



## **ELLEMBY Contracts Ltd**

Unit 4, ABS Business Park  
Northgate, Aldridge  
West Midlands WS9 8TH  
Telephone 01922 455655  
Facsimile 01922 457557  
Email: [enquiries@ellemblycontracts.co.uk](mailto:enquiries@ellemblycontracts.co.uk)  
Website: [www.ellembly-contracts.co.uk](http://www.ellembly-contracts.co.uk)

### ***ELLEMBY CONTRACTS LIMITED - TERMS & CONDITIONS OF CONTRACT***

The following Terms & Conditions shall apply to all orders placed with us, and any stipulations or conditions in a Customer's order which conflict with, qualify or seek to negate any of these Terms & Conditions shall be inapplicable to any order placed with us and have no force or effect unless otherwise specifically agreed by a director of the Contractor in writing when acknowledging the order in question

#### **1. Definitions**

- (a) "Contractor" means Ellembly Contracts Limited.
- (b) "Customer" means the Contractor's customer for the Works.
- (c) "Works" means the building works the subject of the contract, in accordance with the Quotation.
- (d) "Quotation" means the quotation issued by the Contractor.
- (e) "Contract Price" means the price agreed between the Contractor and the Customer for The Works

#### **2. The Works**

- (a) The Contractor will carry out and complete the Works in accordance with the Quotation in a good and workmanlike manner.
- (b) The Customer will provide unrestricted access to the site during normal working hours and wherever practicable, overnight and at weekends.
- (c) The Customer will be responsible for obtaining (if applicable) at its own cost and in a timely fashion so as not to delay or interrupt the regular progress of the Works any consent, permission or approval required.
- (d) Unless expressly agreed in writing the Contractor will not carry out any form of design for these Works. Insofar as the Contractor will use best endeavours to comply with current legislation, Building Regulations and best practice, no warranty or other liability on the part of the Contractor shall be created or implied in regard to the suitability or fitness for purpose of components or systems recommended or any calculations undertaken.

#### **3. Materials**

- (a) Samples submitted for approval show substance and general character only. Colour, size, thickness or shape cannot be guaranteed.
- (b) Technical information quoted is based on information generally distributed by manufacturers and we cannot warrant the accuracy of such.
- (c) All materials delivered to site will remain the Contractor's property with title fully vested in the Contractor until the Customer has paid for the Works in full and if the Customer defaults in respect of any obligations to make payments under the contract the Contractor may enter the site and repossess and remove the materials until such time as all sums due have been paid in full, even if the materials have been installed, connected or



incorporated into the Works, in which case the Contractor may dis-install, disconnect and remove the same.

(d) Where existing materials are to be removed and set aside for re-use, the Contractor will take reasonable care but will not be liable for any breakages. Breakages will be replaced by the best alternative materials reasonably available and charged as an addition to the contract price.

#### **4. Variations and Extras**

(a) The prices quoted are based upon dimensions, quantities, drawings and specifications given at time of tender. The Contractor reserves the right to require re-calculation and apply supplemental charges if any of these parameters change or to increase the contract price to reflect increases in the cost of materials or labour between the date of the Quotation or the end of the fixed price period specified in the Quotation and the date of completion.

(b) If additional work is requested by the Customer a further quotation will be submitted and the additional work will not be started until the Customer has placed an order and the Contractor has accepted it. The Contractor shall not be liable if late acceptance delays the original Works.

(c) Pipe work, extrusions, A/C Units and cabling close to the work area are the responsibility of the Customer and where necessary, the Customer must ensure their removal prior to commencement of the works.

#### **5. Payment**

(a) The following terms will apply unless notified otherwise in writing by a director of the Contractor.

(b) The Contractor may invoice for interim payments each month, as the Works proceed. The sums on each interim invoice become due upon the date of issue, and shall be paid within a maximum of 28 days thereafter (Final date for Payment). The full price (less any interim payments and any agreed retention) + VAT will be invoiced on completion of the Works and will be payable within 28 days of the date of the invoice (Final date for Payment).

(c) The Customer will not be entitled to withhold payment in whole or in part of any sum due unless he issues a written notice of intention to withhold payment not less than 5 days before the final date for payment specifying the amount proposed to be withheld and the ground for the withholding or if there is more than one ground each ground and the amount attributable to it. In any event no set-off or abatement will be permitted by reference to any sum due under one or more other contracts.

(d) The Customer will not be entitled to make any retention, unless provided for in the Quotation or otherwise agreed in writing by a director of the Contractor. Any retention must be released in full together with VAT as appropriate no later than 6 months after the Contractor has completed the Works and left the site or, if earlier, 28 days after the architect's certificate (Final date for Payment).

(e) If any payment is not made by the Customer by the expiry of its respective Final date for Payment the Contractor will be entitled to statutory compensation and to charge interest, pursuant to the Late Payment of Commercial Debts Act. The applicable rate is 8% per annum above Bank of England base rate from time to time. In addition the Contractor will after the expiry of seven days from the giving of written notice to this effect to the Customer, be entitled to cease or suspend the Works and any works under any other contract with the Customer until such outstanding sum is paid

(f) The Contractor reserves the right to refuse to execute any order or contract if the arrangements for payment of the Customer's credit are not satisfactory. In the case of non-payment of any account by its Final date for Payment or in the case of death, incapacity, bankruptcy or insolvency of the Customer or when the Customer is a Limited Company in the case of liquidation or the appointment of a receiver the purchase price of all goods delivered to date and/or any sums already due from the Customer shall become due and payable immediately from the Customer and in addition the



Contractor has the right to cancel every contract made with the Customer or to cancel, suspend or discontinue delivery of goods and materials for same. This provision acts without prejudice to the Contractor's right to recover any loss sustained, caused by the above circumstances.

#### **6. Insurance**

(a) Both the Contractor and the Customer will arrange and keep in force insurance sufficient to cover their respective risks and liabilities in respect of all damage and injuries to property and persons on site from the commencement of the Works. Without limiting the above, although the Contractor will take reasonable care to prevent damage by rain, wind, etc, the Contractor will not be liable for any loss or damage caused by any such risk.

#### **7. Time for Completion**

(a) The Contractor will use reasonable endeavours to ensure that the Works are completed within the time (if any) stated in the Quotation, otherwise within a reasonable time. Quotations are based on normal working hours Monday – Friday 8am – 5pm

#### **8. Defects**

The Contractor will rectify at its own cost any defects or faults which appear and are notified by the Customer to the Contractor in writing within 12 months of completion of the Works and are due to defective workmanship by the Contractor or defective materials supplied by the Contractor.

#### **9. Consequential Damage**

The Contractor will take reasonable care to specify and supply materials of adequate quality and to complete the Works in a good and workmanlike manner, but will not be liable for any consequential loss or damage suffered by the Customer however arising. In particular, due to the nature of the Works, it is impossible for the Contractor to guarantee that the site or the Customer's property will at all times during the Works be wind and water tight and/or protected from the elements. The contractor will at all times use his best endeavours to ensure that the works are as watertight as possible

#### **10. Liability**

The Contractor's liability for death or personal injury to any individual caused by negligence of the Contractor or its subcontractors or agents is not limited. Without prejudice to the above, the maximum liability of the Contractor for all other events shall not exceed the contract price.

#### **11. Disputes**

(a) Notwithstanding that the Customer may be a residential occupier as defined by the Housing Grants Construction and Regeneration Act 1996 (the Act), the Contractor and Customer agree that either party may refer a dispute to adjudication at any time, following the rules and procedures of the Scheme for Construction Contracts Part 1 (the Scheme). The Decision of the Adjudicator shall be binding on the parties until the dispute is finally resolved. Copies of the Act and the Scheme may be purchased from HMSO or may be viewed upon request at the Contractor's offices during office hours.

(b) Without prejudice to the above, final resolution of any dispute may be achieved through agreement or by arbitration under the CIMAR rules

#### **12. Jurisdiction**

This contract is governed by the law of England and Wales.