

Bouygues E&S Solutions Limited - General Terms and Conditions of Quotation

1 Offer and Acceptance

This quotation does not constitute an offer from Bouygues E&S Solutions Limited (the "**Company**"). A contract (the "**Agreement**") will not be made until the Company has accepted in writing an order (the order let in acceptance of this quotation) (the "Order") from the party to whom the quotation was addressed (the "**Customer**"). Together, the Company and the Customer are the "**Parties**", and each is a "**Party**".

Acceptance is solely at the discretion of the Company and will always be subject either to an appropriate financial status check on an existing account or subject to the receipt of satisfactory credit references.

The Order shall specify the works to be performed by the Company pursuant to the Agreement (the "**Works**").

In the event of an Order being placed, the Agreement shall be deemed to include all of the terms and conditions contained within these General Terms and Conditions of Quotation (the "**Terms**") unless expressly agreed otherwise by the Parties in writing. The Terms apply to and form part of the Agreement between the Company and the Customer. They supersede any previously issued terms and conditions.

No other terms or conditions enclosed with or contained within the Order shall form part of the Agreement.

The Customer warrants and represents to the Company that all necessary licences, way-leaves, permits or permissions required in connection with

the execution of the Agreement have been or will be obtained. Also that development or other charges arising there from have been or will be paid by the Customer. The Customer acknowledges that the Company will have entered into the Agreement in reliance of such warranty and representation.

2 Payment

The Company shall submit a statement at the end of each month following commencement of the Works, be they on or off-site works.

Said statement shall specify the amount of the payment applied for, and the basis on which that amount is calculated. The date of the Company's statement shall represent the due date for payment pursuant to section 110 of the Housing Grants, Construction and Regeneration Act (the "**Act**").

Not later than 5 days from the date of the Company's statement, the Customer shall by written notice to the Company, notify the Company of the amount (if any) of the payment made or proposed to be made, and the basis on which that amount was calculated. In the absence of any written notice from the Customer, the amount applied for by the Company shall represent the amount due to the Company pursuant to section 110 of the Act.

The final date for payment of the amount due to the Company shall be 28 days from the due date for payment.

In the event that the Customer intends to pay less than the sum notified to the Company, then it shall be a condition precedent that the Customer notifies the Company in writing not later than 7 days before the final date for payment of

- (i) the sum that the Customer considers to be due to the Company on the date the notice is served; and
- (ii) the basis on which that sum is calculated.

All overdue amounts may be subject to interest at the rate of 8% per annum above the Bank of England base rate, such interest being calculated and compounded on a daily basis from the final date for payment and payable until the payment is received, the total being added to the amount due to the Company.

If the Customer fails to pay any amount due to the Company by the final date for payment, the Company shall be entitled to suspend the Works until such time as the Customer pays all amounts which are due. The Company shall not be liable for any costs or losses sustained by the Customer as a result of such suspension, and the Customer shall pay all of the Company's reasonable costs and losses arising from such suspension.

3 Transfer of Title & Risk

All goods and/or materials delivered to site for the Works shall remain the property of the Company until payment for such goods and/or materials has been received in full from the Customer. Where the goods and/or materials are stored on the Customer's premises the transfer of risk shall take place when the goods and/or materials arrive on site.

4 Third Party Claims

Subject to clause 8 (Assignment and Sub Letting), no person who is not a party to the Order shall be entitled to enforce any terms of the

Agreement solely by virtue of the Contracts (Rights of Third Parties) Act 1999.

5 Insurance

The Company has allowed for Public Liability and Employers Liability insurance with an indemnity limit of £5,000,000;

The Company shall insure the constructional plant, temporary buildings, equipment, tools, and anything bought to the site by it not forming part of the permanent or temporary works (subject to a maximum indemnity limit of £100,000 for hired in plant). Any variation in these terms may result in a revision of the rates and prices

contained in the quotation. Such revision being solely at the Company's discretion. Notwithstanding the foregoing, the Company retains the right to reimbursement of costs from the Customer for the rectification of work should he or his agents damage any of the subcontract works during construction or after installation.

6 Materials

Goods and services supplied under the Agreement shall be guaranteed for one year from the completion of the Works or date of installation (whichever is the earlier) irrespective of and to the exclusion of any additional periods stated in any document forming part of the Agreement unless

agreed, specifically and in writing, by the Company. The Company shall use its reasonable endeavours to see that extended manufacturers' warranties are passed on to the Customer.

Any materials supplied by the Customer and found to be faulty or incompatible are the responsibility of the Customer.

All such materials are only accepted on an un-inspected basis. Any materials placed or repaired by the Company will be at the cost of the Customer.

When goods and/or services forming part of the Works fail to comply with the Agreement, the Company will at its option repair, replace or re-perform such goods and/or services to comply with the Agreement, provided that

- (i) the Customer gives the Company reasonable written notice of any non-compliance; and
- (ii) the Customer gives the Company reasonable opportunity to inspect any defective goods and/or services.

The Company will not be liable for any failure of the goods and/or services to comply with the Agreement to the extent:

- (i) caused by the Customer's failure to comply with the Company's instructions;
- (ii) caused by the Customer's failure to comply with the specification or any other document supplied by the Company;
- (iii) (iii) the Customer alters or repairs such goods and/or services without the prior written consent of the Company.

7 Liability

The Company's maximum liability shall not exceed the aggregate of the amounts paid to the Company under the Agreement. The Company shall not be liable for any loss of profit, loss of agreements or contracts, loss of use, loss of sales or business or for indirect or consequential loss.

8 Assignment and Sub Letting

The Company reserves the right to sub contract to a third party any part of the Works required under the Agreement.

The Customer shall not assign or otherwise transfer any or all of its rights and obligations under the Agreement without the Company's prior written consent.

9 Quality of Works

The Company warrants that the Works shall be carried out by it using reasonable skill and care.

The Order shall detail the materials the Company has allowed for. Where not included as part of the Order, the Customer warrants that installation will be in accordance with all current industry standards, Codes of Practice, manufacturer's guidance/recommendations, and as appropriate for the Works.

The Company cannot accept any responsibility for the compliance of the Company's offer with the Customer's requirements.

10 Price & Quantities

The quotation has been submitted by the Company as a complete package on the assumption that the whole Agreement against those items priced would be let in its entirety. Any section, or item, withdrawn or quantities substantially altered may result in a review of the rates and prices, such review being entirely at the Company's discretion. All quantities stated in the Agreement shall be subject to re-measurement on installation.

The prices shall be held firm for the period specified in the Company's quotation, thereafter price fluctuation shall be applied at an additional 1% increase per month or part month on all rates and prices for the month installed, or such other method as may be subsequently agreed in writing by the Company.

All values are in Pounds Sterling and are exclusive of Value Added Tax and the amount of any such tax due in respect of the subcontract works or materials shall, where appropriate, be applied to all payments due at the prevailing rate. Should the Customer operate VAT Self-Billing procedures then the Company would be willing to agree to these being implemented under the Agreement, subject to it receiving the appropriate details and instructions to use the Customer's scheme.

Once it is agreed to use such scheme, the Company would not issue authenticated receipts or tax invoices for VAT purposes but would pay output tax in accordance with certified payments made under the Agreement.

The material prices are based on single deliveries to site. The Customer shall provide secure, accessible storage on site at no cost to the Company.

The liability for the risk to materials whilst stored on site to remain with the Customer. Any alternative arrangements for staged deliveries or storage of materials off-site will be the subject of separate agreement, including the payment of the Company's additional costs, if applicable.

The Company reserves the right to invoice the Customer in accordance with the Agreement for all materials ordered, stored and/or delivered for use in connection with the Works.

11 Re-Siting

The Company will not accept responsibility for damage to equipment which may occur during the re-siting or re-erecting of any existing equipment or for any subsequent repairs that may be necessary to ensure the installation is fully operational and meets current regulations or standards except insofar as the Company, its employees or agents can be proven to have caused such damage due to its negligence or deliberate default.

12 Site Access

Where the Company's attendance on site is required it must be given not less than seven days notice, unless otherwise agreed by the Company. Attendance on site with a shorter notice period may lead to additional charges, which shall be payable by the Customer.

All additional costs incurred by the Company due to standing time, abortive visits, delay and the like caused by inaccessibility to planned areas of works or other delays, howsoever caused, shall be payable by the Customer to the Company at the rates set out in the Order or, where not specified in the Order at reasonable contemporaneous rates. The quotation assumes there is access to all positions for the Company's plant. Should the Company find it necessary to effect operations by hand, any extra costs shall be charged to the Customer.

13 Delivery

Delivery dates are determined by the lead times from the Company's suppliers as detailed within the quotation and is subject to re-confirmation on receipt of the Order. Notwithstanding the foregoing no materials of any type will be ordered until an Order is accepted. The Company reserves the right to deliver materials to materials to site as soon as they become available and invoice for such materials prior to installation.

14 Setting Out

The Customer's Representative is responsible for determining positioning/setting-out of all equipment. The Customer's Representative instructions will be taken as being final, and the Company is entitled to rely on such instructions. The Customer warrants that all locations have been assessed by it and are subject to suitable Permits to Dig and Highway Notices. The Company shall not carry out any Works unless acceptable Permits to Dig and Highways Notices issued to the Company are issued to the Company by the Customer prior to the commencement of Works.

15 Commissioning

No allowance has been made by the Company in its quotation for Distribution Network Operator (DNO) charges whatsoever. Should the Company be required to commission units following the connection of the DNO's supply, an additional charge would apply and be payable by the Customer.

16 Programme

The programme dates, including commencement, phasing and completion of the Works, shall be agreed in writing by the Parties. The rates in the Company's quotation assume that all Works will be carried out in one continuous operation for each programmed visit, with one full visit programme being achieved without delay or interference. The Company's rates are for the number of visits to site as stated in the quotation documents. Any additional visits shall be charged by the Company at the rates specified in the Agreement, or if not specified, at reasonable contemporaneous rates.

The Company shall use reasonable endeavours to complete the Works in accordance with the dates specified in the Agreement, but time shall not be of the essence for the performance of the Works.

Liquidated damages for delay in completion of the Works shall only apply where provided for in the Order accepted by the Company and only if the cause of delay is accepted by the Company as being an event/s that is/are solely the responsibility of the Company. If applicable, the rates will be specified in the Order, provided that the aggregate liability of the Company for liquidated damages shall not exceed 5% of the value of the Order. Where liquidated damages apply, programme dates for the completion of the Works (or a section thereof) shall be adjusted in the event that without limitation any changes are made to the Works or the Company's method of working, whether or not instructed by the Customer, an event of Force Majeure occurs, the Customer fails to comply with any of its obligations in the Agreement or the Company is caused to be in delay for any reason other than the Company's breach of the Agreement or its negligence.

17 Temporary Works

No allowance has been made for temporary works in the quotation. Should temporary works be required the Company will submit a quotation upon receipt of details of the requirement from the Customer.

18 Waste Management

Waste management and disposal is the responsibility of the Customer. The Company shall remove its waste from its place of work to a designated central collection point on site managed by the Customer.

19 Traffic Management

All traffic management, including all signing, fencing, barriers, noticing, permits and associated items will be the responsibility of the Customer unless agreed otherwise in the Agreement or by the Company in writing.

20 Additional Works

Unless stated otherwise in the quotation documents or agreed to the contrary by the Company, in writing, should additional works result from any instruction from the Customer, or that of his agent or representatives' instruction, or be necessary to complete the Works, then the Company shall be paid by the Customer for such additional works based on rates specified in the Agreement, or in the absence of rates specified for such work, on reasonable contemporaneous rates.

21 Hours of Work

The Customer shall allow the Company to carry out the Works between the hours of 7.30am - 17.30pm Monday to Friday excluding statutory holidays. The Company, its servant and/or agents shall not exceed 8 hours of work during any normal day unless it has been agreed between the Parties in advance. Any work in excess of 8 hours in any normal working days shall be considered as premium time and will be paid by the Customer to the Company at the Company's usual rates for premium time working.

22 Site Equipment & Set Up

Allowance has been made for excavation by mechanical means in normal sub-soil and backfilling of excavated material only. Irrespective of any qualification in the documents forming part of the Agreement, excavation requiring the use of plant-mounted or compressor-powered percussive breaker will incur an extra charge at a rate of £120/m³ for trenching works and £200/m³ for other excavations.

No allowance has been made, unless clearly detailed in the Company's quotation for the following site enabling works and surface reinstatements:

- (i) Relocation and or Protection of existing works (including cabling, trenching, ducting, feeder pillars etc.,) including statutory undertakers plant/equipment.
- (ii) Concrete bases and fixing bolts for flanged based equipment.
- (iii) Reinstatement of surfaces (temporary and/or permanent).

23 Force Majeure

The Company shall not be in breach of the Agreement nor liable for any delay in performing, or for failure to perform, any of its obligations under the Agreement where such delay or failure results for events, circumstances or cause beyond its reasonable control.

24 Law & Arbitration

The Agreement and any dispute or claim arising thereunder (including in relation to non-contractual obligations) shall be subject to English law, and the English courts shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with the Agreement.

Notwithstanding any other provision of the Agreement, either Party may at any time refer a dispute arising under the Agreement to adjudication under Part

I of the Scheme for Construction Contracts (England and Wales) Regulations, which shall take effect as if incorporated into this clause 24 by reference.

25 Ethics & Bribery

The Customer shall, and shall procure that persons associated with it or other persons who are performing services or providing goods in connection with the Agreement shall:

- a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption ("Relevant Requirements"), including, but not limited to the Bribery Act 2010 (including any amendment thereto or re-enactment thereof);
- b) not engage in any activity, practice or conduct which would constitute any offence under the Bribery Act 2010 if such activity had been carried out in the UK;
- c) comply with the Company's ethics, anti-bribery and anti-corruption policies as the Company may update from time to time ("Relevant Policies");
- d) not do, or omit to do, any act that will cause or lead the Company to be in breach of any of the Relevant Requirements or the Relevant Policies;
- e) promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the Agreement.

26 Notices

Notices required to be given under the Agreement will be valid if in writing and sent to a Party's address as set out in the Order (or acceptance thereof). Notices shall be delivered in person, by first class or registered post, by courier, by airmail or if given by email (with evidence of receipt).

27 Termination of Subcontract

Should the Customer:

- a) Fail to make payment of any amount by the final date for payment of such amount ;
- b) Become insolvent, commit an act of bankruptcy or have a receiving order in bankruptcy be made out to them;
- c) Being a company, go into liquidation whether compulsory or voluntarily other than for the purpose of a bona fide amalgamation of reconstruction or have a Receiver of any part of its business or assets appointed;
- d) commit any other material breach of the Agreement and not rectify such breach within 14 days of the Company's notice; then the Company shall have the right to terminate the Agreement forthwith and
 - 1) treat all sums due or to become due from the Customer on any account whatsoever as immediately due and payable;
 - 2) cancel or suspend delivery of goods and goods and materials, execution of work etc., and
 - 3) access the site and the Works and remove any equipment, plant or other property that remains under the

ownership of the Company, including any equipment and materials for which payment has not been received by the Company.