

Heating and Ventilating Contractors' Association

HVCA

DUCTWORK AND REFRIGERATION AND AIR CONDITIONING GROUPS

Conditions of trading

These Conditions are issued by the Heating and Ventilating Contractors' Association for use on contracts direct with Employers involving the supply and installation of commercial Heating and Ventilating and/or Ductwork, and/or Air Conditioning systems and equipment.

In these Conditions, 'the Contractor' shall mean the party supplying and installing Commercial Heating and Ventilating and/or Ductwork and/or Air Conditioning systems and Equipment ('the Installation'). 'The Employer' shall mean the party who requested the provision of the Installation.

There are separate Conditions of Trading for contracts with householders under the HVCA Double Guarantee Scheme for Domestic Heating Installations up to 60 kW (200,000Btu/h); and for the Installation of Commercial Refrigeration Equipment.

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1 PERIOD OF TENDER

Unless previously withdrawn, this tender is open for acceptance in writing within thirty days of the date hereof or within such other period as may be agreed in writing.

2 BASIS OF TENDER

- (1) This tender is conditional upon the Employer having supplied the Contractor with adequate drawings (where the Contractor is not responsible for design) and with such information regarding construction details and site conditions (including the availability of working and storage areas with suitable access roads, the existence of any abnormalities such as heat, fumes, dust etc) as will enable the Contractor to make a reasonable estimate of the cost of the supply and erection of the installation and the work to which the quotation relates (hereinafter referred to as 'the Installation') and the time for its completion. In the event of the Employer supplying inadequate or inaccurate drawings, information or details, the tender price shall be adjusted accordingly.
- (2) (a) This tender covers the items in the specification and/or drawings only and, unless otherwise expressly stated, does not include the following items:
 - (i) building, plumbing and electrical work or the associated work of other trades;
 - (ii) the supply and erection of scaffolding, ladders, moveable platforms, hoisting and/or lowering gear necessary for the execution of the Installation;
 - (iii) the cost of operating any part of the Installation;
 - (iv) the cost of any fuel, water or electricity used on site
- (b) Unless otherwise expressly stated, any costs incurred by the Contractor in providing any of the items referred to in clause 2(2)(a) shall be reimbursed by the Employer to the Contractor.

3* CONTRACT PRICE FLUCTUATION

Unless expressly stated to be on a fixed price basis, the tender price shall be adjusted in accordance with the contract price fluctuation provision attached hereto. Any such adjustment shall be given effect to in clause 9.

4 FIXED PRICE BASIS

- (1) Where expressly stated to be on a fixed price basis, this tender is based upon the types and rates of contributions, taxes, levies and duties (hereinafter referred to as 'the tax items') payable by the Contractor in respect of the execution of the Installation, and which are current at the date of this tender.
- (2) If after the date of tender there is any increase or decrease in the cost to the Contractor of executing the Installation caused by any change in or cessation of any one or more of the tax items or by the introduction of any new contribution, tax, levy or duty payable by the Contractor in connection with the execution of the Installation, then the tender price shall be increased or decreased accordingly.

5 OVERTIME

All additional costs caused by working overtime at the request or with the consent of the Employer shall be charged as an addition to the tender price.

6 VALUE ADDED TAX

- (1) The tender price does not include any Value Added Tax properly chargeable to the Contractor in respect of the execution of the Installation. The net amount of such tax shall be reimbursed to the Contractor in accordance with clause 9.
- (2)** Upon receipt of the amounts referred to in clause 9 (including any Value Added Tax) the Contractor shall immediately issue to the Employer a receipt as referred to in Regulation 12(4) of the Value Added Tax (General) Regulations, 1985 (or any amendment thereof) containing the particulars required under Regulation 13(1) of the said Regulations.

* A copy of the appropriate price fluctuation provision must be submitted to the Employer at the time of tendering. A Supplementary Provision allowing for the adjustment of the tender price conventionally or on the basis of the NEDO Formula has been produced by HVCA.

** Where the Employer is not to provide an authenticated receipt but a system of self billing is to be utilised clause 6(2) must be deleted and alternative arrangements made.

7 VARIATIONS

- (1) The term 'variation' means the alteration or modification of the design, quality or quantity of work executed for the Installation, and includes the addition, omission or substitution of any work and the alteration of the kind or standard of any of the materials or goods to be used in the installation.
 - (2) The Employer may order variations to the Installation and the Contractor shall comply with such orders but not until:
 - (i) the same have been ordered in writing by the Employer or, where ordered orally, confirmed in writing by the Contractor; and
 - (ii) the value of the variation has been agreed where it is reasonably possible to estimate such value.
 - (3) If it is not reasonably possible to estimate the value of a variation before the Contractor complies with the order, or if the order is complied with before such value has been agreed, then a fair valuation shall be made.
 - (4) Where the value of a variation has not been agreed under clause 7(2)(ii) or a fair valuation under clause 7(3) is not made, then the Contractor shall be allowed the prime cost of the variation work calculated in accordance with the 'Definition of the Prime Cost of Daywork' current at the date of tender and issued by the Royal Institute of Chartered Surveyors and the Heating and Ventilating Contractors' Association, together with such percentage additions to each section of prime cost as are given to the Employer upon his application for the same or prior to the execution of such daywork.
- (2) The first payment shall be due one month after the date of the commencement of the Installation.
 - (3) Interim payments shall be due at one monthly intervals calculated from the date when the first payment was due.
 - (4) The Contractor shall make monthly applications for payment to the Employer. Such applications for payment shall state:
 - (i) The total value of the work properly executed including the value of any materials or goods intended for incorporation into the works provided the same had been delivered to or adjacent to the site or in respect of which the Contractor has paid his supplier or is legally bound to make such payments;
 - (ii) Variations, if any, carried out pursuant to clause 7(2) of these Conditions;
 - (iii) Fluctuations, if any, assessed in accordance with clauses 3 and 4 of these Conditions;
 - (iv) Amounts due in respect of loss and/or expense in accordance with clause 10(3) of these Conditions;
 - (v) Any Value Added Tax properly chargeable at the date of the application; and
 - (vi) Any other amounts properly due to the Contractor under these Conditions.
 - (5) The final date for payment shall be fourteen days after receipt of such application.
 - (6) The Employer shall, no later than five days after receipt of an application for payment, issue a written Notice of Payment to the Contractor, specifying,
 - (i) The amount of payment to be made in respect of the amount stated in the application for payment less a retention of three per cent (3%) and less any money previously paid; and
 - (ii) The basis for the calculation of such amounts.
 - (7) The Employer may, not later than five days before the final date for payment of the amount due pursuant to clause 9(6) of these Conditions, give a written notice to the Contractor specifying:
 - (i) The amount proposed to be withheld and/or deducted from the amount due under clause 9(6) of these Conditions;
 - (ii) The ground or grounds for withholding and/or deduction; and
 - (iii) Where the Employer intends to deduct and/or withhold monies on more than one ground, the amount withheld and/or deducted in respect of each ground.
 - (8) Where the Employer fails to give a written notice pursuant to clause 9(7) of these Conditions, the Employer shall pay the Contractor the amount due pursuant to clause 9(6).
 - (9) The retention money referred to in clause 9(6)(i) shall be paid to the Contractor within one month of completion of the Installation.
 - (10) The Contractor shall, without prejudice to any of the rights and remedies which the Contractor may otherwise possess, have the right to suspend the Installation until full payment occurs, provided that:
 - (i) The Employer has failed to pay the Contractor the full amount stated on the Notice of Payment pursuant to clause 9(6) of these Conditions, subject to any notice issued pursuant to clause 9(7); and
 - (ii) Such failure shall continue for seven days after the Contractor has given the Employer written notice of the Contractor's intention to suspend the performance of his obligations under the Contract and the ground or grounds upon which it is intended to suspend performance.
 - (11) If the Employer fails to discharge the full amount due to the Contractor under clause 9(6) on the final date for payment, then without prejudice to any other rights or remedies exercisable by the Contractor under these Conditions or otherwise, the Employer shall pay to the Contractor, in addition to the amount not properly paid, simple interest thereon for such period until such payment is made. The rate payable shall be eight per

8 MATERIALS AND GOODS

- (1) All materials and goods supplied by the Contractor, whether fixed or unfixed, shall remain the sole and absolute property of the Contractor until such time as:
 - (i) the materials and goods have been paid for in full; and
 - (ii) all other monies due to the Contractor from the Employer have been paid to the Contractor but shall be at the Employer's risk from the time of delivery until the completion of the Installation and the Employer shall:
 - (a) until the materials and goods are paid for or returned to the Contractor, be responsible for and adequately insure the materials and goods in the name of and for the benefit of the Contractor against loss or damage arising from any cause whatsoever in their full replacement value and shall produce to the Contractor, on demand, the policies of such insurance and receipts for premiums paid thereon;
 - (b) keep the materials and goods separate from all property of other persons in an area set aside for such purpose and stored in accordance with recommendations made from time to time by the Contractor;
 - (c) at all times, keep a separate account of the materials and goods and supply to the Contractor upon request full details of any part of the materials and goods which have been utilised or sold by the Employer, its servants or agents;
 - (d) hold the entire proceeds of sale in the materials and goods or any part thereof which are used or sold by the Employer in trust for the Contractor.
- (2) The Employer acknowledges that it is in possession of the materials and goods as bailee and in a fiduciary capacity for the Contractor until such time as the said items are paid for in full by the Employer.
- (3) The Employer grants the Contractor an irrevocable licence to enter at any time any vehicle or premises owned or occupied by the Employer or in its possession for the purpose of repossessing and removing any materials and goods, the property in which has remained with the Contractor by virtue of this clause.

9 TERMS OF PAYMENT

- (1) The Contractor shall be entitled to payment by installments unless it is specified in the quotation that the duration of the Installation is to be less than 45 days, in which case, clause 9(12) shall apply.

cent (8%) over the Base Rate of the Bank of England which is current at the date the payment by the Employer became overdue. Payment of interest under this sub-clause shall be treated as a debt due to the Contractor by the Employer.

- (12) Where the duration of the Installation is specified in the quotation to be less than 45 days, the Customer shall, upon acceptance of the quotation, pay to the Contractor the percentage of the quoted price as stated in the quotation. The payment of the remainder of the quoted price shall become due on the expiry of 30 days following the completion of the Installation. The Final Date for such payment shall be 14 days after the Due Date.

10 TIME FOR COMPLETION

- (1) Subject to clause 9(10) the Contractor shall, so soon as he has possession of the site, proceed regularly and diligently with the execution of the Installation.
- (2) Upon it becoming reasonably apparent that the progress of the Installation is delayed, the Contractor shall forthwith give written notice of the delay to the Employer stating the cause and, where reasonably practicable, the extent of the delay. Upon receipt of the said notice and where the delay is due to circumstances beyond the Contractor's control, the Employer shall forthwith grant the Contractor a fair and reasonable extension of the time for completion of the Installation.
- (3) Where the progress of the Installation is delayed or materially disrupted by any act, omission or default of the Contractor or Employer or those for whom they are respectively responsible, then the party at fault shall pay or allow to the other the agreed amount of direct loss and/or expense (including direct costs, overheads and loss of profit) as may be attributable to such delay or disruption.

11 DETERMINATION

- (1) If:
- (i) the Contractor wholly suspends the execution of the Installation without reasonable cause; or
 - (ii) the Contractor fails, without reasonable cause, to proceed regularly and diligently with the Installation; or
 - (iii) the execution of the Installation is delayed due to reasons beyond the control of both parties; or
 - (iv) the execution of the Installation is delayed due to reasons within the control of the Employer; or
 - (v) the Employer fails to make any payment in accordance with the provisions of clause 9
- then if the circumstances mentioned in paragraphs 11(1)(i)-(iii) continue for ten days after notice has been sent by registered post or recorded delivery, specifying the same by the Employer to the Contractor, or if the circumstances mentioned in paragraphs 11(1)(iii)-(v) continue for ten days after notice in the said form has been sent to the Contractor by the Employer, then the party who sent the said notice may, by further notice sent by registered post or recorded delivery, forthwith determine the employment of the Contractor under these Conditions.

PROVIDED that such notice shall not be given unreasonably or vexatiously and provided that any such determination shall be without prejudice to any other rights or remedies of the party effecting determination.

- (2) (i) If either party becomes insolvent then the other party may, by notice sent by registered post or recorded delivery to the other, forthwith determine the employment of the Contractor under these Conditions.
- (ii) A party becomes insolvent if it:
- (a) makes a composition or arrangement with its creditors or becomes bankrupt; or
 - (b) being a company makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 as the case may be, or any amendment or re-enactment thereof; or

- (c) has a provisional liquidator appointed; or
- (d) has a winding-up order made; or
- (e) passes a resolution for voluntary winding-up (except for the purpose of amalgamation or reconstruction); or
- (f) has an administrator or an administrative receiver appointed under the Insolvency Act 1986.

- (3) Upon such determination, after taking into account amounts previously paid, the Contractor shall be entitled to be paid:
- (i) any design costs;
 - (ii) the total value of work begun and/or completed up to the date of determination;
 - (iii) the cost of materials and goods ordered for the Installation for which the Contractor has paid or is legally bound to pay. Upon such payment, title to the said materials and goods shall pass to the Employer and the Contractor shall make the same available for collection by the Employer;
 - (iv) the cost of removal from the site of any property of the Contractor properly on site for the execution of the Installation;
 - (v) any direct loss and/or expense (including overheads and/or financing charges) caused by the Contractor whether by determination or otherwise under these Conditions; and
 - (vi) any other amounts due to the Contractor under these Conditions.

PROVIDED that where determination has been effected for the reasons mentioned in paragraphs 11(1)(i)-(iii), then paragraph 11(3)(v) shall be deemed to be deleted.

AND PROVIDED that where determination has been effected for the reasons mentioned in paragraphs 11(1)(i) and (ii), the Employer shall be entitled to recover from the Contractor any direct loss and/or expense (including overheads and/or financing charges) caused to the Employer whether by determination or otherwise under these Conditions.

AND PROVIDED ALSO that where determination has been effected for the reasons mentioned in paragraphs 11(1)(iv) or (v), the Contractor may take possession of and shall have a lien upon all unfixed goods and materials which may have become the property of the Employer until the payment of all monies due to the Contractor from the Employer.

- (4) Where the amounts already paid to the Contractor exceed those due to him under clause 11(3), then the balance shall be returned to the Employer.

12* INSURANCE

The Employer shall, for the benefit of himself and the Contractor, take out and maintain a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works and the cost of any professional fees or services and shall maintain such Joint Names Policy up to and including the completion of the Installation or up to the date of determination of the employment of the Contractor, referred to at Clause 11 of these conditions, whether or not the validity of that determination is contested.

13 THIRD PARTY/PUBLIC LIABILITY

The Employer shall take out and maintain adequate Third Party Insurance and shall indemnify the Contractor and its employees, servants and/or agents against all claims (including the cost of any legal proceedings) in respect of the death of or injury to any person or for any damage to or loss of property made by any person against the Contractor or the Employer, whether under Statute or Common Law, which may arise out of or be in any way connected with the execution of the Installation except where the same is due to the negligence, omission or default of the Contractor.

14 PROVISION OF FACILITIES

- (1) The Employer shall, upon completion of the Installation, provide free-of-charge, adequate and proper facilities for the storage of such materials, equipment, tools or other property which may be brought on to the site.
- (2) The Employer shall supply at his own cost all necessary water, lighting, power and site security for the purposes of executing, or in connection with the Installation.

**In some cases it may not be possible for the Employer to take out insurance against certain of the risks mentioned in this Clause. In such cases, this matter should be arranged between the parties at the tender stage and the Clause amended accordingly.*

15 DRAWINGS

The copyright in any drawings, illustrations or descriptive matter (hereinafter referred to as 'the documents') submitted to the Contractor shall remain his property. The copyright in any documents submitted by the Employer shall remain his property.

16 GUARANTEE AND LIMITATION OF LIABILITY

- (1) the Contractor shall only be liable to make good any defects in the Installation which stem from his faulty design or his selection of unsuitable or inadequate materials or from faulty materials or bad workmanship. Provided that:
 - (i) the Contractor receives written notice of any defect within 12 months of the completion of the Installation; and
 - (ii) the Installation has been used under proper operating conditions; and
 - (iii) in the case of materials and goods supplied and fixed but not manufactured by the Contractor, the extent of the Contractor's liability in respect thereof shall not exceed the extent of the supplier's or the manufacturer's liability to the Contractor. PROVIDED that paragraph 16 (1)(iii) shall not operate unless, before entering any contract for the purchase of such materials and goods, the Contractor has informed the Employer of the nature and extent of his supplier's intention to limit or exclude his liability and;
 - (a) the Employer has agreed that the Contractor's liability under these conditions shall, mutatis mutandis, be of the same nature and extent; or
 - (b) there are no alternative sources of supply for the materials and goods;
 - (iv) The Contractor shall not be liable to make good any defects in the Installation which arise from the operation of the same by the Employer, his servants or agents before the date of completion, nor shall the Contractor be liable for any loss or damage arising directly or indirectly as a consequence of such operation.
- (2) Completion of the Installation shall be deemed to have occurred and the guarantee period to have commenced on the date on which the Contractor gives written notice to the Employer or his agent that the Installation is ready for use.
- (3) The Contractor shall not be liable in respect of any defect which may occur in any previously existing system to which the Installation may be connected unless and to the extent that such defect is caused or contributed to by a defect in the Installation for which the Contractor would be liable under this clause.
- (4) Save as is provided by this clause, the Contractor shall not be liable for any loss or damage whether arising directly or indirectly as consequence of any defect in the Installation save to the extent that such defect is caused by the negligence of the Contractor, his servants or agents.

17 COMPLIANCE WITH LAW AND REGULATIONS

- (1) Any fees incidental to the execution of the Installation which are payable by reason of any Statute, Order-in-Council, Regulation or Direction, Bye-Law or other lawful requirement or instruction (hereinafter referred to as 'requirement or regulation') are to be paid by the Employer.
- (2) The Employer and the Contractor shall each respectively comply with every applicable good practice, requirement or regulation whether of the Government or any local or other lawful authority and the Employer shall obtain every licence, permit or authority that may be required in connection with the Installation.

18 ADJUDICATION

- (1) Any dispute or difference arising under this contract may be referred to an Adjudicator at any time by either party.
- (2) The Adjudicator shall be the person so named by the parties. If a person is not so named, the Adjudicator shall be such a person as the parties agree, or in the absence of such agreement, a person appointed by an Adjudicator Naming Body (ANB).

- (3) The parties agree to secure the appointment of an Adjudicator within seven days of a written notice issued under clause 18(5) of these conditions.
- (4) If the Adjudicator is:
 - (i) unwilling or unable to adjudicate on a dispute or difference referred to him;
 - (ii) dies before the commencement of such adjudication proceedings or in the course of such adjudication proceedings; or
 - (iii) for reason of illness, absence or is unavailable for some other cause, unable to conduct an adjudication, the parties may, subject to clause 18(3) of these Conditions, agree on a replacement Adjudicator, or, failing such an agreement, the Adjudicator shall be the person appointed by the ANB.
- (5) Either party shall notify his intention to refer a dispute or difference arising under the Contract to an Adjudicator by written notice to the other party, of his intention to do so. Such notice shall include particulars of the dispute or difference, together with relevant documentation in support thereof.
- (6) The reference to the Adjudicator shall be made via a referring party, submitting a copy of the written notice in clause 18(5) of these Conditions, together with any relevant documentation, at the same time as he submits such notice to the other party or as soon as the adjudicator has been appointed (unless the reference to the Adjudicator is made by the parties jointly).
- (7) The other party may, within seven days of the receipt of the documentation issued under clause 18(6) of these Conditions, submit to the Adjudicator and to the party initiating the reference, his written response, including supporting arguments and documentation.
- (8) The Adjudicator shall decide upon the dispute or difference within twenty eight days from the date of referral and shall notify his decision to each party at any time within that period.
- (9) The twenty eight day period referred to at clause 18(8) of these Conditions may be extended upon the agreement of both parties but such extension can only be up to fourteen days if consent is obtained only from the referring party.
- (10) Unless otherwise ordered by the Adjudicator (as part of his decision):
 - (i) The parties shall be equally liable for the Adjudicator's fees and expenses; and
 - (ii) The parties shall each bear its own costs of the Reference to the Adjudicator.
- (11) The Adjudicator shall not be obliged to give reasons for his decision.
- (12) The Adjudicator shall act impartially, set his own procedure and take the initiative in ascertaining the facts and the law as he considers necessary in respect of the referral.
- (13) The decision of the Adjudicator shall be binding upon the parties until the dispute or difference is finally determined by legal proceedings by the written agreement of the parties, entered into pursuant to the Adjudicator's decision.
- (14) (i) The parties shall, without prejudice to their own rights under the Contract, comply with the decision of the Adjudicator and shall ensure that the decision of the Adjudicator is given effect;
 - (ii) Any payment required by the Adjudicator's decision shall be enforced as a debt without Set-Off or Counterclaim and shall be due on the date of the Adjudicator's decision;
 - (iii) Any payment required by the Adjudicator shall be discharged within seven days from the date of his decision, failing which the Contractor may suspend without notice, any further execution of the Installation until such payment has been discharged by the Employer.
- (15) The parties agree that the Adjudicator shall have no liability whatsoever for anything done or omitted to be done in the discharge of his function as an Adjudicator, nor for any consequences arising out of or in connection with his decision, unless such act or omission is in bad faith.
- (16) The parties agree not to institute any challenge to a decision of the Adjudicator until after the completion of the Installation.

19 APPLICABLE LAW

Unless otherwise specifically provided, this Contract is to be construed in accordance with the law of England/Scotland (*delete as applicable*).