

# ARCURA (WOODPECKER TRADING) TERMS & CONDITIONS OF SUB-CONTRACT

These Terms & Conditions shall apply to all orders placed with the Sub-Contractor, and any stipulations or conditions in a Contractor's order which conflict with, qualify or seek to negate any of these Terms & Conditions shall be inapplicable and have no force or effect.

## 1. Definitions

- (a) "Sub-Contractor" Arcura (Woodpecker Trading)
- (b) "Contractor" means the Sub-Contractor's Customer for the Works.
- (c) "Works" means the building works the subject of the contract, in accordance with the Quotation.
- (d) "Quotation" means the quotation issued by the Sub-Contractor.

## 2. The Works

- (a) The Sub-Contractor will carry out and complete the Works in accordance with the Quotation in a good and workmanlike manner.
- (b) The Sub-Contractor is entitled to rely on the accuracy and completeness of Contractor's plans, specifications and reports provided to the Sub-Contractor.
- (c) Unless expressly agreed the Sub-Contractor will not carry out any form of design for these Works. Insofar as the Sub-Contractor will use best endeavours to comply with current legislation, Building Regulations and best practice, no warranty or other liability on the part of the Sub-Contractor shall be created or implied in regard to the suitability or fitness for purpose of components or systems recommended or any calculations undertaken. Structural and other calculations shall be undertaken by the Contractor
- (d) In the case where design forms part of the works, the Contractor shall allow a period of 4 weeks from the date of instruction for the Sub-Contractor to complete the design and produce design drawings required by the Contractor and shall allow a further 6-8 weeks from the date upon which the Contractor approves design drawings to manufacture the Works. Copyright in all design drawings or documents prepared by the Sub-Contractor shall remain vested in the Sub-Contractor.

## 3. Materials

Samples submitted for approval show substance and general character only. Colour, size, thickness or shape cannot be guaranteed.

## 4. Title

All materials will remain the Sub-Contractor's property with title fully vested in the Sub-Contractor until the Contractor has paid for the Works in full.

## 5. Variations and Extras

- (a) The prices quoted are based upon dimensions, quantities, drawings and specifications given at time of tender. The Sub-Contractor reserves the right to require re-calculation and apply supplemental charges if any of these parameters change or to increase the contract price to reflect increases in the cost of materials or labour between the end of the fixed price period specified in the Quotation and the date of completion.
- (b) If additional work is requested by the Contractor a quotation will be submitted and the additional work will not be started until the Contractor has placed an order and agreed the price to be paid for the additional works. The Sub-Contractor shall not be liable for the consequences of late acceptance.

## 6. Payment

- (a) The Sub-Contractor may invoice or provide applications for payment for interim payments each month as the Works proceed. The sums on each interim invoice or application become due upon the date of issue. The payment mechanism and timetable shall be in accordance with the Scheme for Construction Contracts (England & Wales) Regulations 1998, (As amended from time to time), (The Scheme). (1) 25% on Design, 70% on Delivery, 5% on Commissioning, (2) Account holders 30 days end of month following. Non account holding customers, payment on pro-forma.
- (b) The Contractor will not be entitled to withhold payment in whole or in part of any sum due unless and until he issues a valid Pay-less Notice in accordance with The Scheme. No set-off or abatement will be permitted by reference to any sum due under one or more other contracts.
- (c) The Contractor will not be entitled to make any retention unless agreed in writing. The Sub-contractor retains the entitlement to issue a Retention Bond in lieu of cash retentions. It is a condition precedent that the first moiety of retention is to be released in full together with VAT upon practical completion of the Sub-Contractors works. The second moiety of retention shall be released 12 calendar months later.
- (d) If any payment is not made by the Contractor by the expiry of its respective Final date for Payment the Sub-Contractor will be entitled to statutory compensation and to charge interest pursuant to the Late Payment of Commercial Debt Regulations 2013. The applicable rate is 8% per annum above Bank of England base rate. In addition the Sub-Contractor will after the expiry of seven days from the giving of written notice to this effect to the Contractor, be entitled to suspend the Works and any works under any other contract with the Contractor until such outstanding sum is paid. The sub-contractors reasonable costs incurred by such suspension will be reimbursed by the Contractor.

- (e) The Sub-Contractor reserves the right to refuse to execute any order or contract if the arrangements for payment of the Contractor's credit are not satisfactory. In the case of non-payment of any account by its Final date for Payment or in the case of death, incapacity, bankruptcy or insolvency of the Contractor or when the Contractor is a Limited Company in the case of liquidation or the appointment of a receiver the purchase price of all goods delivered to date and/or any sums already due from the Contractor shall become payable immediately from the Contractor and in addition the Sub-Contractor has the right to cancel every contract made with the Contractor or to cancel, suspend or discontinue delivery of goods and materials for same. This provision acts without prejudice to the Sub-Contractor's right to recover any loss sustained, caused by the above circumstances.

## 7. Time for Completion

Time shall not be of the essence. The Sub-Contractor will use reasonable endeavours to ensure that the Works are completed within the time (if any) stated in the Sub-contractors Quotation, otherwise completion shall be within a reasonable time. The Contractor expressly waives all claims for delay charges or Liquidated Damages.

## 8. Defects

The Sub-Contractor will rectify at its own cost any defects or faults which appear and are notified by the Contractor to the Sub-Contractor in writing within 12 months of completion of the Works and are due to defective workmanship by the Sub-Contractor or defective materials supplied by the Sub-Contractor. The Sub-Contractor shall be afforded reasonable opportunity and facilities to investigate such claims.

## 9. Consequential Damage

The Contractor expressly waives all claims for special, incidental, or consequential damages it may have against the Sub-Contractor, including without limitation damages for principal office expenses, financing costs, loss of business and reputation, and loss of use.

## 10. Liability

The Sub-Contractor's liability for death or personal injury to any individual caused by negligence of the Sub-Contractor or its Sub-Sub-Contractors or agents is not limited. Without prejudice to the above, the maximum liability of the Sub-Contractor for all other events shall not exceed the contract price.

## 11. Disputes

- (a) The Sub-Contractor and Contractor agree that either party may refer a dispute to adjudication at any time, following the rules and procedures of the Scheme for Construction Contracts Part 1 (the Scheme). The Decision of the Adjudicator shall be binding on the parties until the dispute is finally resolved through agreement or by Arbitration under the CIMAR rules
- (b) Save in the circumstances provided for below, the parties shall each bear their own legal costs and other expenses incurred in the adjudication.
- (c) Where the referring party is awarded in the aggregate a sum more than 50% of the amount claimed, the non-referring party shall reimburse the referring party's legal costs and other expenses which the referring party incurred in the adjudication process
- (d) The adjudicator shall decide how his fee and reasonable expenses are to be apportioned between the parties
- (e) The adjudicator shall be permitted to correct his decision so as to remove clerical or typographical errors arising by accident or omission

## 12. Jurisdiction

This contract is governed by the law of England and Wales.

