



Everlast Industrial Roofing Limited
("Supplier")
TERMS & CONDITIONS
For Supply & Installation Services

1. DEFINITIONS

In these Terms & Conditions:

- "Client"** means the person named as the Client in the Quotation
- "Contract"** means the contract between the Client and the Supplier for the Services comprising the Quotation, these Terms & Conditions and the other documents specified in the Quotation;
- "Contract Price"** means the price payable by the Client to the Supplier for the Services, as shown in the Quotation (and as varied in accordance with the Contract);
- "Equipment"** means the equipment and materials referred to in the Quotation to be installed at the Site;
- "Quotation"** means the Supplier's signed Quotation referring to these Terms & Conditions;

- "Services"** means the supply and installation services described in the Quotation.
- "Site"** means the place where the Equipment is to be installed and the Services carried out.

2. CONTRACT FORMATION

Acceptance of the Supplier's Quotation by the Client constitutes the Contract for the Supplier to carry out the Services in accordance with these Terms & Conditions.

3. GENERAL OBLIGATIONS OF SUPPLIER

- 3.1 The Supplier shall exercise reasonable skill and care in the performance of the Services.
- 3.2 The Supplier shall give not less than 24 hours' notice of the date when the Supplier requires access to the Site.
- 3.3 The Equipment shall comply with the description in the Quotation but if any Equipment to be purchased for the Contract is not available, the Supplier may select alternative equipment of a comparable quality and shall notify the Client with relevant details.

4. GENERAL OBLIGATIONS OF CLIENT

- 4.1 The Client shall give the Supplier access to the Site as required by the Supplier to enable the Supplier to carry out and complete the Services without interference by the Client or by other suppliers or contractors of the Client.
- 4.2 The Client shall also provide at his expense any facilities reasonably required by the Supplier (which may include secure storage for equipment and materials, power supply, water etc.).
- 4.3 The Client is solely responsible for obtaining any planning permission required for the Services and for any permits and licences needed in the course of the Services unless otherwise agreed in writing by the parties.

5. VARIATIONS

- 5.1 If the Client wishes to omit or vary any of the Equipment or Services, he must inform the Supplier in writing who shall, as soon as practicable, notify the Client of the estimated cost of the variation and the likely effect on the Contract period and Completion Date.

- 5.2 Unless the Client withdraws his request for a variation when he receives the Supplier's estimate, the Contract Price will be adjusted in accordance with the Supplier's estimate (or as otherwise agreed between the Client and the Supplier) and an appropriate extension of time for completion of the Services shall be agreed.
- 5.3 If a variation is made orally, either the Supplier or the Client shall confirm it in writing within 3 working days.
- 5.4 The Supplier shall notify the Client if he encounters any difficulties which he could not have reasonably foreseen when submitting the Quotation and, in those circumstances, a fair and reasonable adjustment to the Contract Price and the date for completion will be made.
- 5.5 The Supplier reserves the right not to comply with any request for a variation which in his opinion is not acceptable or which would increase the Contract Price by more than 25%.

6. CONTRACT PRICE & PAYMENT

- 6.1 The Contract Price is stated in the Quotation and it may be varied in accordance with these Conditions.
- 6.2 The Client shall pay the Supplier the Contract Price in accordance with the payment terms in the Quotation. Unless otherwise stated in the Quotation, payment is due on the 1st of each month for work carried out and materials purchased in the previous month. The Supplier will submit a payment notice by the 5th of each month to the Client specifying the amount due to the Supplier in respect of the previous month and the basis on which that amount is calculated. The final date for payment of each payment notice shall be 14 days from the date of the notice.
- 6.3 The Supplier shall be entitled to an advance payment on account of the cost of Equipment as specified in the Quotation and the Supplier's payment notice (or invoice) for the advance payment shall be paid by the Client before any order for Equipment is placed by the Supplier.
- 6.4 If the Client disputes any part of a payment notice and wishes to pay less than the amount shown in the payment notice, he must at least 5 days before the final date for payment give notice to the Supplier specifying the amount he considers to be payable and the basis on which that amount is calculated. The undisputed items must be paid and any disputed amount will be dealt with under clause 13 (Disputes). Except as stated in this clause, the Client shall not withhold any money or set off any amount against invoices of the Supplier.
- 6.5 If the Client fails to pay any amount properly invoiced, the Supplier can give 7 days' notice to suspend all or part of the work until the payment is received. Any period of

suspension will entitle the Supplier to any additional costs he incurs as well as an extension of time for completion of the Services. If full payment of the outstanding amount is received by the Supplier before expiry of the notice period, the suspension notice will be cancelled.

- 6.6 In the event of non-payment the Company reserves the right to add a late payment compensation payment of 20% the value of the overdue invoice/s to the balance. At the discretion of the Company an additional compensation in the amount of £150 for each month that an invoice remains unpaid shall apply, which shall be added on the 1st of each calendar month until payment of the invoice is received in full. The parties agree that this is a substantial remedy for the purposes of the Late Payments of Commercial Debts Act 2013, and will cover all administrative and collection agency costs.
- 6.7 Prices are quoted **exclusive** of VAT which will be added as appropriate and payable by the Client. The Supplier shall issue a valid VAT invoice or receipt for each such amount.

7. PROPERTY AND RISK

- 7.1 The risk of loss or damage to the Equipment at the Site, except when caused by wilful default of the Supplier, rests with the Client who should insure the risks at his expense.
- 7.2 Ownership in the Equipment and Services shall remain with the Supplier until payment of all amounts due from the Client have been received by the Supplier.

8. INSURANCE & LIABILITY

- 8.1 Unless otherwise stated in the Quotation, the Client shall be responsible for (a) insurance of the Services to their full value, including all Equipment at the Site, with the Supplier named as co-insured and (b) insurance of any building at the Site where the Services are to be performed.
- 8.2 The Supplier shall take out and maintain the following insurances
- Public Liability Insurance for £1,000,000.
 - Employer's Liability Insurance for £10,000,000.
- 8.3 Each party shall provide the other upon request during the Contract period evidence that the insurances for which it is responsible are in place.

9. DURATION, HANDOVER & DEFECTS LIABILITY

- 9.1 The proposed commencement date and completion date are shown in the Quotation. Dates are given by the Supplier in good faith but, unless specified in the Quotation, dates are not guaranteed.

- 9.2 The Supplier shall notify the Client within 5 working days of becoming aware of any event beyond his control which may prevent or delay completion of the Services. The notice shall specify the cause of the delay, the likely effect on the completion date and the Supplier's proposals for dealing with the matter. The completion date shall then be extended as agreed by the parties or, failing agreement, decided under clause 13. The Supplier acknowledges that he must take reasonable steps to mitigate or reduce any delay.
- 9.3 The Supplier shall give the Client notice of his intention to hand over the Services and give the Client the opportunity to inspect the Services prior to handover. The Supplier shall then confirm the date of handover to the Client.
- 9.4 When the Contract provides for Equipment to be tested on completion, unless otherwise agreed in writing, the Client shall perform the tests under the supervision of the Supplier.
- 9.5 Any defect must be notified promptly and in any event within 7 days of the Client becoming aware of the defect. When the Supplier accepts that the defect is the Supplier's responsibility, the Supplier shall have the option either to repair or replace the defective Services.
- 9.6 The Supplier shall be responsible for remedying defects in the Services which appear within 6 months from the date of handover and which are promptly notified to the Supplier by the Client who shall give the Supplier full access to carry out any remedial Services. Defects in design or materials supplied by the Client, and defects attributable to fair wear and tear, accidental damage, or to misuse or failure by the Client to comply with any operating or maintenance manuals shall not be the responsibility of the Supplier.
- 9.7 Where any of the Equipment supplied by the Supplier has the benefit of a manufacturer's warranty, the Supplier shall take steps to procure that the Client has the benefit of that warranty. The Supplier shall not be liable for any defect in the Equipment and the Client's remedy will be with the manufacturer (except to the extent that a defect is due to the Supplier's proven negligence).
- 9.8 Except for his liability to remedy any defect for which he is responsible and which is notified to him within 6 months of the handover date, the Supplier shall have no liability to the Client (whether in contract or in tort or for breach of statutory duty) for any other direct, indirect or consequential loss incurred by the Client, including but not limited to loss of use or loss of profit. Moreover, the aggregate liability of the Supplier under the Contract shall not at any time exceed the Contract Price or the limit specified in the Quotation, if less. However, liability for death or injury of individuals due to the Supplier's negligence is unlimited.

9.9 All terms, conditions and warranties implied by law, trade use or otherwise (including but not limited to any warranties as to quality or fitness for purpose) are excluded to the extent permitted by law. The Client acknowledges that the only warranties are those given expressly by the Supplier in these Terms & Conditions.

10. TERMINATION

10.1 The Supplier may give notice to terminate the Contract if the Client fails to make any payment to the Supplier within 30 days of the payment date or commits any other material breach of the Contract.

10.2 The Client may give notice to terminate the Contract if the Supplier commits a material breach and, in the case of a breach capable of remedy, fails to take steps to remedy the breach within 30 days of being requested to do so in writing.

10.3 Either party may terminate the Contract if the other party becomes insolvent or has a receiver, manager or administrative receiver or liquidator appointed.

10.4 Termination shall not affect the accrued rights and liabilities of the parties at the termination date.

11. INTELLECTUAL PROPERTY

All copyright and other intellectual property rights in designs and documents prepared by the Supplier shall remain the sole property of the Supplier. The Client shall have a licence to use them, but only for the purposes for which they were prepared. The Supplier shall have a similar licence in respect of drawings and documents issued to him by the Client.

12. FORCE MAJEURE

The Supplier shall not have any liability to the Client if prevented from performing the Contract on account of force majeure which includes, but is not limited to severe weather conditions, fire, flood, epidemic, war, terrorism, strikes or difficulty in obtaining materials or labour. In any of these circumstances, the Supplier shall promptly notify the Client and has the right to cancel or suspend the Services.

13. DISPUTES

13.1 The parties will endeavour to settle any dispute or difference amicably by direct negotiation.

13.2 If they are unable to settle the dispute, it may be referred by either party to adjudication in accordance with the CEDR (Centre for Effective Dispute Resolution) Adjudication Rules. The decision of the adjudicator shall be final and binding on the

parties unless a notice of dissatisfaction is served by either party on the other within 28 days of the decision.

13.3 Any dispute that is not resolved by negotiation or adjudication shall be finally settled by the courts of England and Wales.

13.4 The Contract is governed by the laws of England and Wales.

14. GENERAL

14.1 **Notices.** Every notice shall be in writing and delivered by hand or sent by first class post to the address of the recipient. A notice sent by post shall be treated as having been received two working days after posting. A notice delivered by hand shall be treated as having been received at the time of delivery unless this is after the normal working hours of the recipient, in which case delivery shall be treated as occurring at 9.00 a.m. on the next working day.

14.2 **Assignment.** Neither party shall assign any of their rights or obligations under the Contract without the prior written consent of the other.

14.3 **Subcontracting.** The Supplier shall be entitled to sublet any parts of the Services. Subcontracting shall not relieve the Supplier of his obligations under the Contract.

14.4 **Entire Agreement.** The Contract is the only agreement between the parties and supersedes any previous arrangements, agreements or understandings relating to the Services.

14.5 **Amendment.** Any amendment to the terms of the Contract shall only be effective if in writing and signed by an authorised signatory of the Client and the Supplier.

14.6 **No Reliance on Warranties.** The Client acknowledges that he has not relied on and shall have no remedy in respect of any statement, representation, warranty, or undertaking of any person (whether a party to this Agreement or not) other than is expressly set out in the Contract. However, nothing in this clause shall limit or exclude liability for fraud.

14.7 **Severance.** If any provision of the Contract becomes illegal or unenforceable, this shall not affect the legality or enforceability of any other provision of the Contract. In that situation the parties shall, where possible, use reasonable endeavours to agree an alternative provision which is legally enforceable.

14.8 **Waiver.** The waiver by either party of a breach by the other in the performance of its obligations under the Contract shall not constitute a waiver of any default nor shall failure to complain of any default constitute a waiver of that default by the other party.