

QUARTZELEC LIMITED TERMS & CONDITIONS OF PURCHASE FOR GOODS & INCIDENTAL SERVICES

1. Definitions

Buyer: Quartzelec Limited

Commencement Date: as set out in the Order.

Employer's Liability Insurance: means a policy of insurance which covers the Seller's liability for injury or disease to its employees arising out of their employment with such limits as set out in the Order or otherwise £5,000,000 pounds for each and every event.

End Customer: means the customer of the Buyer set out in the Order.

Final Date for Payment: as set out in the Order or otherwise pursuant to clause 13.

Goods: all goods and/or products ordered directly by the Buyer to be provided by the Seller as part of his obligations under this Sub-Contract including Incidental Services.

Incidental Services: all services required to be provided by the Seller under the Sub-Contract which are not directly specified in the Order, to include machining of free issue materials or design of components to be supplied.

Liquidated Damages: as set out in the Order or otherwise being those in the Main Contract.

Main Contract: as set out in the Order.

Main Contract Choice of Law: as set out in the Order.

Main Contract Date: as set out in the Order.

Main Contract Documents: documents forming part of the Main Contract.

Main Contract Rectification Period: as set out in the Main Contract

Materials: all materials ordered directly by the Buyer or by the Seller to be used in connection with the Goods.

Order: the sub-contract order between 1) the Buyer and 2) Seller.

Payment Due Date: as set out in the Order or otherwise pursuant to clause 13.

Period for Completion/Delivery: as set out in the Order.

Place of Delivery: shall mean the Site unless otherwise stated in the Order or instructed by the Buyer.

Principal Contractor: as such term is defined within the Construction (Design and Management) Regulations 2015 ("the CDM Regulations") herein known as the Buyer or such other person notified to the Seller by the Buyer.

Principal Contractor's Safety Policy: the Buyer's terms and conditions from time to time in force.

Product Liability Insurance: means a policy of insurance which covers the Seller's liability for damage or injury to third parties and their property arising out of products supplied by the Seller with such limits as set out in the Order or otherwise £5,000,000 pounds for each and every event.

Professional Indemnity Insurance: means a policy of insurance which covers the Seller's liability for the provision of services with such limits as set out in the Order or otherwise £5,000,000 pounds for each and every event.

Public Liability Insurance: means a policy of insurance which covers the Seller's liability for public or other third party loss with such limits as set out as defined in the Order or otherwise £5,000,000 pounds for each and every event.

Seller: as set out in the Order.

Seller's Documents: means the documents supplied by the Seller in advance of the formation of the Sub-Contract.

Specification: the detailed, exact statements of particulars describing the prescribed materials, dimensions and quality of work for the Goods.

Sub-Contract: means the sub-contract incorporating both the Order, such documents referred to therein and the Terms and Conditions herein.

Sub-Contract Price: as set out in the Order.

Site: as set out in the Order.

Works: means the works which the Buyer is to perform under the Main Contract and of which the Goods form part.

2. General

The Seller will upon and subject to these Terms and Conditions and documents referred to in the Order provide everything which is necessary for the proper and timeous execution and completion of the Goods in accordance with all drawings, specifications, requirements and/or instructions supplied to the Seller and will deliver up the Goods to the Buyer complete in every respect to the satisfaction of the Buyer.

3. Formation of Contract

3.1. The Seller's Documents constitute an offer by the Seller to enter into the Sub-Contract on these Terms and Conditions.

3.2. Subject to clause 3.3, a legally binding contract will only be formed between the Buyer and the Seller when the Buyer has written the details of order on the Order together with a sub-contract order number.

3.3. Commencement of design, manufacture, delivery, start of invoicing or supply of the goods or services implies acceptance of the Order by the Seller of the Sub-Contract under these Terms and Conditions.

4. Main Contract

4.1. The Seller is deemed to have notice of the Main Contract and shall comply with any of the same which may in any way be relevant to the Goods (save for those which have been expressly amended in this Sub-Contract) as though the same were fully set out herein and the Buyer was the End Customer and the Seller was the Buyer.

4.2. The Seller shall indemnify the Buyer against all claims, demands, proceedings, damages, costs, charges, losses and expenses whatsoever suffered or incurred by the Buyer arising under the Main Contract consequent upon the Seller's failure to comply whether in whole or in part with the terms and conditions of the Main Contract save to the extent that such claims, demands, proceedings, damages, costs, charges, losses and expenses are occasioned by any act of negligence or default of the Buyer.

5. Specification

The quantity, quality and description of any Goods shall be as specified in the Order and/or in any Specification provided by the Buyer to the Seller or produced by the Seller for the Buyer and/or as otherwise agreed in writing between the parties.

6. Goods

6.1. The Seller will ensure that the Goods are in every respect properly and effectively co-ordinated and compatible with the works or goods to be provided under the Main Contract.

6.2. Where or to the extent that the Goods and any addition or variation to them include design work or the Seller shall have designed any part of the Goods or shall have selected Materials for incorporation therein, the Seller shall ensure that such design and such Materials are safe, suitable and fit for their intended purpose or purposes.

6.3. The Seller grants to the Buyer an irrevocable, non-exclusive, royalty free licence to copy and use all drawings, details, plans and other documents of any nature whatsoever and any designs contained in them which have been created in the course of performing the obligations under the Sub-Contract (the "Documents").

6.4. The Seller warrants that the Documents are its original work and that they have not been copied wholly or substantially from any other work or material, and that the exercise by the Buyer of the rights assigned to it will not infringe the rights of any third party.

6.5. The Seller agrees to indemnify and to keep the Buyer indemnified from and against all costs (including costs of enforcement), expenses, liabilities, injuries, losses (which includes direct, indirect and consequential loss and loss of profit), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Buyer incurs or suffers as a consequence of a direct or indirect breach of any of its warranties in Clause 6.4 or out of any claims by a third party based on any facts which, if substantiated, would constitute such a breach, and at the request of the Buyer shall provide all reasonable assistance as the Buyer may request to enable the Buyer to resist any action, claim or proceedings brought against the Buyer as a consequence of any such breach.

7. Variations

7.1. The Buyer may, without invalidating the Sub-Contract, instruct a variation to the Goods.

7.2. The Seller shall accept any such variation requested by the Buyer. The Sub-Contract Price shall be adjusted to reflect the variation having regard to the rates and prices used in the Sub-Contract or, where these are not relevant, to what is fair and reasonable.

7.3. Neither party shall be bound by any variation to the Sub-Contract unless and until it is confirmed by an official order amendment issued by the Buyer.

8. Time for Delivery of the Goods

8.1. The Goods shall be carried out and completed within the Period for Delivery and, in any event (but without prejudice to the Period for Delivery) to be carried out diligently and in such manner, order and time as the Buyer may direct in accordance with the Main Contract programme and at all times having regard to the progress of the Works and so as to ensure completion of the Works or any part thereof by the date or dates for completion of the works under the Main Contract.

9. Delay and Loss & Expense

9.1. If, and whenever it becomes reasonably apparent that the commencement, progress or completion of the Goods, or any part thereof, is being or is likely to be delayed, the Seller shall forthwith give written notice to the Buyer of the material circumstances, including the cause or causes of the delay and shall identify in such notice any matter which in its opinion falls within Clause 9.2

9.2. The date for performance of the Seller's obligations will be extended by a reasonable period where in the reasonable opinion of the Buyer, the Seller has been delayed by the breach of the Sub-Contract by the Buyer.

9.3. If the Seller fails to deliver the Goods within the Period for Delivery, or any revision thereto, the Buyer shall notify the Seller in writing, setting out the amount of delay and the Liquidated Damages, if any, to which the Buyer shall be entitled to receive from the Seller by way of deduction or allowance.

10. Insurance

For the duration of the works and for a period of 6 years following completion of the works, the Seller shall have and maintain with a reputable insurer adequate "Employer's Liability", "Public Liability", "Product Liability" and (where appropriate) "Professional Indemnity" insurance in relation to all such risks arising out of or in relation to this Sub-Contract for such amounts and on such terms as may be detailed in the Order (and notwithstanding the amounts detailed in this Order, for such minimum amounts as may be required of the Buyer pursuant to the Main Contract).

11. Legislation and Health and Safety

The Seller shall comply with all statutes, statutory instruments, bye-laws, approved codes of practice and regulations affecting the Goods and the carrying out thereof including but not limited to the Health and Safety at Work (etc) Act 1974 and the CDM Regulations or amendments thereof.

12. Risk and Title

12.1. The risk in all Goods and Materials to be incorporated in the Works and in all plant, tools and equipment for use in connection with the Works, including but not limited to the risk in any and all liabilities to third parties and employees and damage and loss howsoever caused shall remain with the Seller which shall at its own cost, maintain insurance of its Goods and Materials until the Main Contract Completion Date. Risk in compliant Goods or Materials delivered in accordance with the Sub-Contract shall pass to the Buyer on delivery.

12.2. Title to the Goods and Materials shall pass to the Buyer on delivery or if earlier upon payment to the Seller of not less than 51% of the Sub-Contract Price applicable to those Goods or Materials.

13. Payment

Should this Order fall under the provisions of the Housing Grants Construction and Regeneration Act 1996 (as amended) (the Act) or if stated within the Order, then sub-clauses 13.1 to 13.6, otherwise sub-clause 13.7 shall apply

Applications for Payment

13.1. Unless otherwise stated in the Order, the Sub-Contract Price shall be inclusive of the costs of delivery C.I.P. (as defined in Incoterms 2010) to the delivery address stated in the Order.

13.2. The Seller shall submit to the Buyer written applications for payment (an Application for Payment) in accordance with the Application and Payment Date Schedule in the Order or otherwise as stated in this clause 13 and each Application for Payment shall be made by e-mail and sent simultaneously by registered post to the contact specified in the Order. Each Application for Payment shall clearly refer to the Sub-Contract Order Number and Site referred to in the Order.

13.3. In respect of all written Applications for Payment the Seller shall be entitled to apply for such amount as is stated in the Order but if no amount is stated, such amount

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- as is fair and reasonable having regard to the goods supplied. The Payment Due Date and Final Date for each interim payment shall be as set out in the Order, but otherwise the Payment Due Date will be the date of the Application for Payment and the Final Date for Payment shall be sixty days plus ten from the end of month in which the Application for Payment is received.
- 13.4. The Buyer shall notify the Seller within 5 days of the Payment Due Date of the amount of the payment to be made and the basis of calculation of such payment. Such notification shall comprise "the Payment Notice" and the amount specified therein shall be "the Notified Sum". Where an Application for Payment is made later than the Payment Due Date as set out in the Order (or the final day of the relevant calendar month as the case may be) it shall be regarded as an Application for Payment in respect of the next interim payment.
- 13.5. The Seller shall not be entitled to make more than one Application for Payment in each calendar month.
Pay Less Notice
- 13.6. If the Buyer intends to pay less than the Notified Sum the Buyer must give notice to the Seller ("the Pay Less Notice") no later than 2 days before the Final Date for interim payments or the final date for the final payment (as the case may be) specifying:
- (a) the amount which the Buyer considers to be due on the date the Pay Less Notice is served; and
 - (b) the basis on which that sum is calculated.
- 13.7. Unless otherwise agreed in writing, payment terms shall be 60 days plus 10 from end of month in which a valid, complete and correct invoice is received showing our order number, description of the goods provided and includes a copy of the relevant goods delivery note(s)
Value Added Tax (VAT)
- 13.8. Unless otherwise specifically stated the price for the supply of goods or services pursuant to the Order excludes value added tax levied by the Value Added Tax Act 1994 and all legislation additional or supplemental thereto but is inclusive of all other taxes and duties of whatsoever kind.
Seller's Insolvency
- 13.9. The Buyer shall not be required to make any payment to the Seller in circumstances where the Seller becomes insolvent within the meaning of Section 113(2), (3), (4) or (5) of the Act save in accordance with any applicable requirement in the Act. Further, and where the Act applies, the Contractor shall not be required to make any payment to the Sub-Contractor if such insolvency occurs after the date which is 2 days before the final date for any such payment. The Seller's obligations will be immediately suspended.
- 13.10. Should Buyer believe Seller will not comply with Clause 10 then Buyer shall be entitled to damages at 1% of Sub-Contract Value per policy per year of anticipated failure to maintain a compliant insurance policy subject to minimum damages of £150.
End Customer Insolvency
- 13.11. The Buyer shall not be required to make payment to the Seller in circumstances where the End Customer becomes insolvent within the meaning of Section 113 (2), (3), (4) or (5) of the Act and such insolvency occurs after the date which is 2 days before the final date for any such payment.
Right of Set Off
- 13.12. Buyer may at any time, without notice to Seller, set off any liability of Seller to Buyer against any liability of Buyer to Seller, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement.
14. **Sub-Contract Defects Liability Period**
- 14.1. The Buyer will notify the Seller in writing of any defect, imperfection, shrinkage or damage in the Goods which requires rectification. The Seller will then make good at its own expense, and at a time to be decided by the Buyer, such defect, imperfection, shrinkage or damage to the Goods notified by the Buyer prior to the expiry of the Main Contract Works Rectification Period.
- 14.2. The Seller shall commence any required rectification works within seven days of the Buyer's instructions issued pursuant to Clause 14.1 unless a shorter period is required under the Main Contract and shall complete the same within a reasonable period at the Seller's own cost.
- 14.3. In the event of the Seller failing to comply with the first notice issued by the Buyer pursuant to Clause 14.1, the Buyer may undertake to carry out the rectification to the Goods, and may at its discretion set-off the costs of carrying out such works against sums which would otherwise become due to the Seller.
15. **Assignment**
- 15.1. The Seller shall not sub-let or assign in whole or part of the benefit of this Sub-Contract nor shall he sub-let the whole or any part of the Goods or otherwise assign responsibility for receipt of any payment hereunder without written consent first being obtained from the Buyer and such consent if given shall not relieve the Seller from any liability under the Sub-Contract.
16. **Suspension**
- If delivery and/or performance of the Sub-Contract is postponed at the Seller's request Seller shall indemnify and keep indemnified the Buyer in full against any and all losses (including increased administration and legal costs on a full indemnity basis as well as any storage costs and associated insurance costs) suffered and/or incurred by the Buyer as a result.
17. **Termination**
- 17.1. The Buyer may terminate the Seller's employment under this Sub-Contract forthwith upon notice in writing to the Seller to this effect. Following such termination the Seller shall be entitled to be paid for the Goods delivered up to the date of such termination provided that the Seller has first released to the Buyer all original and copy documents, drawings and papers of whatsoever nature relating to or in connection with the project.
- 17.2. The Buyer may without prejudice to any other of its rights or remedies summarily determine the Seller's employment under this Sub-Contract in respect of the whole or any portion of the Goods if the Seller:
- (a) suspends the Sub-Contract or any part thereof or fails to proceed diligently with the Sub-Contract to the reasonable satisfaction of the Buyer;
 - (b) fails forthwith upon notice from the Buyer to commence work to remedy any defective workmanship and/or materials or incomplete work or fails to proceed with such remedial work with due diligence or to complete such remedial work to the satisfaction of the Buyer within such period as the Buyer may specify in the said notice or if none is so specified within a reasonable time;
- (c) fails to complete and deliver up the whole or any portion of the Sub-Contract by the time or times specified or by such amended time or times as may be allowed by the Buyer;
- (d) makes any arrangements with its creditors, has a receiving order made against it or commits an act of bankruptcy or, being a limited company, goes into liquidation or has a Receiver or Administrator appointed or fails to pay his debts as they fall due;
- (e) fails to comply with any of the obligations on the part of the Seller herein contained or if the Main Contract is determined by the End Customer as a consequence (whether in whole or in part) of any breach of this Order by the Seller;
- (f) any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010 or the Modern Slavery Act 2015; or
- (g) in accordance with Clause XII of the QE-PUR-SCC (Nov 16) as may be amended from time to time.
- 17.3. Upon determination under the foregoing clause the Seller shall not be entitled to compensation and therefore shall not remove any of its equipment, materials or property from the Site and notwithstanding anything contained in these conditions, shall become entitled to no further payment until completion of the Works by the Buyer or by others whereupon the Seller shall become entitled to payment for Goods provided by the Seller and subject always to the right of the Buyer to set off all losses, expense and damages suffered or which may be suffered by the Buyer by reason of such determination and subject further to any other right of set off which the Buyer may have.
18. **Collateral Warranties**
- 18.1. If stated in the Order the Seller shall enter into an agreement with the End Customer or other interested party substantially in the form of the Seller form of warranty annexed to the Order or (where no such form is annexed) in such form of Seller warranty as the Buyer is obliged to procure pursuant to the Main Contract.
- 18.2. The Seller shall within 14 days of being requested by the Buyer to execute a collateral warranty deliver to the Buyer or as he may direct. It shall be a condition precedent for payment that any required warranties are correctly executed and provided to the Buyer.
19. **Indemnity**
- The Seller shall indemnify and save from harm the Buyer against and from all claims, causes of action, costs, damages, losses and expenses whatsoever in respect of:
- (a) personal injury or death of any person or injury to any property (including the Works) real or personal arising out of or in the course of or in relation to or by reason of the execution of the Sub-Contract by the Seller including any design undertaken by the Seller (and including but not restricted to the use of any plant equipment or facilities whether in connection with such execution or otherwise); and
 - (b) any negligence or breach of duty on the part of the Seller, its sub-contractors, its or their servants or agents; and
 - (c) any breach or non-performance or non-observance by the Seller, its sub-contractors, its or their servants or agents of the provisions of the Sub-Contract; save to the extent that such claims, causes of action, costs, damages, losses and/or expenses are occasioned by any act or negligence or default of the Buyer
20. **Limitation of Liability**
- Neither the Buyer nor the Seller shall be liable to the other for
- (a) loss of profits;
 - (b) loss of use and/or production;
 - (c) loss of revenues and/or anticipated savings
- unless stated otherwise in the Order or expressly allowed in these Terms and Conditions.
21. **Confidentiality**
- Neither party shall use and/or disclose any confidential information which is acquired by it about the other party's business and/or given by one party to the other party and/or generated by one party using the other party's confidential information except in the proper performance of the Sub-Contract.
22. **Law**
- 22.1. The Sub-Contract shall be governed by and construed in accordance with English Law unless the Main Contract is governed by the law of another jurisdiction in which case the Sub-Contract shall be governed by and construed in accordance with that law.
- 22.2. Disputes under the Sub-Contract shall be subject to the non-exclusive jurisdiction of the English courts.