

## 1. DEFINITIONS

- a. The following provisions shall have the following meanings respectively given to them:
  - i. D and D Construction, being a trading division of Scorpion Engineering Construction Ltd (company registration number 01180177) of Broyle Place Farm, 3 The Cloisters, Loughton Road, Ringmer, East Sussex BN8 5SD (hereafter "the Company")
  - ii. "Customer" means the natural or legal person who accepts the Offer given by the Company
  - iii. "Works" means the construction more particularly referred to in the Offer
  - iv. "Materials" means those products more particularly referred to in the Offer
  - v. "Commencement Date" means the date agreed between the Company and the Customer when the Works is expected to start
  - vi. "Completion Date" means the date agreed between the Parties by when the Works shall be expected to complete
  - vii. "Contract Price" means the price to be paid by the Customer to the Company for supplying the Materials undertaking the Works
  - viii. "Site" means the place where the Works are to be carried out
  - ix. "Staff" means collectively (or any combination thereof as the context may allow of) the employees, sub-contractors, suppliers, other agents and representatives of the Company
- b. References to "Clause" and "Clauses" shall be to the Clauses of these Terms and Conditions
- c. Headings to the Clauses are for guidance only and do not form part of these Terms and Conditions

## 2. GENERALLY

- a. A contract shall be concluded between the Company and the Customer once the Customer (or such persons with the Customer's authority) has signed, dated and returned the written acceptance form in accordance with the Notice Clause in these Terms and Conditions
- b. No person other than a Director of the Company has any authority to exclude or vary or add to these Terms and Conditions
- c. No person other than a Director of the Company has authority to make any representations as to the legal effect of these Terms and Conditions or otherwise.
- d. These Terms and Conditions supersede any Terms and Conditions which may have been used previously, which may appear in any literature, online or elsewhere and shall override any Terms and Conditions stipulated, referred to or incorporated by the Customer unless agreed in writing by a director of the Company

## 3. WARRANTY

- a. All workmanship shall be in conformity with modern practice and all Materials used shall be suitable for the purpose and of sound quality. Where a British Standard is specified in the Company's specification and/or offer the workmanship and Materials will conform to that standard
- b. If the Customer gives notice in writing of any alleged defect in Works or Materials supplied by the Company and upon examination such defect is found to be directly attributable to faulty workmanship on the part of the Company or the use of defective Materials, the Company will rectify such defect free of charge
- c. The forgoing Warranty in this Clause 3 is conditional upon the Customer giving such notice in writing within a period of six months after receipt of the Completion Notice and will not apply if the Customer or any third party appointed by the Customer attempts to rectify any such defects
- d. If within the Warranty period the Customer notifies the Company in writing of any alleged defects in Works or Materials supplied, the Company will visit the Site at within the earliest time practicable and conduct an examination of the alleged defects
- e. If upon examination the Company finds the Customer's complaint to be justified any defect will be remedied by and at the expense of the Company
- f. If such complaint is found not to be justified the Customer will be responsible for the cost of the Company's time and any expenses incurred in such examination including travelling time
- g. The Company will make good defects in accordance with this Clause, by (at its option) repair or replacement or modification, provided the defect has occurred in materials used for the agreed purpose, and the defect arises solely from faulty design (other than a design made, furnished or specified by the Customer), materials or workmanship in the Materials and/or construction
- h. The Company shall not be liable to make good defects arising from installation or repairs undertaken by the Purchaser or any third party unless previously agreed in writing by the Company.

- i. If, at the request of the Customer, the Company supplies Materials manufactured by a third party, the Company shall (to the extent possible under the Company's contract with that third party) transfer to the Customer any warranty given to the Company by the third party in respect of those Materials
- j. Save as provided in this Clause, the Company shall not be under any liability whatsoever in respect of defects in the Works.

#### 4. NOTICE

- a. All notices and other communications between the Company and the Customer must be in writing.
- b. Notices must be given by either or a combination of:
  - i. personal delivery
  - ii. first-class tracked and signed for mail with postage prepaid
  - iii. electronic mail to the Company's e-mail address as specified below at 4. d.
- c. A Notice given in accordance with this agreement will be effective upon receipt by the party to which it is given or, if mailed, upon the earlier of receipt and the fifth Business Day following mailing.
- d. The Company's postal address is set out in Clause 1. a. of these Terms and Conditions. The Company's e-mail address is [info@danddconstruction.co.uk](mailto:info@danddconstruction.co.uk)  
All electronic notices sent by the Customer should be sent to this address and any e-mail addresses provided on the Company's Offer Letter

#### 5. PRICE

- a. Where Value Added Tax (VAT) is applicable it will be added at the prevailing rate at the date of invoice
- b. The Offer is based on the cost of Materials and labour rates which the Company anticipates will be operative at the time the Works is likely to be commenced and is subject to increase in accordance with any increase in the Company's suppliers' prices at the date of delivery (including transport costs and any withdrawal of discounts and including the Company's normal profit margin based on price) and in accordance with any such increases in the cost of labour, the price is thus subject to confirmation or revision by the Company at the time when the Customer asks the Company to commence the Works

#### 6. PAYMENT

- a. The price shall be payable according to the payment schedule as set out in the Offer Letter and in any event the full price of any instalment or the outstanding balance of the price (as the case may be) shall be paid to the Company within 7 days of the Company's invoice.
- b. Once written acceptance of the General Agreement Drawings has been received by the Company from the Customer the Customer is liable for the full cost of the contract
- c. If the Customer fails to pay the Company any sum due pursuant to the contract, the Customer shall be liable to pay interest on such a sum at the Company's discretion at either:
  - i. The rate of 5% per annum above the base lending rate of the Bank of England, for the time being accruing on a daily basis until the payment is made, whether before or after any judgement or where dealing business to business
  - ii. Interest under the Late Payment of Commercial Debts (Interest) Act 1998
- d. Should the Customer fail to make an interim payment within set payment Terms as set out in the Offer Letter then the Company may suspend the Works until the Customer has paid the outstanding interim payment
- e. Should any payment under the Contract be overdue by more than sixty days, then the Company shall be entitled to treat such delay as a material breach on by the Customer and (without prejudice to any other right or remedy it may have) may terminate the Contract with immediate effect by giving written notice to the Customer

#### 7. DEPOSIT

- a. In the event that the Customer accepts the Offer and enters into the Contract with the Company then the Customer will be required to pay a deposit of 15% of the total Contract price before General Arrangement Drawings are prepared
- b. In the event that the Customer decides to terminate the Contract after the Company has instructed the draftsmen to prepare the General Arrangement Drawings, the Customer will be liable to pay for the full cost of the General Arrangement Drawings

- c. In accordance with the above, the Company will deduct payment for the General Arrangement from the Deposit

#### **8. TITLE AND RISK**

- a. Risk in the materials shall pass to the Customer on delivery to the Customer's premises or site
- b. Title in the equipment ("title") shall pass to the Customer on payment of the entire contract Price
- c. Until title passes to the Customer, the Customer shall hold the materials as the Company's fiduciary agent and bailee, and shall keep the equipment separate from that of the Customer and third parties and properly stored, identified and protected as the Company's property
- d. Until title passes to the Customer (and provided that the materials have not been resold) the Company shall, without prejudice to any other rights it may have, have the right to immediate recovery of all of the Materials in the possession of the Customer. The Company may enter the premises of the Customer and any of its servants or agents for the purpose of recovering its Materials until title passes
- e. Nothing in this Clause 7 alters the Customer's obligation to purchase the materials

#### **9. VARIATIONS**

- a. The Company reserves the right when necessary in its opinion to vary the specification, or construction, or design of the Works and/or Materials to be supplied provided that any relevant British Standard is nevertheless fulfilled.
- b. If such variation is attributable to shortage or non-availability or price increases in Materials the Company any shall be entitled to increase the price quoted in the Offer Letter
- c. Should the Company incur extra cost owing to variation or to suspension of the work by the Customer's instructions or lack of instructions, interruptions, delays, over-time, unusual hours, mistakes or work for which the Company is not responsible, a reasonable sum in respect of such extra cost as well as the cost incurred by keeping any of the Company's workforce on the Site after the date when their work on site would otherwise have been completed shall be added to and form part of the Contract Price and shall be paid for by the Customer accordingly
- d. If the cost to the Company of performing its obligations under the Contract shall be varied by reason of any law, order or regulation, the amount of such variation shall be added to or deducted from the Contract Price.

#### **10. SITE**

- a. The Company's Offer and its acceptance of the Customer's order are given on the basis that the Site is:
  - i. level before any excavation by the Company
  - ii. capable of bearing a load of 1.5 tonnes per square foot
  - iii. will not involve excavation in hard shale, rock, water or other adverse Conditions and
  - iv. there is adequate access to the site for mobile cranes, contractors plant and other vehicles
- b. The Company does not conduct any structural survey of the Site and gives its Offer on the assumption that the Customer has arranged any structural survey which it feels necessary. The Company will not be liable for any loss, including any future losses attributable to factors which ought to have been disclosed in the structural survey
- c. Before requesting the Company to commence construction work the Customer shall properly prepare the site of the building by levelling and consolidating it with hardcore in a good and workmanlike manner so as to afford suitable access for the crane and other equipment used by the Company. The Company's Offer includes the necessary excavation for the bases or foundations of the stanchions or columns to be installed but does not include the removal or spreading of excavated soil. The Customer shall leave the site clear of any spoil or other obstructions prior to commencement of the Company's work
- d. If any of the Conditions or obligations on the part of the Customer in this Clause 10 or in the previous and following Clauses is not fulfilled by the Customer the Company reserves the right at its discretion (but without prejudice to any other right or remedy) to increase the Offer price or not to terminate the contract.

#### **11. OTHER OBLIGATIONS OF THE CUSTOMER AS TO THE SITE**

- a. The Customer shall provide uninterrupted access to the Site for the Company such that the contracted works can be undertaken without interruption during normal weekday working hours (0830 to 1700 hours) unless otherwise agreed in writing before the scheduled start date

- b. Suppliers of Materials are not always able to give exact delivery dates and if Materials are delivered to the Site prior to the arrival of the Company's workmen the Customer will give all reasonable assistance in the unloading and storing of the Materials and will notify the Company of their arrival
- c. Unless otherwise stated in the Offer, the Customer shall be responsible for all road works and civil works associated with the installation of the equipment, and in particular, except where specifically agreed in writing, shall provide the following facilities or work free of charge to the Company as and when required for the Company to proceed with the contracted works without interruption:
  - i. issue of notices and way leaves
  - ii. removal of obstructions and old equipment
  - iii. sufficient fencing and guarding to prevent access by animals or persons not involved in the construction work and will indemnify the Company against any loss or damage sustained through breach of this obligation
  - iv. provision and erection of temporary road signing
  - v. excavation and reinstatement of cable trenches
  - vi. clean running water and a sufficient supply of electricity
  - vii. other reasonable items and services required for completion of the work and not specifically included in the Offer

## **12. CONSENTS**

Any necessary planning permission and approval under the building regulations for the building work shall be obtained by the Customer by the time he requests the Company to commence the building work and the Customer shall be solely responsible for any application he wishes to make for a grant

## **13. GENERAL AGREEMENT DRAWINGS**

- a. Upon the Company receiving the deposit from the Customer the project design will commence with the drafting of any relevant General Arrangement Drawings
- b. Within approximately 10 days of the Company receiving the Deposit from the Customer, the Company will provide the Customer with a full set of General Arrangement drawings
- c. In the event that the Customer having reviewed the General Arrangement Drawings wishes to make changes to the Contract the Company will endeavour to accommodate these changes and issue a written Variation Order confirming these changes and detailing how much if at all these changes will vary the Contract Price
- d. Once the Customer has approved the General Arrangement Drawings including any relevant changes, the General Arrangement Drawings will be passed by the Company to the Customer for written approval by signature

## **14. TIME IS NOT OF THE ESSENCE**

- a. Any estimated dates of completion which the Company may quote to the Customer are approximations only given for the Customer's guidance and are not binding upon the Company
- b. Such estimated dates of completion shall be extended by the Company for a reasonable period if delay in delivery and/or construction is caused by:
  - i. instructions or lack of instructions from the Customer
  - ii. industrial disputes
  - iii. plant or fabrication facilities are damaged by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water, tanks apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from them
  - iv. war, hostilities, invasion, act of foreign enemies, or civil war industrial action delays the Company providing the works
  - v. any other circumstance which an experienced construction Company would have judged at the date of the Offer to have such a small chance of occurring that it would have been unreasonable for it to have allowed for it

## **15. LIABILITY FOR ACCIDENTS AND DAMAGE**

Whilst the Company or its agents or sub-contractors are on site for the purposes of the Contract the Company shall be liable for damage to the tangible property of the Customer or others occurring to the extent directly caused by the negligence of, or breach of statutory duty or breach of the Contract by the Company or its subcontractors or agents but not otherwise. The Company shall fully satisfy its liability by making good the damage, subject always to Clause 16 below.

**16. LIMITATION OF LIABILITY**

- a. The Company accepts unlimited liability for personal injury or death caused by the negligence of the Company, its fraud (including, without limitation, fraudulent misrepresentation), for any claims under s.12 Sale of Goods Act, s.2 Supply of Goods and Services Act 1982 and any other liability which it cannot exclude or limit by law
- b. The Company shall be liable for damage to the Customer's property caused by the negligence of the Company or its sub-contractors or agents whilst on site for the purposes of the Contract, to a total limit of £250,000 in aggregate for each Contract
- c. The Company's liability for loss or damage suffered by the Customer pursuant to Clause 16. b. shall in the aggregate be limited to £250,000 or the Contract Price, whichever is the greater
- d. Subject to Conditions 16. a., 16. b., 16. c. and 16. e the Company's total liability to the Customer (including without limitation liability accepted by the Company in Clause 2 of these Terms and Conditions and damage caused by breach of the Contract, tort or breach of statutory duty on the part of the Company or any of the Company's subcontractors) shall not exceed the Contract Price.
- e. With the exception of the indemnity referred to in Clause 11 c. iii., neither the Company or the Customer shall be liable to the other by way of indemnity or by reason of any breach of the Contract or of statutory duty or in tort (including but not limited to negligence) for the following loss or damage however caused and even if foreseeable:
  - i. economic losses including, without limitation, loss of profits, losses arising from loss of business, contracts, data, revenues, goodwill, production and loss of anticipated savings of every description
  - ii. loss arising from any claim made by any third party under any other contract which the Purchaser may have or may enter into; or
  - iii. indirect or consequential loss or damage whatsoever
- f. Without prejudice to the warranty contained in condition 2 (b) above the Company shall not be liable for:
  - a. loss arising through any circumstances beyond the Company's reasonable control
  - b. loss caused by damage to underground drainage, water, gas, electricity and similar services installation unless their exact location is made clear to the Company prior to the commencement of the works
  - c. loss consequent upon modification of alteration or misuse of the building works or any factor whereby they are subjected to abnormal stress or strain or consequent upon any attempt by the Customer to remedy any defect or alleged defect
  - d. loss which has not been notified to the Company within a reasonable time so as to enable the Company to investigate any alleged defect as soon as possible after it becomes apparent and in any event
  - e. loss which could have been notified to the Company within 30 days of happening thereof but which has not been notified within such period
  - f. consequential loss in the nature of loss of production or loss of profits or other economic loss as distinct from loss to material property
  - g. loss attributable to defective materials in circumstances in which the Company cannot recover the loss from the manufacturer or supplier of materials

**17. ASSIGNMENT**

The Customer shall not assign the Contract without the Company's prior written consent

**18. RIGHTS OF THIRD PARTIES**

No person who is not a party to the Contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract

**19. TERMINATION**

If the Customer:

- a. materially breaches the Contract (and where remediable fails to rectify the breach within 21 days of a written notice identifying the breach and requiring its remedy
- b. is subject to bankruptcy or liquidation
- c. has a receiver or administrator appointed
- d. is subject to a voluntary or involuntary arrangement

- e. sets up meeting with creditors or managers or carries out or is affected by any similar action which means the Customer may be unable to pay its debts; or
- f. is subject to a change of control which the Company considers acting reasonably is or could be detrimental to its business

**20. LEGAL CONSTRUCTION AND SEVERABILITY**

- a. The Contract shall be governed by and construed in accordance with English Law.
- b. Each of the parties submits for all purposes in connection with the Contract to the sole jurisdiction of the courts of England and Wales.
- c. Except where injunctive relief is sought, should any dispute arise out of the Contract the parties shall seek to settle it by negotiation before having recourse to the courts.
- d. The Conditions and sub-Conditions of these Terms and Conditions and of each Contract are several, and to the extent that any provision is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of the Contract, it shall not affect the enforceability of the remainder of the Contract, nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.