



**LK Construction Ltd**  
**Terms and Conditions**

**1.0. DEFINITIONS**

In these conditions the following words and expressions shall have the meanings hereby respectively assigned to them:

- a). "The Company" means The LK Construction or associated business.
- b). "Customer" means the person who the quotation is made.
- c). "The Works" means the works as described.
- d). "The Price" means the sum specified.

**2.0. GENERAL OBLIGATIONS**

- a) These conditions shall apply to any supply of services and/or plant hire by the Company to the Customer and all or any other terms and conditions or enquires (whether in the customer's order or otherwise) shall be of no effect.
- b) The Customer shall be deemed to have full knowledge of all the provisions of these Terms and Conditions and shall be bound to observe and perform in every respect the obligations, duties, conditions, and covenants to be observed and performed by the Contractor.
- c) The Customer shall not sub-let any part of the Works without the prior written consent of the Company and if such consent is given it will not relieve the Customer of any of their liabilities or obligations under these Terms and Conditions.
- d) The commencement of the Works will be deemed to signify that the conditions and construction of the site to receive the Sub-Contract Works are satisfactory for the proper execution of the Works.
- e) These conditions are to the exclusion of all other standard conditions incorporated in any of the Customers documents unless they are expressly agreed by the Company in writing.
- f) The commencement of the Works by the Company will be deemed to signify that the Customer accepts these conditions.
- g) In addition to the terms and conditions, asset out above any quotation given are also subject to the Conditions which appear on the face of any quotation and if there be any inconsistency between such Conditions appearing above then the Conditions on the face of any quotation shall apply rather than the above Terms and Conditions only insofar as there is any inconsistency between the two and save therefore all Terms and Conditions whether printed herein or on the face of any quotation will be applicable

**3.0. ESTIMATES AND PRICES**

- a) Any Quotations given will be based upon current rates and conditions of labour costs of material transport and handling and adequate supplies of fuel and should such rates and conditions by The Company prior to the date of the delivery of all part or an order materialising from such a quotation then the Company will be entitled to increase the price of any part of the order which had not been delivered at the time of the increase by the same percentage as the rise in the aforementioned rates and conditions whether such rise takes place before or after any acceptance of any quotation.
- b) Any quotation that are given are open or acceptance by the Customer within 30 days from the date there of (unless previously cancelled by the Company) and if not accepted within that time then any quotation given shall automatically lapse unless extended in writing by the Company.
- c) Any quotations given will not take into account Value Added Tax or other Tax (unless stated otherwise) and the Customer shall in addition to the contract price pay Value Add tax or other tax to The Company and The Company reserves the right to increase any quote price by the amount of any such Tax payable by supplier. If such Tax or other Tax shall be levied after the date thereof shall take place before or after acceptance of any quotation.
- d) Prices of goods are based on, amongst others, the cost of materials, labour, transport, import duties and levies, currency exchange rates and statutory obligations prevailing at the date of The Company's acceptance of the Customer's order. If before delivery there occurs any increase, howsoever arising, in the cost to The Company of supplying the Goods, including (without limitation) any of the above matters, The Company shall be entitled to adjust the price for the Goods by a reasonable amount to take account of such increases.

**4.0. ACCEPTANCE OF ORDERS**

- a) When the Customer wishes to order Goods and/or Services it shall do so in writing address to The Company. Each order shall be a separate offer by the Customer to buy Goods and/or to receive Services on these Conditions, which The Company shall be free to accept or decline at its absolute discretion. An order shall not be binding unless and until accepted by The Company in writing.
- b) In the case of orders given by the Customer verbally whether by telephone or otherwise the offer will not be binding until accepted by the Company in writing.
- c) Any modification to these Conditions will only be binding if made in writing, signed on behalf of The Company and containing a specific reference to these Conditions being modified. The Company may at its sole discretion, accept amendments to an order after it has been accepted.
- d) No order which has been accepted by The Company may be cancelled by the Customer without The Company's agreement in writing. If The Company agrees to the Customer cancelling an order, the Customer will indemnify The Company against all losses (including, without limitation, loss of profit) suffered by The Company arising out of such cancellation.
- e) The Company reserves the right (but does not assume the obligation) to make any changes in the specification of Goods and/or Services which are required to conform with any legislation, and which do not materially affect the nature or quality of the Goods and/or Services (as the case may be).
- f) No shortage in respect of goods which are sold by weight and are subject of any quotation will be recognised unless properly weighed over a public weigh bridge and certificate or eight produced within three working days after receipt of the goods which are alleged to be underweight.
- g) All plant is hired under CPA model terms and conditions,
- h) A minimum hire charge of 9 hours shall apply to all plant machinery and tipper lorries hire on a daywork rate unless otherwise agree in writing.
- i) Materials offered ex stock are subject to being unsold on the receipt of orders.
- j) The Customers signature or placing of any order shall be deemed acceptance of these conditions of sale.

**5.0. DELIVERY OF GOODS/SERVICES**

- a) Any times periods or dates quoted for the despatch or delivery of goods by the Company are approximate only. They are not to be taken and are not intended to be agreed times periods or dates imposing any obligations on the Company to despatch or deliver within or by such times periods or dates.
- b) If any quoted price includes delivery, it is in respect of delivery on normal working days i.e. Monday to Friday during normal working hours. All deliveries made at the Customers request at any time outside normal working hours or normal working days may be subject to an extra charge. Bank Holidays will not be deemed as a normal working day.
- c) The use of the expression 'delivery site' in any quotation shall mean that the Company by itself or by its contractors shall deliver the goods which are the subject matter of any quotation to the agreed delivery point by the lorry on a road or access which is suitable and safe in the opinion of the lorry driver. Should the driver deem to delivery point inaccessible, they shall deliver such goods to the nearest accessible point so far as it is lawful.
- d) The Company's obligation shall be to dispatch or deliver within a reasonable time after the acceptance of any quotation. In assessing what is reasonable time there shall be taken into account and full allowance shall be made in respect of, inter alia, the following factors affecting the Company and associated professional bodies in favour of the Company
  - i. Force majeure war
  - ii. Civil commotion.
  - iii. Any act of Parliament statutory instrument or any Bye Law or regulation of any Local Authority or of any statutory undertaking which comes into effect after the date of this quotation
  - iv. Any strikes or lockouts or industrial action (whether official or otherwise)
  - v. Any breakdown of plant or equipment used in production or delivery.



- vi. Any shortage of labour of plant and equipment,
- vii. Any cause or circumstances beyond the control of the Company or associated professional bodies.
- viii. Any impediment, prevention or default whether by act or omission by the Customer
- ix. Exceptionally adverse weather conditions

#### **6.0. PAYMENT TERMS**

- a) Payment terms are net monthly account unless otherwise stated and are then subject to the Customer having an approved credit account facility with the Company. Payments to the Company by the Customer shall be made within 30 days of the invoice.
- b) Without limiting any other right or remedy of The Company, if the Customer fails to make any payment due to The Company by the due date for payment, The Company shall have the right at its sole discretion:
  - i. to disapply any discounts applied in respect of the charges; and
  - ii. to charge interest on the overdue amount at the rate of 4% per annum above the current base rate of the National Westminster Bank plc accruing on a daily basis from the due date for payment of the overdue amount
- c) The Company may (at its absolute discretion) refuse to make delivery of any further consignment of any Goods or withhold the Services or make a charge at the Fee Rates or cancel any Contract, either in whole or part, by notice in writing to the Customer without incurring any liability to the Customer for any loss caused by such refusal or cancellation:
  - i. where any payment is overdue at a time when performance of the Services or the delivery of any Goods is required;
  - ii. where access for provision of the Services or delivery of the Goods cannot be obtained at the relevant time for such performance or delivery;
  - iii. where in the Company's reasonable opinion access for provision of the Services or delivery of the Goods cannot be exercised safely; or
  - iv. in such other circumstances (if any) listed in the Contract.
- d) All payments due to The Company under a Contract shall become due immediately on its termination regardless of any other provision.
- e) VAT shall be added to the price of the Goods and/or Services at the prevailing rate.
- f) The Customer shall pay all amounts due under these Conditions or any Contract in full without any deduction or withholding except as required by law and shall not be entitled to assert any credit, set off or counterclaim against The Company in order to justify withholding payment of any such amount in whole or in part.

#### **7.0. LIMITATION TO LIABILITY**

- a) The Company shall not be liable to the customer for breakage or damage in or caused to the goods and/or plant supplied by The Company for goods not being of merchantable quality of interior quality or not fit for purpose intended or in respect of any discrepancies in the goods supplied by The Company unless The Company have given written notification in respect thereof within three working days after the Company shall have supplied or delivered the said goods.
- b) The liability of the Company in respect of any defective goods or services supplied or provided by it shall be limited to the free replacement by the Company of such goods or services.
- c) The Customer shall unload The Company lorry expeditiously and shall be responsible for the provision of all labour and tackle for so doing. The Customer shall be responsible for any demurrage or waiting time cause by any delay in unloading.
- d) The Company shall not be liable for any damage or breakage during or subsequent to unloading by the Customer.
- e) The Customer will indemnify the Company in respect of any claim loss or damage payable by the Company as a result of any claim arising out of the unloading of the goods howsoever occasioned. The Customer warrants to the Company that in pursuance of the requirement of the Health and Safety at Work etc. Act 1974 the Customer will provide safe working conditions within site premises consistent with that Act (or any re-enactment of the same) and will ensure that the Company's personnel are not exposed to any risk to their health and safety.
- f) The Customer hereby agree to indemnify the Company against any liability loss damage expense or proceedings arising out of any claims by any employee of the Company or of its contractor pursuant to the above Act of statutory modification in respect of any incident or occurrence at the point at or on the road or access to which delivery is made. The Customer shall not be required to indemnify the Company for any claims which rise as a result of the Company's or its contractors' negligence.
- g) The Company shall not be liable for loss, damage or otherwise which is caused to the Customer or clients or contractors, site or property where the Customer directs the Company as to where to place the plant, equipment or goods. Further, the Customer undertakes that where in such circumstances loss or damage does occur, they shall not delay payment for the goods or services supplied by the Company.
- h) The risk in the goods, subject to this quotation shall pass to the Customer upon delivery, but equitable and beneficial ownership shall remain with the Company until full payment has been received each order being considered as a whole) or until prior re-sale in which case the Company's beneficial entitlement shall attach to the proceeds of re-sale or to the claim for such proceeds.
- i) The Company shall not be held liable for any personal injury and death caused by the supply of any of its goods or services unless caused by the Company's negligence

#### **8.0. TERMINATION**

- a) The Customer shall acknowledge the right of the Company to terminate of an agreement without further liability upon 5 days' notice in the event of the Main Contract being determined or in the event of the insolvency of the Customer

#### **9.0. INDEMNITY**

The Customer hereby wholly releases and indemnifies the Company from and against all liability arising at Common Law or otherwise howsoever so far as concerns workmen in the employment of the Customer, his agents or servants. The Customer hereby also wholly releases and indemnifies the Company from and against all liability for:-

- a) Personal Injury (whether fatal or otherwise)
- b) Loss or Damage to property.
- c) Any other loss damage costs and expenses howsoever caused or incurred by reason of the Customer's act or neglect in connection with the carrying out of the Works.

#### **10.0. DISPUTES**

- a) Should any dispute or difference arise between the parties under this Agreement the Scheme for Construction Contracts (England and Wales) Regulations 1998 and the nominating body shall be the Royal Institution of Chartered Surveyors or that stated in the Contract Particulars. Any decision of the Adjudicator shall be binding upon the parties until the final determination of the dispute of arbitration, be legal proceedings or by agreement.
- b) Subject to the right of either party first to refer any dispute or difference to adjudication such dispute or difference shall be referred to arbitration and the final decision of a person to be agreed between the parties or failing agreement a person to be appointed on the request of either party be the President or Vice-President for the time being of the Royal Institution of Chartered Surveyors.



**11.0. HEALTH, SAFETY AND WELFARE**

- a) The Customers acceptance of these terms and conditions will be deemed to include acceptance of the requirements of our Company Policy Statement for Health, Safety & Welfare and list responsibilities for Customers on this Company's sites. Details of our Policy are available on site and from the Company Head Office.
- b) The Customer must comply with the requirements of all statutory Rules and Regulations in respect of Safety, Health & Welfare, Machinery, Electricity, etc which may be in force or be introduced during the course of the work and shall be responsible for due observance and compliance with all notices and regulations whatsoever regarding safe conduct of the works and security arrangements which may be laid down and introduced to the site from time to time.

**12.0. ACTS OF PARLIAMENT ETC**

- a) The Customer shall comply with all Acts of Parliament Ordinances, Regulations, bylaws and Statutory Instruments of any Minister of the Crown or Government Department and shall furnish proof of so doing to the Company as and when requested.
- b) In addition the Customer shall free and indemnify the Company and his Principals from and against all penalties, fines and liabilities whatsoever arising from the Customers failure to so comply. Consumer Protection Act 1987 – Health and Safety At Work Act 1974 and The Control of Substances Hazardous To Health Regulations 1988.
- c) The Customer shall comply with the above Acts and regulations and shall send to the Company not less than 5 working days before commencing the Works all adequate information including the indemnity of any substance hazardous to Health, product data sheets and guidance notes relating to safe use, handling and storage of goods, substances and articles supplied under the Sub-Contract Agreement as required by the above Acts, Regulations and Safety Regulations made under Section 11 or the Consumer Protection Act 1987 and any amendment to the same.
- d) The Customer shall indemnify the Company against all losses, costs, damages incurred in connection with the breach of this clause by the Customer.

**13.0. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1989**

- a) The parties hereby confirm that notwithstanding any other provision of this Agreement, the Agreement shall not, and shall not purport to conform on any third party and right to enforce any term of the Agreement for the purposes of the contracts (Rights of Third Parties) act 1999 (whether or not in force)

**14.0. DIVISIBILITY**

- a) The Company reserves the right to make deliveries/and or services by installments and to render a separate invoice in respect of each such instalment.
- b) If the Company exercises its right to make deliveries/and or services in accordance with sub-paragraph (a) above, then any delay in the provision of such deliveries/and or services, or failure to deliver installments, shall not entitle the Buyer to reject the Contract or the delivery/service of any other installment or to withhold payment in respect of any installment previously delivered/serviced.