

1. DEFINITIONS

1.1 The following definitions have the following meanings:

"**Customer, you**" the person, firm or company to whom the quotation is addressed or such other person, firm or company as we may agree in writing to regard as the Customer for the purpose of the Contract.

"**Conditions**" these terms and any special terms and conditions notified in writing by us to you or specified in the Quotation.

"**Quotation**" our quotation to supply, manufacture and/or install the Works, including any drawings and specifications referred to and contained therein.

"**Works**" the goods, materials and/ or services specified in the Quotation.

"**Site**" the location described in the Quotation to which the Works are to be delivered or carried out.

"**(B & E), we, our and us**" means Berry and Escott Limited, company number: 04310923, registered office: 4 King Square, Bridgwater, Somerset, TA6 3YF.

2. PLACING AN ORDER AND ACCEPTANCE

- 2.1 Each order from you is an offer by you to buy the Works subject to these Conditions and any conditions in the Quotation ("**Contract**").
- 2.2 Our acceptance of your order takes place when we confirm in writing that we accept it or we confirm to you that the Works have been dispatched, at which point the Contract between you and us will come into existence. No other terms are implied by trade, custom, practice or course of dealing.
- 2.3 Should any conflict or discrepancy between the Conditions and the terms of the Quotation occur the terms of the Quotation shall prevail.

3. PRICES AND TERMS OF PAYMENT

3.1 The price shall be as stated in the Quotation and is exclusive of Value Added Tax ("**VAT**") which shall be due at the rate ruling on the date of our invoice.

3.2 Except where:

- 3.2.1 clause 3.6 applies;
- 3.2.2 otherwise specified in the Quotation,

each invoice we submit will be payable by you within 30 days of the date of the invoice.

- 3.3 Interest shall accrue on any overdue sum from the due date until payment is received. Interest shall apply each day at 4% a year above the Bank of England base rate from time to time.
- 3.4 Any discounts referred to in the Quotation only apply if payment is received by the due date for payment.
- 3.5 You shall not be permitted to exercise any right to off-set, counterclaim, deduction or withholding against payments due to us.
- 3.6 In relation to new Customers, until such time as we have confirmed that account forms have been completed and verified to our satisfaction, clause 3.2 shall not apply and such Customers will be required to pay immediately upon invoice, before Works can commence.

4. WARRANTY

- 4.1 For a period of 3 months from the date of use of any part of the Works or from commissioning the Works where delivery is delayed by the Customer, whichever is the sooner ("**Warranty Period**"), we warrant that the Works will be free from material defect that is detrimental to the process or performance for which the Works were intended.
- 4.2 Subject to clause 4.3, if the Customer gives notice in writing to us within the Warranty Period that the Works do not comply with the warranty in clause 4.1 and we are given a reasonable opportunity to examine such Works and, if requested by us, the relevant Works are returned to us, we will, at our option, supply a replacement part ex-Works, free of charge, repair or refund the price of the defective Works.
- 4.3 The warranty in clause 4.1 shall not apply if:
 - (a) You make use of the Works after giving us notice of the defect or deficiency under clause 4.2;
 - (b) The defect or deficiency arises out of fair wear and tear, wilful damage, negligence, abnormal storage or working conditions, or other misuse of the Works or use otherwise than in accordance with (B & E) oral or written recommendations
 - (c) The defect or deficiency arises as a result of following any drawing, design specification supplied by you.
 - (d) You alter or repair the Works or attempt to do so without our written consent.

5. LIABILITY: your attention is particularly drawn to this clause

- 5.1 Nothing in these Conditions limits or excludes our liability for death or personal injury caused by our negligence, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession) or any other liability that cannot be limited or excluded by law.
- 5.2 Subject to clause 5.1, we shall not in any event be liable for any loss of use, loss of profit, loss of rent, loss of opportunity, loss of anticipated savings, loss of goodwill or other indirect or consequential loss.

- 5.3 Subject to clause 5.1, our total liability to you shall not exceed the price of the Works.
- 5.4 We will not be liable or responsible for any failure to perform or delays arising from any act or event beyond our reasonable control.
- 5.5 The Works are intended for use only in the UK. We do not warrant that the Works comply with the laws, regulations or standards outside the UK.
- 5.6 Except as expressly stated in these Conditions, we do not give any representations, warranties or undertakings in relation to the Works. Any representation, terms, condition or warranty which might be implied or incorporated into the Contract by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, we will not be responsible for ensuring that the Works are suitable for your purposes.
- 5.7 This clause 5 shall survive termination of the Contract.

6. OUR OBLIGATIONS

- 6.1 We will carry out and complete the supply, manufacture and/or installation of the Works in conformity with the Contract in all material respects.
- 6.2 We will not have any liability in respect of our design of the Works, except insofar as we have failed to exercise reasonable care and skill.
- 6.3 We reserve the right to make minor variations to the design of the Works or to substitute for goods and materials of the same or better quality if we consider such variations or substitution reasonably necessary for the proper performance of the Works without adjustment to the price in the Quotation.
- 6.4 We will use reasonable endeavours to meet performance dates specified for the Works, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Works.
- 6.5 Unless specified to the contrary, the Quotation is based upon the Customer accepting deliveries detailed within the Quotation and upon our supply, manufacture and installation Works being carried out in one single, continuous operation.
- 6.6 If the performance of our obligations under the Contract is prevented or delayed by your act or omission or failure to perform any relevant obligation (**Customer Default**):
 - (a) without limiting or affecting any other right or remedy available to us, we shall have the right to suspend performance of the Works until you have remedied the Customer Default, and the Customer Default will relieve performance of our obligations in each case to the extent the Customer Default prevents or delays the performance of our obligations;
 - (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform our obligations as a result of the Customer Default; and
 - (c) you will reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.

7. YOUR OBLIGATIONS

You shall:

- (a) Supply all drawings, information and data necessary for us to prepare designs and working drawings in connection with the Works and ensure that the specification in the Works is complete and accurate.
- (b) Where applicable, allow us access to the Site to carry out the Works free and unhindered.
- (c) Be responsible for obtaining any planning permission, approvals, consent to discharge or other such statutory approvals considered necessary for us to carry out the Works.
- (d) Properly design and accurately construct any foundations or lifting points stated as a requirement in the Quotation and suitable in all respects for the construction thereon and fixing thereto by us for the Works.
- (e) Accept deliveries of materials and goods on to Site in connection with the Works, offload, inspect and allow us to access the Site for such deliveries where required and ensure the storage of all such goods and materials in an adequate storage location in our reasonable opinion.
- (f) Where applicable, prepare your premises for the Works, which shall include but not be limited to security (in particular from any theft, fire or vandalism), obtaining industry appropriate insurances, compliance with all laws including health and safety laws, provision of Health and Welfare facilities and you agree to indemnify us against any losses we suffered as a result of your failure to do so.
- (g) Co-operate in all respects and provide any information, materials, services, facilities or utilities stated in the Quotation or reasonably required for the provisions of the Works in a timely manner appropriate to the nature and timing of the Works and in any case no later than 2 business days of any request from us.

8. CONTRACT LOSS OR VARIATION

- 8.1 Any samples, drawings or advertising, illustrations or descriptions of the Works shown in our catalogues, brochures or website are for the sole purpose of giving an approximate idea of the goods and services available. They shall not form part of the Contract nor have any contractual force.
- 8.2 We reserve the right to amend the specification of the Works if required by any applicable statutory or regulatory requirements.
- 8.3 The Customer shall not be entitled to vary the Works as described within the Quotation, except by our prior agreement in writing which shall be conditional upon the Customer agreeing to any increase in price to the Quotation as a result of such variations. This includes any variations to the Works required by law, local authority or other government body or agencies.

9. TERMINATION

- 9.1 Without affecting any of our other rights, we may suspend the supply or delivery of the Works to you, or terminate the Contract with immediate effect by giving written notice to you if:
 - (a) you do not make payments due to us under the Contract on the due date for payment.
 - (b) you commit a material breach of the contract and (if such breach is remedial) fail to remedy that breach within [7] days of you being notified in writing to do so.
 - (c) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business, you are declared bankrupt, in liquidation or administration or a receiver or administrative receiver is appointed over any of your assets or any execution or distress is levied on any part of your property or your financial position deteriorates to such an extent that in our reasonable opinion your ability to fulfill your obligations under this Contract is placed in jeopardy.
- 9.2 On termination of the Contract you shall immediately pay to us all unpaid invoices and interest, and, in respect of Works commenced or supplied for which no invoice has been submitted, the Supplier shall submit an invoice which shall be payable by the Customer immediately on receipt. Provided that such payments do not limit our right to sue for and recover any damage, loss and/or expense to which we may additionally be entitled.
- 9.3 Termination of the Contract shall not affect our rights and remedies accrued as at termination.

10. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

- 10.1 All intellectual property rights in or arising out of or in connection with the Quote and the Works (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by us.
- 10.2 All drawings, documents and other information supplied by us are given in confidence and may not be used, copied or disclosed to a third party by you without our specific written consent.

11. DELIVERY AND TRANSFER OR RISK AND TITLE

- 11.1 Title to the Works shall not pass to you until payment is received in full (in cash or cleared funds) for:
 - (a) the Works and any other goods, materials or services supplied and any applicable delivery charges; and
 - (b) all other amounts owing to us from you on any account whatsoever or until the goods and/or materials lose their separate identity or are sold by you, whichever is the sooner.
- 11.2 Risk on the goods and/or material shall pass on delivery to the Customer or its duly authorised carrier or agent and notwithstanding the goods and/or materials being destroyed, damaged or lost after delivery (B & E) will be entitled to payment therefore
- 11.3 Until title to the Works has passed to you, you shall keep the goods marked and/or separately stored at your expense so as to be clearly identifiable as (B & E) property, nor remove any identifying mark or packaging, maintain the goods in satisfactory condition and keep them insured against all risks for their full price.
- 11.4 Where payment is due but not received by us we shall be entitled to dismantle and remove any goods and/or materials supplied pursuant to the Contract and you hereby grant us an irrevocable licence to enter your premises for this purpose. You will be liable to us for all costs involved in reclaiming the goods and/or materials.
- 11.5 Any dates quoted for delivery of the Works are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Works caused by the Customer's failure to provide adequate delivery instructions or any other instructions that are relevant to the supply of the Works.
- 11.6 If you fail to take delivery within 7 days after the day on which we notified you that the Works were ready for delivery, delivery shall be deemed to have been completed at 9.00am on the eighth day following the day we notified you the Works were ready. You will be liable for all storage costs and expenses for us storing the Works until actual delivery takes place.
- 11.7 If you fail to take delivery within 14 days after the day on which we notified you that the Works were ready for delivery and you have not taken actual delivery of them, we may resell or otherwise dispose of part of, or all the Works and after deducting reasonable storage and selling costs charge you for any shortfall below the price of the Works.
- 11.8 We may deliver the Works by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

12. INTERNATIONAL DELIVERY

- 12.1 If you order Works for delivery to an international destination, your order may be subject to import duties and taxes which are applied when the delivery reaches that destination. We have no control over these charges and we cannot predict their amount.
- 12.2 You will be responsible for payment of any such import duties and taxes. Please contact your local customs office for further information before placing your order.
- 12.3 You must comply with all applicable laws and regulations of the country for which the Works are destined. We will not be liable or responsible if you break any such law.

13. FORCE MAJEURE

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a Force Majeure Event). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for [4] weeks, the party not affected may terminate the Contract by giving [14] days' written notice to the affected party.

14. ASSIGNMENT AND SUBCONTRACTING

- 14.1 Neither party without the specific written consent of the other party shall assign the contract.
- 14.2 We may employ sub-contractors to perform all or any part of the Works.

15. GENERAL

- 15.1 Any notice to be given under this Contract shall be in writing and be delivered by hand, pre-paid first class post or other next working day delivery service, or email.
- 15.2 A notice is deemed to have been received, if delivered by hand, at the time the notice is left at the proper address, if by pre-paid first class post or next working day delivery service, at 9.00am on the second working day after posting or if by email, at the time of transmission if during normal working hours or at 9.00am the next working day if outside of normal working hours.
- 15.3 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.
- 15.4 Any variation of the Contract only has effect if it is in writing and signed by both parties
- 15.5 Any full or partial waiver of any obligation does not mean we have waived future rights or remedies and or any failure to exercise rights or remedies does not constitute a waiver of those rights or remedies.

- 15.6 Each paragraph of these Terms operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.
- 15.7 The Contract and the Quotation constitute the entire agreement between the parties. No other person has any rights to enforce any terms in this Contract.
- 15.8 The Contract is governed by English law and you and we each irrevocably agree to submit all disputes arising out of or in connection with the Contract to the exclusive jurisdiction of the English courts.