

Terms & Conditions

TERMS AND CONDITIONS OF TENDER AND CONTRACT

1. General

- 1.1. Acceptance of the tender includes acceptance of the following Terms and Conditions. The Contractor shall mean [Westbrook Industrial Ltd.] Unit 3, Easter Court, Westbrook, Warrington. WA5 7ZB. ASG Services and Warehouse Partners are trading divisions of Westbrook Industrial Ltd
- 1.2. "Contract Price" means the price agreed for the Work;
- 1.3. "Customer" means the person(s) or company for whom the Work is carried out on behalf of;
- 1.4. "Work" means the work described within the Tender.
- 1.5. "Tender" means the responses in the documents. Where any Terms and Conditions of the Customer conflict with any of these Terms and Conditions, these Terms and Conditions shall apply.
- 1.6. Where any Terms and Conditions of the Customer conflict with any of these Terms and Conditions, these Terms and Conditions shall apply.

2. Period of Tender

- 2.1. The Tender remains open for 30 days from the date of the tender unless previously withdrawn or otherwise stated. Thereafter, the Tender is subject to confirmation or adjustment by the Contractor.

3. Basis of Tender

- 3.1. Reasonable and proper increases or decreases in labour and/or material costs arising after the date of Tender may be recovered from or allowed to the Customer unless the Tender expressly excludes this condition.
- 3.2. Unless otherwise stated within the quotation the Contract Price is based on the Work being carried out will be during normal working hours, Monday to Friday 8am – 5pm.
- 3.3. Variations or additional work requested by the Customer in writing shall be charged on a time and material basis unless the subject of a separate quotation accepted by the Customer. Payment of any additional costs and any changes to labour or material costs will be made in the payments following the request for variation or change in cost.
- 3.4. Statutory fees or charges for work done by Supply Authority or Local Authority are not included in the Contract Price.

4. Contractor's Obligations - Limit of Liability

- 4.1. The Contractor will attempt to complete the Work within the agreed period or where no period is agreed within a reasonable period. The Contractor is not responsible for any loss or damage whatsoever which the Customer may incur as a result of any failure of the Contractor to complete within either an agreed period or a reasonable period, save for any delay or failure caused by contractor negligence or wilful breach of the terms of this agreement.
- 4.2. The Contractor shall carry out and complete the Work to the quality described in the tender or where no quality is stated, to a reasonable quality, in keeping with a professional warehouse or other similar industrial or manufacturing site.
- 4.3. The Contractor shall carry out any design work using the reasonable skill and care expected from a reasonably competent designer of that particular specialism.
- 4.4. If the Contractor fails to comply with any of its obligations in clauses 4.2 or 4.3 above, the Customer shall allow the Contractor to replace or make good any defective materials, workmanship or design with materials, workmanship or design that does so comply within a reasonable period of notification of such failure, at no cost to the Customer. The Contractor is not responsible for any loss or damage whatsoever which the Customer may incur as a result of any failure by the Contractor to comply with the obligation in clauses 4.2 or 4.3 above, save for neglect or wilful breach.

- 4.5. If the Customer does not allow the Contractor to replace or make good any defect in materials, workmanship or design then the Contractor is not responsible for any additional costs incurred by the Customer in employing others to replace or make good such defect, but for the avoidance of doubt the customer will not have to pay for such defective work or materials or, it is already paid, will be reimbursed by the contractor promptly.
- 4.6. Without prejudice to the Customer's Statutory rights, the Contractor will pass to the Customer the benefit of any guarantees the Contractor has received in respect of materials supplied by the Contractor and undertake to repair or, if necessary, replace free of charge any materials or work found to be defective if the defect is due to faulty workmanship by the Contractor, his servants or agents nevertheless that:
- (a) the Contractor accepts no responsibility for any drawing, design or specification not prepared by him.
- (b) the Contractor will take reasonable care but accepts no liability, save for negligent or malicious damage, for damage to furniture or other fixtures and fittings which have to be removed by the Contractor or his workmen in order to carry out the Contract Works. The Contractor will maintain adequate Public Liability Insurance Cover for at least the duration of the Contract.

5. Workmanship Guarantee

- 5.1. Westbrook Industrial Ltd will guarantee both materials and labour for a period of 12 months after the date of satisfactory completion of the Work.

6. Design

- 6.1. Any design or other information provided by either party shall be kept confidential between the parties.
- 6.2. The Customer warrants that any design or documents or other materials provided to the Contractor for the purposes of the contract will not infringe the copyright or other rights of any third party and the Customer shall indemnify the Contractor against any loss, damages, costs, expenses or other claims arising from any such infringement.

7. Loss and Expense

- 7.1. If the Contractor's progress of the work is delayed or their method or sequence of work is affected by reasonable and proper events beyond the Contractor's reasonable control the Customer will reimburse the Contractor any additional loss and/or expense they incur as a result of such events. The contractor will use all reasonable endeavours to mitigate such losses and or expenses if required. The amount of any loss or expense will be paid in the payments following such loss or expense being incurred in accordance with clause 8.

8. Terms of Payment

- 8.1. The Contractor is not obliged to commence the Work including design work until any required deposit is paid in full.
- 8.2. Payment of the required deposit (if applicable) becomes due on the date of the order. Payment of the balance against the Contract Price becomes due either on the date of completion of the Work or for clients with approved account status only, becomes due 30 days after the date of completion of the Work. The final date for all payments is 14 days after the date on which they become due.
- 8.3. All payments will be made in full by the Customer without any reduction, deduction or set off
- 8.4. Failure by the Customer to make any payment by the dates in clause 8.2 above shall entitle the Contractor to immediately suspend the Work and/or charge Late Payment fees and Interest as defined in the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.
- 8.5. If the Contractor suspends performance as described in clause 8.4 above the Customer will reimburse any loss or expense suffered or incurred by the Contractor as a result of such suspension within the payments following the commencement of the period of suspension.
- 8.6. Failure by the Customer to make reasonable and proper payment by the dates in clause 8.2 above shall entitle the Contractor to reimbursement of the full amount of any legal fees and expenses or other cost or expense incurred in obtaining payment from the Customer whether or not any legal proceedings are commenced. Payment of such fees and expenses is to be made by the Customer at the same time as the overdue payment.
- 8.7. This contract is divisible. Each delivery made hereunder:
- 1) Shall be deemed to arise from a separate contract, and
 - 2) Shall be invoiced separately and any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein without reference to and notwithstanding any defect or default in the delivery of any other instalment.'

9. Applicable Law and Dispute Resolution

- 9.1. For the purposes of the Contract (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement this, Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions.
- 9.2. Either party may refer any dispute at any time to adjudication in accordance with the Scheme for Construction Contracts (England and Wales) 1998. Nomination of the Adjudicator shall be by the Royal Institution of Chartered Surveyors.
- 9.3. The law applicable to this contract is the Law of England and Wales and the English Courts shall have jurisdiction over any dispute or difference between the parties.