

BOC Limited

GENERAL CONDITIONS FOR MINOR WORKS CONTRACTS **("the Conditions")**

1. CONTRACTOR'S TERMS

- 1.1 No terms and conditions put forward by the Contractor whether in quotations, letters or other documents shall apply to the Contract unless expressly and specifically agreed in writing by BOC.
- 1.2 No variation of these Conditions shall be valid unless it is in writing and signed by or on behalf of each Party.

2 DEFINITIONS AND INTERPRETATION

- 2.1 The following provisions shall have the following meanings respectively given to them:

"Commencement Date" means the date agreed between the Parties when the Works is to start;

"Completion Date" means the date agreed between the Parties by when the Works shall be complete;

"Contract Price" means the price to be paid by BOC to the Contractor for undertaking the Works;

"Parties" means together BOC and the Contractor and each **"a Party"**;

"Site" means the place where the Works are to be carried out;

"Staff" means collectively (or any combination thereof as the context may allow of) the employees, sub-contractors, suppliers, other agents and representatives of the Contractor;

"Works" means those works more particularly referred to in the annexed document entitled "Scope of Works" or such other scope document as agreed between the Parties which scope document describes the total work to be undertaken by the Contractor, and which shall be deemed to form a part of these Conditions and shall be read and construed as such.

- 2.2 References to Clauses shall be to the clauses of these Conditions
- 2.3 Headings to clauses are for guidance only and do not form part of these Conditions.

3 COMPLETION

The Contractor shall proceed diligently with the Works from the Commencement Date and shall complete the Works by the Completion Date.

4 VARIATIONS

- 4.1 BOC may, subject to the remaining provisions of this Clause 4, order a variation to the Works if it reasonably deems it necessary by giving a written variation instruction to the Contractor.

- 4.2 If the nature or extent of such a variation is such that it will result in an increase or decrease to the Contract Price, or affect the Completion Date, then the Contractor shall put in writing to BOC, as soon as practicable, his proposals for such amendments to the Contract as he believes to be appropriate.
- 4.3 On receipt of such written proposals, BOC shall confirm in writing to the Contractor if the proposals are acceptable, and if the variations should be proceeded with.
- 4.4 No additional costs or extensions of time shall be granted to the Contractor unless the above variation procedure is strictly adhered to.

5 DELAYS AND DISRUPTIONS

- 5.1 Any claim by the Contractor for additional costs or extensions to time resulting from delays or disruptions caused by third parties, other than by the Contractor, shall be notified in writing to BOC at the time of such event, or as soon after the event as possible which shall not exceed twenty four (24) hours.
- 5.2 Any delay in submitting a claim for delay or disruption may result in the claim being rejected by BOC.

6 PAYMENT

- 6.1 Unless otherwise agreed between the Parties, the Contractor will invoice BOC upon completion of the Works on issue of a certificate of completion by BOC, such certification not to be unreasonably withheld or delayed.
- 6.2 BOC shall pay the Contractor's invoice at the end of the month following month of invoice.

7 WORKMANSHIP AND MATERIALS

- 7.1 The Works shall be carried out in a good and workmanlike manner using materials of good quality, sound and in new condition (unless agreed by BOC in writing), and in all respects suitable for their purposes.
- 7.2 The Contractor shall execute the Works safely and in accordance with good engineering and construction practice and applicable regulations and to the reasonable satisfaction of BOC.
- 7.3 The Contractor shall only employ Staff to carry out the Works who are competent, are appropriately qualified, have the necessary skills in their trade and are capable of working safely. BOC may request the Contractor to provide evidence of such competency and /or qualifications.
- 7.4 The Works shall be subject to such tests as BOC may reasonably direct at the place of manufacture or on the Site. The Contractor shall, at its own expense, provide such assistance, instruments, machines, labour and materials as may be required for such testing. If reasonably required by BOC, the Contractor shall, at its own expense, supply samples of materials for testing before they are incorporated in the Works.
- 7.5 BOC may at any time instruct the Contractor at its own expense to:-
- remove from the Site any materials which in the reasonable opinion of BOC are not in accordance with the Contract, unsafe, or are not to BOC's reasonable satisfaction;
 - substitute proper and suitable materials;
 - remove and properly re-execute any work which in respect of materials or workmanship is not in the opinion of BOC in accordance with the Contract, or is not to BOC's reasonable satisfaction.

- 7.6 BOC shall be entitled to employ and pay other persons to carry out its instructions pursuant to Clause 7.5 if the Contractor does not do so within a reasonable time and the Contractor shall pay to BOC the cost thereof.

8 GUARANTEE

- 8.1 If within twelve (12) months after the Completion Date, BOC gives written notice to the Contractor of any defect in the Works of materials or workmanship, the Contractor, at its own cost, shall immediately and without prejudice to any other right of BOC, at its option replace or repair such defect, in either case to BOC's reasonable satisfaction.

9 FREE ISSUE MATERIAL

- 9.1 The Contractor shall be responsible and account for any material issued free of charge to it by BOC.
- 9.2 The Contractor shall replace at its own cost all such material which is either lost, is ineffectively used or becomes damaged for any reason and shall return to BOC or as BOC shall direct all material which is not used by the Contractor in the execution of the Works.

10 CONTRACTOR'S OBLIGATIONS

- 10.1 The Contractor shall be responsible for communicating all its obligations contained herein to its Staff. The Contractor shall also be responsible for full compliance with these obligations.
- 10.2 The Contractor and its Staff shall comply fully with all statutory obligations, laws and regulations in force from time to time relating to the Works, and shall hold harmless and indemnify BOC against any claims or proceedings arising out of any breach of such obligations, laws or regulations by the Contractor or its Staff.
- 10.3 The Contractor shall, when entering or working on the Site, make himself fully aware of all safety and security regulations applicable to the Site. The Contractor shall comply and shall ensure that its Staff complies with all then current BOC safety and security policies relating to the Site, as notified to it from time to time.
- 10.4 BOC will require all contractors entering the Site for the first time to attend a safety induction course. Depending on the hazards associated with the Site, the induction course may last up to two (2) hours.
- 10.5 Site Induction Safety Training shall include (but shall not be limited to) issues such as:
- Hazards particular to the Site,
 - Toilet and messing facilities,
 - Smoking areas,
 - Vehicle parking and access restrictions,
 - Accident procedure (whether personal, injury or damage to property),
 - Requirements for Protective Clothing and Equipment,.
 - Emergency fire procedures
 - Storage facilities,
 - Permit to Work system,
- 10.6 The Contractor shall be responsible for providing to its Staff all necessary personal protective clothing and equipment appropriate for the tasks being undertaken.
- 10.7 The Contractor shall be required to provide appropriate risk assessments and method statements before the Works commence. Other than in exceptional circumstances, this documentation shall be submitted to BOC at least forty eight (48) hours before start of work. Delays in submitting acceptable and proper risk assessments or method statements shall not be a valid reason for the Contractor claiming additional costs or an extension of time.

11 TOOLS AND EQUIPMENT

- 11.1 All plant and equipment brought on to the Site by the Contractor or its Staff such as scaffolding, lifting tackle, mechanical or electrically powered equipment must be of sound construction and properly maintained and will be liable for inspection by BOC. The Contractor is responsible for ensuring that all required statutory inspections are carried out and that documentary evidence of such inspections are available on the Site.
- 11.2 All non-battery portable tools brought onto BOC sites must be 110V CTE (centre tapped to earth) and have an in-date test label. Any portable tool which is over 110V must be agreed in writing by a BOC authorised person before it is allowed onto the Site.
- 11.3 The register identifying the tool(s) or/and equipment covering all such items shall be kept on the Site throughout the period hereunder and shall be kept up to date by the Contractor recording all additions to and removals from the Site.
- 11.4 The Contractor shall permit BOC at any time to inspect the register, whether on Site or at the Contractor's office. In addition, BOC shall in its discretion carry out inspection or testing of tools and/or equipment at any time and BOC shall have the right to require the removal of any tools and equipment from the Site.
- 11.5 The Contractor shall not make use of BOC's electrical or other sources of power, mechanical equipment, lifting gear, scaffolding, ladders and other gear on the Site without the express permission of BOC in writing and subject to any conditions BOC may reasonably impose.

12 USE OF BOC'S PRODUCTS

BOC industrial gases shall be used by the Contractor in the execution of the Works unless BOC's prior written consent is obtained to use gases not of BOC's manufacture.

13 PUBLICITY

Neither the Contractor nor any member of its Staff shall display any advertisement on the Site or take photographs of it without the prior written approval of BOC.

14 LIABILITIES AND INDEMNITIES

- 14.1 The Contractor's liability to BOC is set out in this Clause 14 and the Contractor shall have no liability (whether in contract, tort, misrepresentation or otherwise) for any other BOC loss or damage, including, without limitation, loss or damage to revenue, profits, savings use, contracts, goodwill or business and any consequential loss indirect loss or damage. Nothing herein shall, however, limit the Contractor's liability for fraud or fraudulent misrepresentation.
- 14.2 The Contractor accepts liability to BOC by way of an indemnity for personal injury or death to the extent caused by the negligence, act or default or breach of contract of the Contractor, its employees or agents.
- 14.3 The Contractor accepts liability to BOC by way of an indemnity for the cost of repair, reinstatement or replacement of physical damage to property to the extent caused by the negligence, act or default or breach of contract of the Contractor, its employees or agents, up to a limit of two million pounds (£2m) per any one incident or series of incidents arising out of the same originating cause.
- 14.4 The Contractor accepts liability to BOC by way of an indemnity for any other breach of these Conditions (including, but not limited to, a breach of the provisions of Clause 10.2) to the extent caused by the negligence, act or default of, or breach of contract by, the Contractor or its Staff, up to a limit of thirty thousand Pounds (£30,000) per any one incident or series of incidents arising out of the same originating cause.

- 14.5 The Contractor shall at its own expense take out and maintain, and the Contract Price shall be deemed to include, the costs of insurances with companies having a Standard and Poor's minimum rating of 'A' or equivalent, and adequate to cover the Contractor's liabilities under these Conditions and pursuant to statute and the requirements and regulations of Local Government and other appropriate bodies; and the Contractor shall produce to BOC, if requested, evidence satisfactory to BOC of the existence and extent of such insurances. For the purposes of this clause, a minimum level of cover shall deem to be: Employer's liability – not less than £5m per occurrence or series of occurrences and Products/Public liability – not less than £5m per occurrence or series of occurrences.
- 14.6 BOC's liability to the Contractor is set out in this Clause 14 and BOC shall have no liability (whether in contract, tort, misrepresentation or otherwise) for any other Contractor loss or damage, including, without limitation, loss or damage to revenue, profits, savings use, contracts, goodwill or business and any consequential loss indirect loss or damage. Nothing herein shall, however, limit BOC's liability for fraud or fraudulent misrepresentation.
- 14.7 BOC accepts liability to the Contractor by way of an indemnity for personal injury or death to the extent caused by the negligence, act or default or breach of contract of BOC, its employees or agents.
- 14.8 BOC accepts liability to the Contractor by way of an indemnity for the cost of repair, reinstatement or replacement of physical damage to the Contractor's property to the extent caused by the negligence, act or default or breach of contract of BOC, its employees or agents, up to a limit of two million pounds (£2m) per any one incident or series of incidents arising out of the same originating cause.
- 14.9 The provisions of Clause 14.5 shall apply reciprocally to BOC *mutatis mutandis*.

15 NOTIFICATION OF ACCIDENTS

- 15.1 The Contractor shall:-
- a) immediately, upon learning of any accident, injury, damage or loss in which it is involved on the Site, given written notice thereof to BOC; and
 - b) immediately, upon receipt of any writ, summons or other proceedings arising out of such accident, injury or damage which may be commenced against the Contractor or any member of its Staff, notify BOC in writing.

16 SUSPENSION

- 16.1 BOC may give written notice to the Contractor to suspend the Works or any part thereof and the Contractor shall during such suspension properly protect and secure the Works.
- 16.2 The reasonable extra direct cost (if any) to the Contractor of implementing such suspension and/or protecting and securing the Works shall be paid by BOC unless such suspension is:-
- a) otherwise provided for hereunder, or
 - b) necessary for the proper execution of the Works due to weather conditions or by the act, omission or other default on the part of the Contractor its Staff, or
 - c) necessary for the safety of the Works or any part thereof
- 16.3 Provided that the Contractor shall not be entitled to recover any such extra cost unless it makes a written claim to BOC within twenty eight (28) days of receipt by it of such written notice.

17 CONTRACTOR'S DEFAULT

- 17.1 If BOC is of the opinion (acting reasonably) and is able to demonstrate to the Contractor's reasonable satisfaction that either the Contractor:
- a) is not executing the Works in accordance with, or as specified in herein, or
 - b) is not proceeding fast enough to ensure the completion of the Works by the time stipulated in the Contract or that such time has already expired, or
 - c) has refused to carryout a reasonable instruction of BOC for the execution of the Works, or
 - d) has committed any material breach of the Conditions, then the provisions of Clause 17.2 shall apply
- 17.2 Should the circumstances under Clause 17.1 apply, BOC may give the Contractor seven (7) days' written notice to make good such default or breach. Should the Contractor fail to comply with such notice BOC may, at the expense of the Contractor and without prejudice to any other rights or remedies of BOC, either perform itself such of the Works as the Contractor has failed to, or re-contract the Works to any other person, or make such modifications, substitutions or additions to the Works as it considers necessary to ensure the satisfactory execution thereof.

18 SITE CLEARANCE

- 18.1 The Contractor shall, when required by BOC, carry away excavated and other unwanted material arising from the Works and shall from time to time as work progresses remove all surplus material, temporary erections, etc. and shall on completion of the Works leave the Site clear and tidy to BOC's satisfaction.

19 DRAWINGS ETC

- 19.1 All plans, drawings, specifications and other documents provided by BOC to the Contractor shall remain the property and copyright of BOC and forthwith upon completion of the Works (or sooner determination of the Contract) shall be returned to BOC in good condition. No such plan, drawing, specification or other document nor any copy thereof shall be shown nor its contents disclosed to any third party, nor shall it be copied or used for any purpose other than for the Works.

20 ASSIGNMENT AND SUB-CONTRACTING

- 20.1 Neither Party may assign, novate or otherwise transfer these Conditions or the Works or any part thereof unless agreed by the other Party in writing.
- 20.2 The Contractor shall not sub-contract the whole of the Works. The Contractor may sub-contract any part or parts of the Works with the prior written consent of BOC. If BOC agrees to the sub-contracting of any part or parts (but not the whole) of the Works, the Contractor shall not be relieved of any of its obligations and liabilities hereunder and shall remain responsible for the acts, defaults or neglects of any sub-contractor as fully as if they were the acts, omissions or other default by it or its Staff.

21 INSOLVENCY

- 21.1 Either Party may terminate these Conditions forthwith by notice in writing if the other Party either (i) becomes bankrupt, (ii) passes a resolution or a court makes an order that it be wound up, otherwise than for the purpose of a bona fide reconstruction or amalgamation, or (iii) makes any arrangement with its creditors or being a company goes into liquidation either voluntarily or compulsorily.

22 DISPUTES

- 22.1 If any dispute shall arise between BOC and the Contractor in connection with or arising out of the Contract or the carrying out of the Works it shall be settled
- a) promptly through negotiations between the Contractor and a senior executive of BOC who shall have authority to settle the same, and
 - b) if the dispute cannot be resolved by negotiation between the senior executives under (a) above, then the Parties will attempt to settle it by mediation in accordance with the London Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure (“Mediation”).
 - c) if the dispute is not resolved by Mediation within thirty (30) days or if either Party refuses to participate in Mediation or where Mediation is inappropriate in the circumstances (e.g., where either Party seeks injunctive or other ancillary relief), the dispute shall be referred to the English courts.

23 LAW

- 23.1 These Conditions shall be governed by and construed in accordance with English Law, and, subject to the provisions of Clause 22.1, the Parties hereby submit to the exclusive jurisdiction of the English Courts.

24 GENERAL

- 24.1 Should any provision of these Conditions be held to be invalid or unenforceable by any court or other body of competent jurisdiction, and such provision shall be ineffective without thereby invalidating any of the remaining provisions of these Conditions, the Parties shall in good faith replace the invalid or unenforceable provision by a valid and enforceable provision which comes as closely as possible to the common intention underlying the provision which is being replaced.
- 24.2 The failure by either Party to insist upon strict performance of any provision of these Conditions or failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof.
- 24.3 Nothing in these Conditions is intended to or shall operate to create a partnership between the Parties or to authorise either Party to act as agent for the other and neither Party shall have any authority to act in the name or on behalf of or otherwise bind the other Party in any way.