

NMC SURFACING LIMITED TERMS AND CONDITIONS OF CONTRACT

1. Definitions and interpretation

1.1 In these Standard Terms & Conditions of Contract, the following terms have the following meanings unless the context otherwise requires:

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| "Act" | means the Housing Grants, Construction and Regeneration Act 1996 (as amended). |
| "CDM Regulations" | means the Construction (Design and Management) Regulations 2015 or any amendments thereto. |
| "Company" | means the company, organisation or individual to whom the Quotation is addressed. |
| "Completion Date" | means the date (which may be amended in accordance with the Contract) by which practical completion of the Contract Works is to be achieved, and excludes any testing of the Contract Works. |
| "Confidential Information" | means any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers. |
| "Contract" | means the contract between NMC and the Company for the carrying out of the Contract Works, which shall incorporate the Quotation and any documents referred to therein and shall be subject to these Standard Terms & Conditions. |
| "Contract Documents" | means the Quotation together with these Standard Terms and Conditions. |
| "Contract Sum" | means the sum payable to NMC by the Company for carrying out the Contract Works. |
| "Contract Works" | means the goods and services to be provided by NMC as set out in the Quotation. |
| "Design Documents" | means any drawings, plans or specifications produced by NMC in connection with the Contract Works. |
| "Intellectual Property Rights" | means the rights in all intellectual property arising out of or in connection with the Contract Works, including but not limited to copyright, patents and design rights. |
| "NMC" | means NMC Surfacing Limited. |
| "Quotation" | means the quotation issued by NMC to the Company. |
| "Site" | means the location where the Contract Works are to be carried out. |

1.2 In these Standard Terms & Conditions, unless expressly stated otherwise or unless the context otherwise requires:

- 1.2.1 any term importing gender includes any gender, and any term importing the singular includes the plural and vice versa;
- 1.2.2 any reference to a clause is a reference to a clause of these Standard Terms & Conditions;
- 1.2.3 the words **"include"** or **"including"** shall be construed without limitation;
- 1.2.4 a reference to any enactment, statutory provision or subordinate legislation is a reference to such enactment, statutory provision or subordinate legislation as modified, re-enacted, replaced or extended from time to time, and a reference to an enactment or statutory provision includes reference to any subordinate legislation made under the enactment or statutory provision; and
- 1.2.5 clause headings are for reference only and do not form part of or affect the interpretation of these Standard Terms & Conditions.

2. Contract Formation

- 2.1 The Quotation provided by NMC shall, unless otherwise stated therein, remain open for acceptance for a period of 1 month from the date thereof.
- 2.2 A request from the Company for NMC to commence the Contract Works shall constitute acceptance by the Company of these Standard Terms & Conditions.
- 2.3 Any terms and conditions contained in any document provided or submitted by the Company shall not apply as between the parties unless specifically agreed in writing by NMC.

3. NMC's Obligations

- 3.1 NMC warrants that:
 - 3.1.1 it shall carry out and complete the Contract Works with due diligence and in a good and workmanlike manner;
 - 3.1.2 it shall provide goods and materials which are of a satisfactory quality and appropriate for use in the Contract Works;
 - 3.1.3 it shall not use or permit to be used in the Contract Works any materials which by their nature or application contravene any British Standard or EU equivalent, or which are generally considered to be deleterious within the building design professions;
 - 3.1.4 it shall keep the Site clear from rubbish, waste and debris;
 - 3.1.5 it shall, where required to do so, fully comply with all applicable building regulations and the CDM Regulations, the Health and Safety at Work Act etc in its most recent form and all other current legislation relating to health and safety;
 - 3.1.6 it shall treat as confidential all information relating to the Contract Works, save as may be necessary for the performance of the Contract Works or as the Company may otherwise allow in writing; and
 - 3.1.7 insofar as NMC is responsible for the design of the Contract Works or any part thereof, there has been exercised and will be exercised the skill and care reasonably to be expected of duly qualified and experienced designers undertaking the design of works similar in scope and character to the Contract Works or such part of the works.
- 3.2 NMC may at its sole discretion use subcontractors to carry out and complete the Contract Works.
- 3.3 NMC shall not be required to carry out any instruction issued by the Company unless and until that instruction is confirmed to NMC in writing.
- 3.4 Unless otherwise stated in the Quotation no bonds, warranties, agreements or guarantees are to be provided by NMC. If the company requires the aforementioned to be provided, the form and number is to be agreed by NMC and the Company. The provision of such documents shall not constitute a condition precedent to payment.
- 3.5 If NMC becomes aware of any discrepancy, error or divergence in or between any detail, drawing, specification, quantity, document, instruction or data relating to the Contract Works, it shall notify the Company and the Company shall issue instructions in that regard.
- 3.6 NMC shall undertake and comply with the relevant duties required of it as defined by the CDM Regulations. This status shall apply to all the Contract Works undertaken by NMC unless specifically agreed otherwise in writing.

- 3.7 NMC will be responsible for providing personal protective equipment up to minimum industry requirements only.
- 3.8 NMC's sole liability and obligation in respect of noise shall be to use reasonable endeavours to maintain noise, compatible with the methodology and normal plant usage employed by NMC to carry out the Contract Works.
- 3.9 For avoidance of doubt, NMC is only obliged to carry out the Contract Works under the terms of the Contract. If any Contract Works are required to be carried out by the relevant local authority or relevant statutory body, then these Contract Works shall be treated as a variation pursuant to clause 8.

4. The Company's Obligations

- 4.1 The Company shall provide NMC, its servants, employees and agents with full access to the Site, as required by NMC, to carry out the Contract Works.
- 4.2 The Company shall provide NMC with all relevant information necessary to carry out the Contract Works in a timely manner and shall issue all instructions to NMC in writing.
- 4.3 The Company shall not hinder or prevent NMC from performing the Contract Works.
- 4.4 The Company shall ensure that the Site is clear of all debris and the like in order to give NMC employees, servants or agents a clear and undisturbed working environment.

5. Commencement, Progress & Completion

- 5.1 The Company shall specify in writing the date on which the Contract Works are to commence.
- 5.2 NMC and the Company shall agree a date/dates by which, or a period/periods within which, the Contract Works are to be completed. NMC shall endeavour to complete the Contract Works by the date(s) or within the period(s) agreed. If no date(s) or period(s) for completion of the Contract Works is agreed, NMC shall complete the Contract Works within a reasonable time.
- 5.3 In the absence of any instructions from the Company, NMC shall progress the Contract Works in a sequence and manner which it thinks fit. It is the Company's responsibility to ensure that it notifies NMC of the requirements of any programme for the Contract Works (including phasing or key completion dates), and any changes or revisions thereto.
- 5.4 NMC shall confirm the date of practical completion of the Contract Works to the Company in writing.
- 5.5 Where requested by NMC, the Company will exercise its best endeavours to allow and actively assist NMC to accelerate the Contract Works in order to achieve practical completion before the Completion Date including permitting weekend working where requested by NMC. Such assistance shall be provided at no additional cost to NMC.

6. Attendances

- 6.1 Unless expressly agreed otherwise in writing, the Company shall be responsible for providing and maintaining at its own cost:
 - 6.1.1 site welfare facilities, including but not limited to toilets, canteens and washing and drying facilities;
 - 6.1.2 suitable supplies of water, light, power and heating as necessary, and readily accessible connection points to the same; and
 - 6.1.3 safe and dry storage space adjacent to the Contract Works and appropriate parking facilities and NMC, its servants, employees and agents shall be entitled to use the same in the carrying out of the Contract Works.
- 6.2 Subject to clause 6.1, and unless otherwise agreed in writing, NMC shall provide all materials, goods, labour, plant, equipment and transport necessary to carry out and complete the Contract Works.

7. Site Conditions

- 7.1 It shall be the Company's responsibility to make all necessary inspections, investigations and surveys as to ground conditions, drainage and services and to ensure that the Site will be fit for the Contract Works to be carried out.
- 7.2 NMC shall bear no responsibility whatsoever for the adequacy or suitability of the existing ground conditions of the Site or any adjoining property unless NMC has expressly agreed to do so in writing.
- 7.3 The normal working hours applicable to the Contract shall be 0730-1830hrs Monday to Friday, excluding industry and public holidays. Unless otherwise stated in the Quotation, the Contract Works shall be carried out in one continuous visit and the Company will ensure that NMC and any subcontractors and/or agents of NMC shall have continuity of working for the duration of the Contract Works and sole access to the Site.

8. Variations & Dayworks

- 8.1 No variation to the Contract Works shall be effective, and NMC shall not be required to carry out any variation, unless it is agreed in writing, and the value of the variation is agreed between the parties with reference to the rates and prices set out in the Quotation.
- 8.2 Signature of daywork sheets by the Company shall constitute acceptance by the Company of the hours and rates detailed within those sheets.
- 8.3 The agreed value of all variations and the cost of all dayworks shall be paid by the Company in accordance with the provisions of clause 13.

9. Extension of Time

- 9.1 If the Company has specified a date(s) or period(s) for completion of the Contract Works and NMC has been or is likely to be delayed in completing the Contract Works by such date(s) or within such period(s) due to:
 - 9.1.1 any variation to the Contract Works;
 - 9.1.2 any default or breach of the Contract by the Company;
 - 9.1.3 suspension by NMC pursuant to clause 14; or
 - 9.1.4 any other matter beyond NMC's reasonable control
 NMC shall within a reasonable time thereafter give written notice to the Company detailing the delay(s) and the anticipated effects thereof.
- 9.2 The Company and NMC shall, insofar as possible, agree on a reasonable extension of time for the completion of the Contract Works.

10. Loss and Expense

- 10.1 If the progress of the Contract Works is affected by:
 - 10.1.1 access to the Site being impeded;
 - 10.1.2 any variation to the Contract Works;

10.1.3 any default or breach of the Contract by the Company;

10.1.4 any other matter beyond NMC's reasonable control

NMC shall within a reasonable time thereafter give written notice to the Company detailing the matter(s) affecting the progress of the Contract Works and the loss and/or expense NMC has incurred. The Company and NMC shall agree on a reasonable amount of loss and/or expense to be paid to NMC.

10.2 NMC shall have no liability to the Company for any consequential loss arising out of or in connection with the provision of any goods or services pursuant to the Contract (except in respect of death or personal injury resulting from negligence, breach of contract or breach of statutory duty on the part of NMC, its servants or agents.)

11. Title in Goods & Materials

11.1 The risk in all goods and materials intended for inclusion in the Contract Works shall pass to the Company upon delivery to the Site.

11.2 Notwithstanding the passing of risk, title in all goods and materials shall only pass to the Company when payment for the same is received in full by NMC.

12. Insurance

12.1 NMC shall have no responsibility for loss or damage to the Contract Works, the Site or materials and goods on Site. It shall be the Company's responsibility to obtain a policy of insurance to cover the risk of loss or damage to the Contract Works, the Site and materials and goods on Site.

12.2 NMC warrants that there is in force a policy of insurance to cover NMC's liability in respect of personal injury, death and injury or damage to property arising out of, in the course of or in connection with the carrying out of the Contract Works by NMC.

12.3 Insofar as NMC is responsible for the design of the Contract Works or any part thereof, NMC shall exercise reasonable endeavours to hold and maintain professional indemnity insurance at all times until 6 years after the date of practical completion of the Contract Works, provided always that such insurance is available at commercially reasonable rates and terms.

12.4 When reasonably required to do so by the Company, NMC shall provide documentary evidence that the policies of insurance specified in this clause 12 are being maintained.

13. Payment

13.1 The Contract Sum is not a fixed price and if after the date of the Quotation there is any increase in the cost of labour or materials, the Contract Sum may be increased by an equivalent amount. The Contract Sum shall be exclusive of VAT.

13.2 The Quotation includes for NMC costs associated with pre-Contract and preliminary Contract design submissions. NMC will charge for additional design resource at a rate of £85.00 per hour.

13.3 Payment to NMC shall be made in full for all measured work carried out under the Contract without deduction, set-off, counterclaim and/or any other withholding of monies. Payment shall not be deemed to be made until NMC has received cleared funds in respect of the full amount outstanding.

13.4 NMC shall submit applications for payment on the last calendar day of each month.

13.5 The due date for payment shall be the date of submission by NMC of each application for payment.

13.6 The final date for payment shall be 30 days after the relevant due date.

13.7 Not later than 5 days after the due date for payment, the Company shall give a notice (the "**Payment Notice**") to NMC specifying the sum the Company considers to be or to have been due at the due date in respect of the relevant payment and the basis on which that sum is calculated. The sum the Company considers to be due shall be calculated by reference to NMC's relevant application. If no such Payment Notice is issued, the Company shall, subject to any Pay Less Notice being given under clause 13.8, pay the full value of NMC's application for payment by the relevant final date for payment.

13.8 If the Company wishes to pay less than the sum set out in any Payment Notice (or NMC's application for payment in default of service of a Payment Notice), the Company shall, not later than 5 days before the relevant final date for payment, issue a written notice to NMC specifying the sum the Company considers to be due at the date the notice is given and the basis on which that sum is calculated (the "**Pay Less Notice**").

13.9 Unless otherwise agreed in writing by NMC, the Company shall not deduct any retention monies from any payment unless otherwise agreed in the Quotation.

13.10 In the event of the Company failing to pay any sum properly due to NMC by the final date for payment, NMC shall be entitled to charge interest on such overdue sum at the rate of 8% per annum above the official interest rate of the Bank of England.

14. Suspension

14.1 If any sum properly due under the Contract is not paid by the Company by the relevant final date for payment, NMC may give 7 days' notice of its intention to suspend performance of any or all of its obligations under the Contract, specifying the grounds for suspension. Should the Company fail to pay the sum due after the expiry of the 7 day notice period, NMC may suspend the performance of any or all of its obligations under the Contract, in which case NMC shall be entitled to recover from the Company a reasonable amount in respect of costs and expenses it reasonably incurs as a result of the exercise of that right.

15. Intellectual Property Rights

15.1 Except to the extent that the Contract Works are constructed to a design or specification provided by the Company, all Intellectual Property Rights in or arising out of or in connection with the Contract Works shall be owned by NMC.

15.2 Subject to all sums due and payable under the Contract to NMC having been paid, the Company shall be granted a non-exclusive licence to copy and use the Design Documents and to reproduce the designs and content of them for any purpose relating to the Contract Works.

15.3 This clause 15 shall survive termination of the Contract.

16. Defects

16.1 If the Company alleges that there is any defect in the Contract Works, it must notify NMC in writing within 6 months of the date of practical completion of the Contract Works and, if NMC agrees that there is a defect in the Contract Works, NMC shall rectify the same within a

- reasonable time thereafter. The Company shall provide NMC, its employees, servants or agents with full access to the Site, as required by NMC, to review alleged defects and rectify agreed defects.
- 16.2 The Company shall have no right or remedy against NMC in respect of any alleged defect, whether arising during the 6 month period referred to in clause 16.1 or otherwise, unless the Company has given written notice of the defect to NMC as soon as the alleged defect became apparent and provided NMC with the opportunity to remedy the alleged defect in the first instance.
- 16.3 NMC offers no warranty whatsoever in respect of goods or materials incorporated into the Contract Works, save for any warranty or guarantee given by the manufacturer of such goods or materials.
- 16.4 NMC offers no warranty whatsoever that any goods, materials or workmanship will be suitable for any particular purpose or meet any particular performance specification or requirement, notwithstanding that such purpose or condition may be known or made known to NMC.
- 16.5 Where any opening up for inspection, testing and reinstatement is instructed and the work, the subject of such instruction, is found to be in accordance with the Contract, then any costs and expense in respect of the Contract Works thereof shall be added to the Contract Sum together with the granting of a fair and reasonable extension of time for completion of the Contract Works.
- 17. Liability**
- 17.1 NMC's total and aggregate liability to the Company in respect of all matters arising out of, under or in connection with the Contract, including (without limitation) any breach of NMC's obligations under the Contract, whether arising in contract, tort, statute, strict liability or otherwise, shall not exceed the Contract Sum.
- 17.2 NMC shall have no liability whatsoever to the Company arising out of, under or in connection with the Contract for loss of actual and/or anticipated profits and/or overheads, loss of contracts with any third party, liquidated damages payable to a third party by the Company, costs of attempted mitigation and indirect, special, incidental and/or consequential losses or damages.
- 17.3 NMC shall have no liability for the following:
- 17.3.1 settlement or movement due to underpinning, mine workings, use of explosives, springs, artesian water or to the presence of acids or other deleterious matter, and loss of support due to subsequent workings or other causes outside NMC's immediate and direct control;
- 17.3.2 any changes in legislation, or any other statutory requirements after the date of the Quotation; and/or
- 17.3.3 any delay in performance of the Contract to the extent that such delay is caused or contributed to by any events outside of NMC's reasonable control.
- 17.4 No claims or proceedings arising out of or in connection with the Contract and/or the Contract Works shall be brought against NMC after the expiry of 6 years following the date of practical completion of the Contract Works.
- 17.5 Nothing in this clause 17 shall exclude or limit NMC's liability for death or personal injury caused by NMC's negligence or for any other matter in respect of which the law provides that liability may not be excluded or limited.
- 18. Termination**
- 18.1 Either party shall be entitled to terminate the employment of NMC under the Contract forthwith upon written notice if:
- 18.1.1 the other party commits a breach of any of the provisions of the Contract and fails to remedy the same within 30 days after receipt from the party not in breach of a written notice giving full particulars of the breach required to be remedied; or
- 18.1.2 the other party becomes insolvent as defined in sections 113(2) to 113(5) of the Act.
- 18.2 Where NMC terminates its employment under the Contract, NMC shall be entitled to be paid the value of the Contract Works carried out to date (less any sums already paid), its reasonable demobilisation costs and a reasonable sum in respect of loss of profit.
- 18.3 Where the Company terminates the employment of NMC under the Contract, NMC shall be entitled to be paid the value of the Contract Works carried out to date (less any sums already paid).
- 18.4 Termination of the Contract, however arising, shall not affect any of NMC's rights and remedies that have accrued as at the date of termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 19. Obligations on termination**
- 19.1 On termination of the employment of NMC under the Contract, the Company shall promptly:
- 19.1.1 return to NMC all equipment, materials and property belonging to NMC which was supplied to the Company in connection with the Contract Works under the Contract;
- 19.1.2 return to NMC all documents and materials (and any copies) containing NMC's Confidential Information;
- 19.1.3 erase all of NMC's Confidential Information from its computer systems (to the extent possible); and
- 19.1.4 on request, certify in writing to NMC that it has complied with the requirements of this clause 19.
- 20. Force Majeure**
- 20.1 NMC shall have no liability or responsibility to the Company for any failure to fulfill its obligations under the Contract if such failure is caused by any occurrence beyond the responsibility and reasonable control of NMC, including any act of war, rebellion, revolution, military power or terrorism; radioactive contamination; fire; government restrictions and any weather event or natural disaster which is shown to occur on average less frequently than once every 10 years in the UK when compared with publicly available records
- 20.2 If an occurrence of the type referred to in clause 20.1 continues for a period of 3 months, either party may determine the Contract by service of a written notice, in which case NMC shall be entitled to be paid the value of the Contract Works carried out to date (less any sums already paid).
- 20.3 Each party shall bear its own costs and losses arising out of an occurrence of the type referred to in clause 20.1.
- 21. Entire Agreement**
- 21.1 The Contract constitutes the entire agreement and understanding between the parties in relation to the Contract Works and supersedes all previous agreements (whether written or oral) between the parties relating to the Contract Works. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any written or oral statement, representation, misrepresentation, assurance or warranty (whether made negligently or innocently, and whether express or implied) other than as expressly set out in the Contract. Nothing in this clause 21.1 shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

22. Notices

- 22.1 Any Payment Notice or Pay Less Notice to be given in accordance with the Contract shall be delivered by hand, sent by first class post or sent by email. Any other notice to be given under the Contract shall be sent by first class post or recorded delivery or delivered by hand.
- 22.2 Notices delivered by hand shall be deemed to be received on the working day on which they were delivered, or if the notice was not delivered on a working day, on the next working day after the date of delivery. Notices sent by first class post or recorded delivery shall be deemed to be received on the second working day after the date of posting. Notices sent by email shall be deemed to be received on the same working day that the email is sent. If the email is sent after 5:00pm or not on a working day, the notice shall be deemed to be received on the next working day.
- 22.3 This clause 22 shall survive termination of the Contract.

23. Third Party Rights

- 23.1 The Contract is not intended to confer any rights on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

24. Waiver

- 24.1 No failure or delay on the part of either party to exercise any right or remedy under the Contract shall be construed or operate as a waiver, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.

25. Severance

- 25.1 If any provision of the Contract is held by a court or other relevant tribunal to be invalid or unenforceable it shall be severable and shall be deemed omitted from the Contract to the extent necessary to prevent such invalidity or unenforceability and the remaining provisions shall continue to have full effect.

26. Bribery Act

- 26.1 NMC shall comply with all applicable laws, statutes, regulations and codes relating to anti bribery and anti-corruption including, but not limited to, the Bribery Act 2010.

27. Slavery Act

- 27.1 In performing its obligations under the Contract, NMC shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes in force including but not limited to, the Modern Slavery Act 2015.

28. Disputes

- 28.1 If any dispute or difference arises between NMC and the Company under or in relation to the Contract, either party may give written notice at any time of its intention to refer the dispute to adjudication. Any adjudication shall be governed by the Scheme for Construction Contracts (England & Wales) Regulations 1998 (as amended). The adjudicator nominating body shall be the Royal Institution of Chartered Surveyors.
- 28.2 The Contract shall be governed by English law and the English courts shall have jurisdiction with regard to all matters arising under it.

29. Assignment

- 29.1 NMC shall be entitled to assign the benefit of the Contract without the Company's consent.
- 29.2 The Company shall not assign, transfer or otherwise deal in any manner with his rights and benefits under the Contract unless agreed by both parties in writing.

30. Order of Precedence

- 30.1 Notwithstanding any other provision of the Contract, in the event of any conflict, divergence or discrepancy between these Standard Terms and Conditions and any other provisions of the Contract, these Standard Terms and Conditions shall prevail.
- 30.2 In the event of any conflict, divergence or discrepancy between any provisions of the Contract and the provisions of any upstream main contract, the provisions of the Contract shall prevail. Where such main contract imposes greater, different or higher obligations upon NMC than those set out in the Contract, NMC shall have no liability;
- 30.2.1 where NMC have complied with the provisions of the Contract; and/or
- 30.2.2 for any failure to comply with the provisions of such main contract.