

TERMS & CONDITIONS OF TRADING

These conditions are issued by the Heating and Ventilation Contractor's Association for use on contracts direct with Employers involving the supply and installation of commercial heating plumbing, ductwork, Unit Air Conditioning systems and ventilating systems.

1. PERIOD OF TENDER

Unless previously withdrawn, this tender is open for acceptance in writing within thirty days of the date hereof or within such other period as may be agreed in writing.

2. BASIS OF TENDER

(1) This tender is conditional upon the employer having supplied the Contractor with adequate drawings (where the Contractor is not responsible for design) and with availability of working and storage areas with suitable access roads, the existence of any abnormalities such as heat, fumes, dust etc.) as will enable the Contractor to make a reasonable estimate of the cost of the supply and erection of the Installation and the work to which this tender relates (hereinafter referred to as "the installation") and the time for its completion. In the event of the Employer supplying inadequate or inaccurate drawings, information or details, the tender price shall be adjusted accordingly.

(2)(a) This tender covers the items in the specification and/or drawings only and unless otherwise expressly stated, does not include the following items:

- (i) Building and electrical work or the associated work of other trades.
- (ii) The supply and erection of scaffolding, ladders, moveable platforms, hoisting and/or lowering gear necessary for the execution of the Installation.
- (iii) The cost of operating any part of the installation.
- (iv) The cost of any fuel, water or electricity used on site.

(b) Unless otherwise expressly stated, any costs incurred by the Contractor in providing any of the items referred to in paragraph 2(2)(a) shall be reimbursed by the Employer to the Contractor.

3. CONTRACT PRICE FLUCTUATION

Unless expressly stated to be on a fixed price basis, the tender price shall be adjusted in accordance with the contract price fluctuation provision attached hereto. Any such adjustment shall be given effect in accordance with Clause 9.

4. FIXED PRICE BASIS

- (1) Where expressly stated to be on a fixed price basis, this tender is based upon the types and rates of contributions, taxes, levies and duties (hereinafter referred to as "the tax items") payable by the Contractor in respect of the execution of the Installation and which are current at the date of the tender.
- (2) If after the date of tender there is any increase or decrease in the cost to the Contractor of executing the Installation caused by any change in or cessation of any one or more of the tax items or by the



introduction of any new contribution, tax, levy or duty payable by the Contractor in connection with the execution of the Installation, then the tender price shall be increased or decreased accordingly.

5. OVERTIME

All additional costs caused by working overtime at the request or with the consent of the Employer shall be charged as an addition to the tender price.

6. VALUE ADDED TAX

The tender price does not include any Value Added Tax properly chargeable to the Contractor in respect of the execution of the Installation. The net amount of such tax shall be reimbursed to the Contractor in accordance with Clause 9.

7. VARIATIONS

- (1) The term “variation” means the alteration or modification of the design, quality or quantity of work executed for the Installation, and includes the addition, omission or substitution of
- (2) Any work and the alteration of the kind of standard of any of the materials or goods to be used in the installation.
- (3) The employer may order variations to the Installation and the Contractor shall comply with such orders but not until:
 - (i) the same have been ordered in writing by the Employer or, where ordered orally, confirmed in writing by the Contractor; and
 - (ii) the value of the variation has been agreed where it is reasonably possible to estimate such value.
- (3) If it is reasonably possible to estimate the value of a variation before the Contractor complies with the order, or if the order is complied with before such value has been agreed, then a fair valuation shall be made.
- (4) Where the value of a variation has not been agreed under paragraph 7(2)(ii) or a fair valuation under sub-clause 7(3) is not made, then the Contractor shall be allowed the prime cost of the variation work calculated in accordance with the “Definition of the Prime Cost of Day Work” current at the date of tender and issued by the Royal Institution of Chartered Surveyors and the Heating and Ventilation Contractors’ Association together with such percentage additions to each section of prime costs as are given to the employer upon his application for the same or prior to the execution of such day work.

8. MATERIALS, GOODS WITH RETENTION OF TITLE

- (1) Materials and goods properly on site for incorporation into the installation shall remain the property of the Contractor on retention of title until he has received payment in full. (Less any deductions properly made under paragraph 9(1)(iii)).
- (2) Until such payment has been received the Contractor may remove any materials and goods from the site under the retention of title and the Employer shall allow such access to the site as is reasonably necessary for such removal. If the Employer seeks administration/receivership/liquidation during the time of seeking payment the Contractor will seek to use the rights of Retention of title.



- (3) All materials and goods properly on site whether unfixed or incorporated into the installation shall be at the sole risk of the Employer. If any part of the Installation or any materials and goods are destroyed, damaged or lost through any cause then the Contractor shall be entitled to charge as a variation to the contract for the restoration of any work or the replacement of any materials or goods so destroyed, damaged or lost.



9. TERMS OF PAYMENT

- (1) During the execution of the Installation, the Contractor shall be entitled to be paid by instalments.
- (i) The Contractor may apply for payment to the Employer at any time or at such specific intervals as are agreed between the parties in writing, stating the total value of the work executed (including the value of any materials or goods intended for incorporation into the Installation provided the same have been delivered to or adjacent to the site so in respect of which the Contractor has paid his supplier or is legally bound to make such payment, and of any fluctuations assessed in accordance with Clauses 3 and 4, and of any amounts due under sub-clause 10(3), and of any variations which have been executed) and of any Value Added Tax properly chargeable at the date of the application, and of any other amounts due to the Contractor under these Conditions.
 - (ii) Within 14 days of receipt of such application the Employer shall pay the Contractor the full amount properly applied for less a retention of 2.5% and less any amounts previously paid. PROVIDED that any Value Added Tax properly due to the Contractor from the Employer shall not be subject to the deduction of the retention money.
 - (iii) Capital Plant. The contractor may make a claim in advance for the payment of the retail value of capital plant payable 7 days prior to the delivery of the plant or by banker's draft on the day of delivery.
- (2) The retention money referred to in paragraph 9(1)(ii) shall be paid to the Contractor within one month of completion of the Installation.
- (3) If the Employer fails to make any payment in accordance with these Conditions, and such failure continues for seven days after the Contractor has given him written notice of the same, then without prejudice to any other rights or remedies of the Contractor, he may suspend the further execution of the Installation until such payment is made and any such period of suspension shall be deemed to be an extension of the period for completion determined in accordance with Clause 10 and shall not be deemed a delay in the completion of the Installation for which the Contractor is responsible.

10. TIME FOR COMPLETION

- (1) Subject to the sub clause 9(3) the Contractor shall, so soon as he has possession of the site, proceed regularly and diligently with the execution of the Installation.
- 2) Upon it becoming reasonably apparent that the process of the Installation is delayed, the Contractor shall forthwith give written notice of the delay to the Employer stating the cause and where reasonably practicable, the extent of the delay. Upon receipt of the said notice and where the delay is due to circumstances beyond the Contractors control, the Employer shall forthwith grant the Contractor a fair and reasonable extension of the time for completion of the Installation.



(3) Where the progress of the Installation is delayed or materially disrupted by any act, omission or default of the Contractor or Employer or those for whom they are respectively responsible, then the party at fault shall pay or allow to the other the agreed amount of direct loss and/or expense (including direct cost, overheads and loss of profit) as may be attributable to such delay or disruption.

11. DETERMINATION

(1) If:

(i) The Contractor wholly suspends the execution of the Installation without reasonable cause; or

(ii) The Contractor fails, without reasonable cause, to proceed regularly and diligently with the Installation; or

(iii) The execution of the Installation is delayed due to reasons beyond the control of both parties; or

(iv) The execution of the Installation is delayed due to reasons within the control of the Employer; or

(v) The Employer fails to make any payment in accordance with the provisions of Clause

9 then if the circumstances mentioned in paragraphs 11(1)(i) – (iii) continue for ten days after notice has been sent by registered post or recorded delivery specifying the same by the Employer to the Contractor, or if the circumstances mentioned in paragraphs 11(1)(iii) – (v) continue for ten days after notice in the said form has been sent by the Contractor to the Employer, then the party who sent the said notice may, by further notice sent by registered post or recorded delivery, forthwith determine the employment of the Contractor under these Conditions. PROVIDED that such notice shall not be given unreasonably and provided that any such determination shall be without prejudice to any other rights or remedies of the party effecting determination.

(2) If either party commits an act of bankruptcy or enters into any deed of arrangement or composition with his creditors or enters into bankruptcy or liquidation (whether compulsory or voluntary) except for the purpose of company reconstruction, then the other party may, by notice sent by registered post or recorded delivery to the other, forthwith determine the employment of the Contractor under these conditions.

(3) Upon such determination, after taking into account amounts previously paid, the Contractor shall be entitled to be paid: any design costs and the total value of work begun and/or completed up to the date of determination;

(i) the cost of materials and goods ordered for the Installation for which the Contractor has paid

(ii) or is legally bound to pay. Upon such payment, title to the said material and goods shall pass to the employer and the Contractor shall make the same available for collection by the employer the cost of removal from the site of any property of the Contractor properly on site for the execution of the Installation;

(iii) any direct loss and/or expense caused to the Contractor whether by determination or otherwise under these Conditions.

any other amounts due to the Contractor under these conditions PROVIDED that where determination has been effected for the reasons mentioned in paragraphs 11(1)(i) and (iii), then paragraph 11(3)(v) shall be deemed to be deleted.

AND PROVIDED that where determination has been effected for the reasons mentioned in paragraphs 11(1)(i) and (ii), the Employer shall be entitled to recover from the Contractor any direct loss and/or



expense (including overheads and/or financing charges) caused to the Employer whether by determination or otherwise under these conditions.

AND PROVIDED ALSO that where determination has been effected for the reasons mentioned in paragraphs 11(1)(iv) or (v), the Contractor may take possession of and shall have a lien upon all unfixed goods and materials which may have become the property of the Employer until the payment of all monies due to the Contract from the Employer.

- (3) Where the amounts already paid to the Contractor exceed those due to him under sub-clause 11(3), then the balance shall be returned to the Employer.

11. INSURANCE

The Employer shall, for the benefit of himself and the Contractor, insure and keep insured the full value of the Installation, the materials and goods on site for incorporation into the Installation and the cost of any professional fees or services against loss or damage by fire, explosion, storm, tempest, flood, bursting or overflowing of water tank, apparatus or pipes (whether such loss or damage is caused or contributed to by the negligence of the Contractor or those for whose actions the Contractor is responsible) lightning, earthquake, aircraft or anything dropped therefrom, aerial, objects, riots and civil commotion, and such loss or damage which may occur shall be at the sole risk of the Employer.

12. THIRD PARTY / PUBLIC LIABILITY

The Employer shall indemnify the Contractor and his Employees against all claims (including the cost of any legal proceedings) in the respect of the death of or injury to any persons or for any damage to or loss of property made by any persons against the Contractor or the Employer whether under Statute or Common law which may arise out of or be in any way connected with the execution of the Installation except where the same is due to the negligence, omission or default of the Contractor.

13. PROVISION OF FACILITIES

- (1) The Employer shall, until completion of the Installation, provide free-of-charge, adequate and proper facilities for the storage of such materials, equipment, tools or other property which may be brought on site, by the contractor.
- (2) The Employer shall supply at his own cost all necessary water, lighting, power, welfare facilities and site security the purposes of executing, or in connection with, the Installation.

14. DRAWINGS

The copyright in any drawings, illustrations or descriptive matter (hereafter referred to as "documents") submitted by the Contractor shall remain his property. The copyright in any documents submitted by the Employer shall remain his property.

15. GUARANTEE AND LIMITATION OF LIABILITY

- (1) The Contractor shall only be liable to make good any defects in the Installation which stem from his faulty design or his selection of unsuitable or inadequate materials or from faulty materials or bad workmanship. Provided that:



- (i) the contractor receives written notice of any defect within 12 months of the completion of the Installation; and
- (ii) the Installation has been used under proper operating conditions; and
- (iv) in the case of materials and goods supplied and fixed but not manufactured by the Contractor, the extent of the Contractor's liability in respect thereof shall not exceed the extent of his supplier's or the manufacturer's liability to the Contractor.

PROVIDED that paragraph 16(1)(iii) shall not operate unless, before entering any contract for the purchase of any materials and goods, the Contractor has informed the Employer of the nature and extent of his supplier's intention to limit or exclude his liability and:

- (a) the Employer has agreed that the Contractor's liability under these Conditions shall, mutatis mutandis, be of the same nature and extent, or
 - (b) there are no alternative sources of supply for the materials and goods.
 - (v) the Contractor shall not be liable to make good any defects in the Installation which arise from the operation of the same by the Employer, his servants or agents before the date of completion, nor shall the Contractor be liable for any loss or damage arising directly or indirectly as a consequence of such operation.
- (2) Completion of the Installation shall be deemed to have occurred and the guarantee period to have commenced on the date of which the Contractor gives written notice to the Employer or his agent that the installation is ready for use.
- (3) The Contractor shall not be liable in respect of any defect which may occur in any previously existing system to which the Installation may be connected unless and to the extent that such defect is caused or contributed to by a defect in the Installation for which the Contractor would be liable under this Clause.
- (4) Save as is provided in this Clause, the Contractor shall not be liable for any loss or damage whether arising directly or indirectly as a consequence of any defect in the Installation save to the extent that such defect is caused by the negligence of the Contractor, his servants or agents.

16. COMPLIANCE WITH LAW AND REGULATIONS

- (1) Any fees incidental to the execution of the Installation which are payable by reason of any Statute, Order-in-Council, Regulation or Direction, Bye-Law or other lawful requirement of instruction (hereinafter referred to as "requirement or regulation") are to be paid by the Employer.
- (2) The Employer and Contractor shall each respectively comply with every applicable good practice, requirement or regulation whether of the Government or any local or other lawful authority and the Employer shall obtain every licence, permit or authority that may be required in connection with the Installation.

17. ARBITRATION

If any dispute or difference between the parties hereto arises out of this contract the same shall be referred to the decision of an Arbitrator to be mutually agreed upon or (failing such agreement) to be appointed by the President for the time being of the Institute of Arbitrators. The Arbitrator shall be subject to and in accordance with the Arbitration Act 1950 or any statutory modification or re-enactment thereof or substitution therefore.

