

Terms and Conditions of Quotation and Contract

The following conditions shall apply to all Contracts entered into by or on behalf of Omega Red Group Ltd or its Trading Divisions (hereinafter called "the Company") for the supply of Services.

In these conditions:-

"Acknowledgment of Order"	means the Company's Acknowledgment of Order to which these Terms and conditions are annexed;
"Customer"	means a person at whose request Goods are to be supplied by the Company;
"Completion"	means completion of the Contract by the Company to the specifications set out in the Acknowledgment of Order; or such specification as may have been varied by the agreement of the Company and the Customer in writing;
"Contract"	means the Contract for the supply of Goods;
"Contract Premises"	means the premises specified in the Contract to which the Goods are supplied;
"Goods"	means the Goods (or any of them) described in the Quotation and includes (without limitation) in the case of an order for services, the services to be supplied or work to be performed pursuant to the Contract;
"Price"	means the price of the Goods;
"Quotation"	means a Quotation submitted by the Company in writing for the supply of Goods on these Terms and Conditions and includes all specifications issued pursuant thereto.

1.0 General

Acceptance by the Company of the Customer's order is conditional upon acceptance by the Customer of these Terms and Conditions, which shall prevail over any inconsistent terms or conditions of the Customer expressed or implied (apart from alterations to or departures from these Conditions specifically agreed by an authorised person on behalf of the Company in writing). The headings are for convenience only and shall not affect construction of these Terms and Conditions.

2.0 Formation and Parties

- 2.1 All Quotations issued by the Company shall be valid until the Quotation Expiry Date set out in the Quotation. In the event that no Quotation Expiry Date is stipulated the Quotation shall be valid for a period of 30 days from the date thereof.
- 2.2 The Customer's order to the Company is an offer to enter into a Contract upon these Conditions. Acceptance occurs and the Contract is formed only upon the Company dispatching to the Customer its Acknowledgment of Order. A Quotation by the Company does not constitute an offer.
- 2.3 The Contract supersedes any arrangements, understandings, promises or agreements made or existing between the Company and the Customer prior to or simultaneously with the Contract and constitutes the entire understanding between the Company and the Customer in connection with the supply of goods and/or services under the Contract.
- 2.4 The Customer shall not assign the benefit of the Contract without the Company's prior written consent.
- 2.5 The Contract is not cancelable by the Customer without the express consent of an authorised person on behalf of the Company.
- 2.6 If the Company agrees cancellation by the Customer, the Customer shall indemnify the Company in full against all expenses incurred up to the time of cancellation, together with a reasonable amount by way of liquidated damages for breach of contract as specified by the Company, such sum being acknowledged by the Customer as representing a genuine pre-estimate of the Company's loss of profit and not in any event to exceed the Price.
- 2.7 Except as otherwise expressly provided nothing in this contract shall confer or purport to confer on any third party any benefit or right to enforce any term of this contract.
- 2.8 The Company has the express benefit or right to enforce any term of this contract on any third party related in any way to the Contract.

3. The Price

- 3.1 The Price shall be the Company's quoted price as stated in the Acknowledgment of Order. The Price is exclusive of VAT or any similar taxes, levies or duties which shall be due at the rate ruling on the date of invoice or, if different, the basic tax point (as defined in regulations governing VAT from time to time in force).
- 3.2 The Company reserves the right to vary the Price at any time without notice to take account of any variation in the cost of materials, labour, transport duties, taxes, exchange rates or any costs of whatsoever nature between the date of the Contract and the completion of payment.

4. Time for the Supply of Goods

- 4.1 The Company will use its reasonable endeavors to supply the Goods and where the supply of Goods includes services to perform the services at the rates and within the time estimated in its Acknowledgment of Order (if so specified), but the Company shall not be liable for any loss or damage whatsoever suffered by the Customer as the result of any failure by the Company, for whatsoever reason, to effect delivery or to complete work at the rate or within the time so specified.
- 4.2 Unless specifically agreed in writing between the Company and the Customer the time of supply of Goods and performance of services shall not be of the essence of the Contract.
- 4.3 The Customer shall not be entitled to refuse late supply of Goods or to treat late supply of Goods as a breach of Contract.
- 4.4 The time estimated to effect supply of Goods and where the supply of Goods include services to perform the services shall be subject to all necessary information being supplied to the Company and adequate facilities being provided to the Company to enable work to be started and continued in accordance with the Company's programme.
- 4.5 In the event that a date for Completion is specified in the Acknowledgment of Order and:-
 - (a) the amount or nature of extra or additional work or
 - (b) extremes of weather or
 - (c) any delay, impediment or prevention by the Customer or
 - (d) other special circumstances which may occur, other than through a default or breach of Contract by the Company or for which it is responsible is such as fairly to entitle the Company to an extension of time for Completion, then provided that the Company shall as soon as reasonably practicable have given to the Customer notice of claim for an extension of time with full supporting details, the Customer shall grant the Company either prospectively or retrospectively such extension of time for completion as may be reasonable.

5. Delivery

When the Contract is one for supply of Goods only then claims against the Company for short or incorrect delivery of Goods to the Contract Premises shall be notified to the Company within 3 days of receipt of the Goods. The Company shall make good shortages or errors in delivery within a reasonable time thereafter and the Company shall not thereafter be liable for any loss whatsoever arising out of such shortages or errors in delivery.

- 6. Risk**
- 6.1 All Goods brought on to the Contract Premises whether fixed or unfixed and notwithstanding Condition 12.1 below shall be at the sole risk of the Customer and in the event of Goods or any part thereof being lost, damaged, destroyed or stolen, howsoever occurring before payment for them in full has been made to the Company, the Customer shall nonetheless pay to the Company the full value of any such Goods and the full value of any work damaged, destroyed or lost together with any additional costs incurred by the Company in replacing any such Goods and in reinstating or restoring any such work shall be paid by the Customer provided, however, that the Customer shall not be responsible for any damage or loss sustained arising solely from the negligence of the Company, its servants and/or agents.
- 6.2 Safe storage accommodation is to be provided by the Customer at the Contract Premises for all materials and equipment for use in connection with the Contract and the Customer shall also accept and hold safe all such materials and equipment delivered to the Contract Premises before the arrival of the Company, its servants and/or agents.
- 7. Substitution**
- 7.1 Should any materials or parts specified or required for completion of the Contract be unavailable for the timely satisfaction of the Contract, substitutes, deemed by the Company to be suitable for the intended purpose, as understood by the Company, will be supplied if available and shall be agreed with the Customer in full satisfaction and performance of the Contract.
- 7.2 If such substitutes are higher in cost then the additional amount of cost shall be added to the Price.
- 7.3 In the event that the Company is unable to obtain substitutes which the Company deems suitable for unavailable materials or parts, the Company's obligation to complete performance shall, upon notification to the Customer be suspended until such time as the unavailable materials or parts become available.
- 8. Compliance with Law and Regulations**
- It shall be the sole responsibility of the Customer to comply in every respect with all relevant Planning and Building Regulation requirements, statutes, orders in council, regulations, by laws or other lawful requirements and to obtain all necessary consents, licences, permits or authorities which may be required in connection with the Goods.
- 9. Warranty**
- 9.1 If within twelve months after Completion a material defect in the Goods supplied or services performed shall be discovered and:-
- the Customer notifies the Company within fourteen days after discovery giving particulars and permits the Company to inspect the same; and
 - such defect has arisen from faulty materials employed or workmanship carried out by the Company existing but not discoverable upon inspection at time of supply of Goods or (as the case may be) performance or services; then the Company shall at its sole discretion be entitled to supply replacements or (as the case may be) rectify defective work provided always that the Company is given full and unobstructed access to the Contract Premises.
- 9.2 The Company's liability under this Condition applies only to defects appearing before the Customer makes any modification or alteration to the Goods and whilst the Goods are being properly used or stored and in particular (but without limitation) the Company shall not be liable in the case of defects arising from:-
- normal deterioration;
 - repair of or modification to the Goods by or on behalf of the Customer;
 - defects in or subsidence to any structure or surface to which the Goods are affixed or attached;
 - wilful damage, negligence, misuse or any other interference with the Goods by the Customer or any other person;
 - extremes of weather.
- 10. Non-Interference**
- The Customer agrees that at all times during the supply of Goods and where included, the performance of services, neither it nor its agents, employees and invitees shall interfere in any way with any of the Goods without the consent of the Company.
- 11. Items supplied by the Customer**
- The customer shall be liable for all drawings, specifications and instructions (if any) issued to the Company with the Order or pursuant to the Contract and shall indemnify and keep indemnified the Company against all loss directly or indirectly arising out of any error in or omission from such drawings, specifications and instructions, and against all costs, claims, demands and expenses whatsoever in respect of the infringement or potential infringement of any patent, copyright, registered design or other third part right arising out of the Company's use of such drawings, specifications or instructions.
- 12. Limits of Liability**
- 12.1 The Customer acknowledges that:-
- all specifications and details in catalogues, quotations and acknowledgments of order or similar documents or by word of mouth and all forecasts of performances, howsoever given are approximate only;
 - all specifications and details in catalogues, quotations or similar documents or by word of mouth and all forecasts, of performances, howsoever given are approximate only and do not form part of the Contract (unless otherwise agreed by the parties) and that in respect of such specifications, details and forecasts the Company shall be under no liability nor shall the Customer be entitled to any remedy under the provisions of the Misrepresentation Act 1967.
- 12.2 The Company's liability under Condition 9 shall be accepted by the Customer in lieu of any warranty or condition, whether express or implied by law, as to the quality or fitness for any particular purpose of the Goods and, save as provided in these Conditions, the Company shall not be under any liability to the Customer (whether in contract, tort or otherwise) for any defects in the Goods, materials supplied or workmanship performed by the Company or for any damage, loss, death or injury resulting from such defects and the Customer shall indemnify the Company against any claims in respect thereof. For the purposes of this paragraph the Company contracts on its own behalf and on behalf of and as trustee for its Sub-Contractors, servants and agents.
- 12.3 The Company shall not be liable, whether by way of indemnity or by reason of breach of contract, tort or breach of statutory duty or in any other manner for consequential or indirect loss of whatever nature suffered by the Customer or for special damages, loss of use (whether complete or partial) of the Goods, or loss of profit or of any contract.
- 12.4 The Company accepts liability for death or personal injury which is due to the negligence of the Company in performing the Contract.
- 12.5 Nothing in these conditions shall be construed as limiting or excluding the Company's liability:-
- under the Consumer Protection Act 1987, or
 - for death or personal injury resulting from its negligence (as defined in Section 1 of the Unfair Contract Terms Act 1977); or
 - affecting statutory rights of a consumer.
- 12.6 The Customer shall indemnify and keep indemnified the Company against all actions, claims, costs, damages, demands and expenses or other loss arising out of a defect in the Goods (including, without limitation, all liabilities incurred under the Consumer Protection Act 1987) to the extent occasioned or contributed to by an act or omission of the Customer its servants, agents or persons under its control.
- 13. Material and Ownership**
- 13.1 The property in the Goods, whether fixed or unfixed, shall not pass to the Customer until the full price and all sums from time to time owing by the Customer to the Company (whether under this or any other Contract) shall have been paid in full; such goods are referred to as "Retained Goods". Until payment of all such sums the Customer shall hold the Retained Goods in a fiduciary capacity for and on behalf of the Company.
- 13.2 No resale shall be made by the Customer of any Retained Goods (whether in their delivered state or mixed or incorporated into other Goods prior to re-sale) until property therein shall have passed in accordance with Condition 13.1 and in any case where any authorised re-sale shall be effected the re-sale shall be deemed to have been made by the Customer for the Company and the Customer shall hold the proceeds from the sale for and on behalf of the Company up to the full value thereof or to the full value of all sums from time to time owing by the Customer to the Company.
- 13.3 Upon the happening of any of the following events the Customer shall place Retained Goods at the Company's disposal and shall be deemed irrevocably to authorise the Company to enter upon the Contract Premises and any other premises of the Customer, with or without vehicles, for the purposes of removing Retained Goods:-
- forthwith on notice from the Company if the customer is in default of any of its obligations under this or any other contract with the Company or if the Company has reasonable doubts as to the ability or willingness of the Customer to pay any sum to it on the due date; or
 - if the Customer causes a meeting of or makes any arrangement or composition with its creditors; or
 - if the Customer becomes insolvent or appears to be unable to pay a debt or to have no reasonable prospect of paying a debt (within the meaning of Section 268 of the Insolvency Act 1986); or, being a company, appears unable to pay its debts (within the meaning of Section 123 of that Act); or
 - if there is presented a petition for the winding up of the Customer or for the appointment of an Administrator of its undertaking; or

- (e) if the Customer has an Administrator or Administrative Receiver appointed over any of its assets or undertakings or a winding up order made against it or it goes into voluntary liquidation (otherwise than for the purposes of bona fide reconstruction or amalgamation of a solvent company);
- (f) the repossession of Retained Goods by the Company in accordance with this Conditions shall be without prejudice to all or any of the Company's other rights against the Customer under the Contract.

14. Payment

- 14.1 Payment of the Price and VAT shall be due within 28 days of the date of an invoice submitted by the Company.
- 14.2 The Company may submit invoices for interim payment where considered appropriate by the Company in respect of Goods supplied and/or services performed as the case may be up to the date of invoice, which shall be due for payment within 28 days of the date of invoice. Time for payment shall be of the essence of the Contract.
- 14.3 Interest on overdue invoices shall accrue from (and including) the date when payment becomes due from day to day until but excluding the date of payment at a rate of 5% above National Westminster Bank Plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgement. Said interest shall in no circumstances be construed as an agreement by the Company to provide extended credit and is in addition to any other rights that the Company has arising out of such delay.
- 14.4 The Company shall be entitled to cancel the Contract or to postpone any supply until payment has been received, in the event that the Company has reasonable doubts about the Customer's ability or willingness to pay on the due date.
- 14.5 Prices for work included in a Quotation are based upon uninterrupted access to the Contract Premises up to completion of the supply of Goods.

15. Force Majeure

- 15.1 The Company shall not be liable to the Customer if unable to carry out any provision of the Contract for any reason beyond its control including (but without limitation) act of God, legislation, war, civil commotion, fire, flood, drought, failure of power supply, lock out, strike, stoppage or other action by employees or third parties in contemplation or furtherance of any dispute or owing to any inability to procure parts or materials required for the performance of the Contract.
- 15.2 The Company shall notify the Customer as soon as reasonably practicable after circumstances preventing performance arise. During the continuance of such a contingency the Company may within its absolute discretion, withhold, reduce or suspend performance of its contractual obligations, so far as prevented or hindered by such contingency, liability to the Customer, for any loss or damage whatsoever suffered directly or indirectly by reason of any such withholding, reduction or suspension.

16. Special Risks

Unless the Contract makes express reference to any special risks to be insured under the RIBA Standard Form of Agreement 1992, the Quotation submitted by the Company has been prepared on the basis that no such insurance cover is required and accordingly, the cost of such cover is not included in the Price.

17. Health and Safety

The Customer shall provide all necessary facilities at the Contract Premises, to include First Aid, shelter and accommodation for clothing, meals, washing and sanitary, enabling the Company to confirm in all respects with all relevant Health and Safety regulations to include but not restricted to the Construction (Design and Management) Regulations 1994.

18. Notices

Any notice under these Conditions shall be properly given if in writing and handed to or sent by first class post, or by facsimile transmission, to the address of the intended recipient as stated in the Contract or to such address as the Company and the Customer from time to time shall notify to each other as their respective addresses for service and shall be deemed serviced if sent by hand when so delivered, if sent by pre-paid first class post within 48 hours of posting, if sent by facsimile, upon sending, subject to confirmation of uninterrupted transmission by a transmission report, and transmission being made prior to 17.00 hours on a business day, that day but otherwise on the next following business day. A business day for this purpose being any week day (Monday to Friday inclusive) which is not a bank holiday or public holiday.

19. Construction and Jurisdiction

- 19.1 English Law shall govern construction and operation of the Contract and the Customer agrees to submit to the exclusive jurisdiction of the English Courts.
- 19.2 Each of these Conditions and each paragraph hereof shall be construed as a separate Condition; should any provision hereof be found to be invalid or unenforceable or an unreasonable restriction of The Company's liability then such provision shall apply with such modification as may be necessary to make it valid and effective.