months, the warranty for the labour provided by the Company shall be limited to a maximum period of 12 months from the date of assembly or installation by the

Company of the said materials, goods or components. The Company will only provide in these cases the labour required to complete the works to the defective part and not any other associated parts connected with the fault.

**13.4** In the event that any of the materials, goods or components supplied by the Company as part of the work scope comprised within the Contract Price or a Variation are defective, then if agreed to be defective by the Company, these will be replaced by the Company at the Company's cost provided that the Client gives written notice of the defect and this is received by the Company within 5 days of the date of delivery of the defective goods. In the event that written notice is not given by the Client or received by the Company within 5 days of the date of delivery of any goods considered to be defective, then the Company shall have no liability to replace them at its cost.

#### **14. INDEMNITY BY CLIENT**

**14.1** The Client shall hold harmless from and keep the Company indemnified against all claims or demands whatsoever by whomsoever made in excess of the liability of the Company under these Conditions. The Client warrants that the Machinery is safe and without risk to any person connected with these Conditions. All known risks must be clearly identified and marked by the Client. The Client warrants that it is either the owner of the Machinery or is authorised by such owner to accept these Conditions on the owner's behalf.

#### **15. ASSIGNMENT AND SUBCONTRACTING**

**15.1** Neither party shall assign any of its rights or obligations under the Contract without the prior written consent of the other party, which shall not be unreasonably withheld.

**15.2** The Company may sub-contract all or any part of the services except insofar as the Client otherwise requests the Company and the Company agrees in writing prior to the conclusion of the Contract. The Company contracts for itself and as agent of and trustee for its employees and sub-contractors and their employees or sub-contractors and any reference herein to "the Company" shall be deemed to include all such employees and sub-contractors.

#### **16. CONFIDENTIALITY**

**16.1** The Company and the Client shall keep confidential all information of the other party, whether designated as confidential or not, obtained under or in connection with the Contract and shall not divulge the same to any third party without the written consent of the other party. The provisions of this clause shall not apply to any information in the public domain otherwise than by breach of the Contract; or information obtained from a third party who is free to divulge the same.

**16.2** The Company and Client shall divulge confidential information only to those employees who are directly involved in the Contract or have use of equipment and/or software used in connection with the Contract and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.

#### **17. COMMUNICATIONS**

**17.1** All notices under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

**17.2** Notices shall be deemed to have been duly given :

- a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or
- b) when sent, if transmitted by facsimile or email and a successful transmission report or return receipt is generated; or
- c) on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- d) on the tenth business day following mailing, if mailed by airmail, postage prepaid.

**17.3** All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

**17.4** All documentation provided to the Customer will be in the English language.

## **18. INTELLECTUAL PROPERTY RIGHTS**

**18.1** Unless otherwise agreed in writing, know-how and intellectual property rights evolved and generated from or arising in the performance of or as a result of the Contract shall (to the extent that they are not already vested in the Company) vest in and be the absolute property of the Company. The Client shall have a non-exclusive, non-transferable, royalty-free licence to use, and have used, that know-how and intellectual property rights for any purpose in connection with the Contract.

**18.2** Know-how and intellectual property rights evolved and generated from or arising in the performance of or as a result of the activities of the Company shall (to the extent that they are not already vested in the Company) vest in and be the absolute property of the Company.

## **19. LIEN**

**19.1** The Company shall be entitled to a general lien on the Machinery for payment of all monies due and outstanding from the Client on any account.

## **20. LAW**

**20.1** Nothing in this Contract is intended to confer on any third party any benefit or right to enforce any of these terms pursuant to the Contracts (Rights of Third Parties) Act 1999 which benefit or right is excluded.

**20.2** This Contract and any dispute which arises between the Client and the Company under or in connection with it shall be subject to the Laws of England.

## **21. RECRUITMENT CONSIDERATION**

**21.1** Should any member of the Company's staff directly involved in the provision of the Services leave the Company's employment to join the Client or any company associated with or in its ownership either during the period of his or her direct involvement with the provision of Services or within a period of 6 months after his or her direct involvement with the provision of Services ceases, the Client will pay the Company, in addition to all interim fee account invoices and/or final fee account invoice in respect of the provision of the Services, a recruitment fee of 40% of the gross annual salary of the member of staff concerned.



## **22. SEVERANCE**

**22.1** If any court or other tribunal finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part provision shall to the extent required be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

## **23. DIVISIBILITY**

**23.1** The Contract is divisible. Each invoice submitted shall be deemed to arise from a separate contract; all invoices shall be payable in full, without reference to and notwithstanding any dispute concerning any other invoice. Any dispute will remain with the contracted company only and does not concern any other associated, related or subsidiary business.

## **24. OTHER SERVICES**

**24.1** If the services undertaken by the Company comprise or include any of the following then the Conditions indicated below, copies of which are available on request, shall be applicable in lieu of the above Conditions insofar as the services specified below are concerned.

- a) Carriage of goods on public roads. Road Haulage Association Standard Conditions (June 1991) (UK); Convention on the Contract for the International Carriage of Goods by Road (CMR) (International).
- b) Warehousing of goods. UK Warehousing Association Conditions of Contract (July 1994)
- c) Plant and crane hire. Contractors' Plant Association Model Conditions for the Hiring of Plant.
- d) Contract Lift. CPA Conditions for a Contract Lift.

## **25. DISPUTE RESOLUTION**

**25.1** If any dissatisfaction, difference or dispute which cannot be resolved between the parties, in first instance a meeting shall take place between the relevant parties Directors within 14 days of the dispute being notified in writing to either party.

**25.2** If there has been no agreement following the meeting the matter shall be referred to adjudication subject to the provisions of the Housing Grants, Construction Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009), whether or not the operations of the dispute are considered as "construction operations".

**26.2** The dispute shall be referred at any time to an adjudicator nominated by the President of the Royal Institute of Chartered Surveyor. The appointment of the adjudicator, the power of the adjudicator and the adjudicator's decision shall be in accordance with the provisions of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011.

## **26. TERMINATION**

**26.1** If at any time after issuing instructions to proceed, the client decides to determine or terminate the instruction the company will charge for the reasonable costs associated with complying with the clients instructions.