

1. DEFINITIONS

- 1.1. In this Agreement the following terms shall have the following meanings:
- 1.1.1. "BMSI" Means Building Management Solutions Integrators Limited ("BMSI") (company number 03584156) whose registered office is at Foundation House, Fairacres Industrial Estate, Dedworth Road, Windsor, Berkshire, SL4 4LE.
 - 1.1.2. "Completion" Means the when the Works have been completed.
 - 1.1.3. "Conditions" Means these conditions, forming part of the Contract.
 - 1.1.4. "Contract Price" Means the sum(s) set out in the Order Acknowledgment.
 - 1.1.5. "Contract" Means the Purchase order and these Conditions and as further clarified by the Order Acknowledgement (and any documents expressly referred to in them).
 - 1.1.6. "Customer" Means the individual or company as set out in the Purchase order.
 - 1.1.7. "Goods" Means all items to be supplied by BMSI under the Contract.
 - 1.1.8. "Guarantee" Means the obligation to repair and/or replace set out in Clause 7.1
 - 1.1.9. "Insolvency" Means the meaning defined in the definition described in Section 113 of the Housing Grants, Construction and Regeneration Act 1996.
 - 1.1.10. "Order Acknowledgment" Means the formal acknowledgment of the Customer's order setting out the agreed scope, price and duration of the works.
 - 1.1.11. "Purchase Order" Means the Customer's Purchase Order.
 - 1.1.12. "Site" Means the place where the Goods are to be delivered and/or the Works are to be carried out.
 - 1.1.13. "Warranty Period" Means 12 months from the date of delivery of the Goods or completion of the Works whichever date is the latter.
 - 1.1.14. "Works" Means the works being carried out by BMSI in accordance with the Contract.

2. CONTRACT

- 2.1. The Contract is comprised of these Conditions and the Purchase order (and any documents expressly referred to therein) and the Order Acknowledgement to the exclusion of all other terms and conditions (including any terms which the Customer seeks to impose or which are implied by trade, custom, practice or course of dealing under any purchase order, confirmation of order, specification or other document). In the event of any conflict between the Purchase order and the Order Acknowledgment the Order Acknowledgment shall take precedence.
- 2.2. The Contract constitutes the entire agreement between the parties with regard to the subject matter of the Contract and supersedes all prior representations and agreements whether oral or written.
- 2.3. Orders are accepted under these Conditions unless agreed in writing elsewhere

3. CONTRACT PRICE AND TERMS OF PAYMENT

- 3.1. The Contract Price shall be the sum(s) set out in the Purchase Order and as confirmed or adjusted in the Order Acknowledgment (and, unless otherwise stated, shall be exclusive of VAT) as may be adjusted pursuant to these Conditions.
- 3.2. BMSI may submit an invoice
- 3.2.1. for the Goods upon delivery to the Site (or when the Goods are available for delivery but delayed due to the Customer's request or default); and
 - 3.2.2. for the Works upon Completion of the Works.
 - 3.2.3. for Contracts with Goods and Services BMSI may at its option submit separate invoices for the Good and Services.
- 3.3. Payment of an invoice issued in accordance with clause 3.2 or 3.6 is due within 30 days of date of the invoice and shall be made without any set-off, counterclaim or deduction whatsoever by the Customer and the time for payment shall be of the essence. Payment shall be made by BACS transfer unless agreed otherwise in writing.
- 3.4. Where the duration of the contract exceeds 45 days then interim payments shall be agreed, applications for payment shall be submitted on a periodic basis for the value of any works performed during this period. These works may include work carried out on and off site including but not limited to mobilisation costs and engineering costs. BMSI shall be entitled to interim payment for off-site manufacture of control panels and where BMSI are requested to deliver products to addresses off-site then the value of these items shall also be included in the application for payment.
- 3.5. These payment provisions shall be in accordance with the Housing Grants, Construction and Regeneration Act 1996 with the following appropriate payment terms:
- 3.5.1. The Relevant Period shall be 28 days.
 - 3.5.2. The Payment Due Date shall be 7 days after the end of the Relevant Period or the date of issue of a payment application by BMSI whichever is the later.
 - 3.5.3. The Customer shall within 5 days of the Payment Due Date issue to BMSI a Notice of the Amount of Payment specifying to what the payment relates and the basis upon which the amount is calculated in accordance with clause 3.4. In the absence of such notice then the Customer and BMSI both deem the payment application to be agreed in full.
 - 3.5.4. The Final Date for Payment shall be 23 days after the Payment Due Date.
- 3.5.5. The customer must request a VAT invoice in good time to ensure that payment is made no later than the Final Date for Payment
- 3.6. Should the Customer fail to make full payment to BMSI in accordance with clause 3.4, and such failure continue for 7 days after BMSI has given the Customer written notice of the same, then BMSI may suspend the further execution of the works until such payment has been made and such suspension shall not be deemed a failure on our part to proceed with the works.
- 3.7. BMSI reserves the right to apply costs for storage charges as necessary in the event that delivery of Goods available for dispatch is delayed due to the Customer's request or default. BMSI reserve the right to invoice such cost separately or within the next invoice due at their discretion.
- 3.8. Interest for late payment shall be charged on the relevant sum as calculated on a daily basis from the date due for payment to the date of actual payment at a rate of 4% per annum above the current base rate of HSBC Bank Plc This liability shall be in addition to and without prejudice to any other remedy available to BMSI for non-payment.

- 3.9. BMSI reserve the right to seek payment guarantees in the form of pro-forma payment, parent company guarantee, availed bill of exchange or such other assurance as BMSI may deem appropriate.
- 3.10. Without prejudice to BMSI's right to claim costs under the Late Payment of Commercial Debts (Interest) Act 1998, if for any reason any payment is not made when due BMSI reserve the right to be paid on an indemnity basis any costs are incurred in recovering any money due under this contract (and the costs of recovering such costs) including administrative costs and any costs incurred with lawyers or debt collection agencies. Administrative costs may include the cost of employing the staff concerned and the overheads attributable to them for the time spent. In calculating our administrative costs credit will be given for any compensation due under the Late Payment of Commercial Debts (Interest) Act 1998.
4. **SPECIFICATIONS AND PARTIES GENERAL OBLIGATIONS**
- 4.1. The Customer shall be solely responsible for ensuring that all information (including drawings) given to BMSI (directly or indirectly) are accurate suitable and correct. Examination or consideration of such information shall not of itself limit the Customer's responsibility.
- 4.2. No variation to the Goods and/or the Works requested by the Customer shall be binding on BMSI unless agreed to by the parties in writing, including as part of such agreement, any change to the Contract Price arising as a consequence of the variation of the Goods and/or the Works. If BMSI agrees to any such variation, any times for delivery of the Goods and/or completion of the Works shall be extended as is reasonable in the circumstances. Where the Customer makes a written request to vary the Goods and/or Works, in accordance with clause 4.2, and BMSI agrees to the variations, BMSI will face no liability for loss or damages as a result of not completing the Works, or providing the Goods, on time, as set out in the original Contract.
- 4.3. BMSI reserves the right to substitute or alter the Goods and/or the Works provided that such substitution or alteration shall not adversely affect the Customer to any material extent.
- 4.4. The Customer shall give BMSI access to the Site at all reasonable times to enable BMSI to carry out its obligations under the Contract without interruption and give all reasonable assistance and information to BMSI including obtaining the relevant necessary consents, advising BMSI of any concealed pipes wires etc and notifying BMSI of any changes which may affect the layout and/or operation of the Goods and/or the Works.
- 4.5. BMSI is entitled to rely on all information provided to it by the Customer and to assume that all such information is true, complete and not misleading. BMSI will not be held responsible for the consequences of any information provided by the Customer not being complete, accurate or current.
5. **TIME FOR DELIVERY AND COMPLETION OF THE WORKS**
- 5.1. Delivery of the Goods and/or completion of the Works shall be within a reasonable time of the dates and/or times set out in the "Programme" section of Order Acknowledgement (or where no such dates and/or times are stipulated then the Goods shall be delivered and/or the Works completed within a reasonable time of the acceptance of the Customer's order by BMSI).
- 5.2. Any Works to be carried out by BMSI will be undertaken during normal working hours (i.e. Mon-Fri 8.30am-5.30pm excluding Bank Holidays) although if necessary and at BMSI's option such Works may be undertaken outside these hours.
6. **RISK AND INSURANCE**
- 6.1. The risk in Goods supplied by BMSI shall pass to the Customer upon arrival of the Goods at the agreed place of delivery and the Customer shall also be responsible for insurance thereof from the time of such delivery until such time as title passes to the Customer in accordance with clause 9.1.
7. **GUARANTEES AGAINST DEFECTS**
- 7.1. BMSI warrant to use its reasonable endeavours to make good by repair, or at BMSI's option by the supply of replacements, any defects in the Goods and/or the Works which are notified in writing to BMSI during the Warranty Period provided such defects are due to BMSI's faulty materials and/or workmanship or the Goods not being in accordance with the Contract. In the event of a dispute between the parties as to whether goods are "defective", the final decision will rest with BMSI, acting reasonably.
- 7.2. If the Goods and/or Works become defective for any reason other than as set out in Condition 7.1 above, including (but not limited to) accidental damage, failure by or on behalf of the Customer to operate, service or maintain the Goods and/or the Works in accordance with any operating and maintenance instructions by BMSI and/or or any relevant British Standards then such defects will not be covered by the Warranty.
- 7.3. The Warranty excludes fair wear and tear and (without prejudice to Condition 7.2) any improper use, failure of proper maintenance, failure to observe operating instructions, excessive loading, unsuitable environmental conditions, corrosive atmosphere, dust, moisture, electromagnetic disturbances, static discharge, unsuitable materials, incorrect or unsuitable installation to or the use of Goods on an unsuitable system.
- 7.4. The Warranty shall become void if the Customer or any party on its behalf (other than BMSI) undertakes alterations or repair to the Goods and/or the Works without BMSI's written consent or if the Customer does not notify BMSI of the defects within a reasonable time of becoming aware of (or when the Customer should reasonably have become aware of) the defect occurring.
- 7.5. If the condition of the Goods and/or the Works is such as might or would (subject to these Conditions) entitle the Customer to claim damages, to repudiate the Contract or to reject the Goods and/or the Works the Customer shall not then do so but shall first ask BMSI to repair or supply satisfactory substitute Goods and/or Works and BMSI shall then be entitled at its option to repair or take back the defective Goods and to supply satisfactory substitute goods or perform works of rectification free of cost and within a reasonable time or to repay the Contract Price in respect of which the complaint is made.
- 7.6. If BMSI does so repair the Goods or supply satisfactory substitute Goods or effect rectification or repayment under Condition 7.5, the Customer shall be bound to accept such repaired or substituted Goods, repayment or rectification and BMSI shall be under no liability in respect of any loss or damage of whatever nature arising from the initial delivery of the defective Goods or from the initial carrying out of the Works or from any delay before the defective Goods are repaired or the substitute Goods are delivered or the repayment or rectification of the Works is effected.
8. **LIABILITY**
- 8.1. The Customer is deemed to accept that BMSI has no detailed knowledge of the Customer's business or the nature and value of the Site. The Customer does (or reasonably should) know the nature or value of the Site and its business and agrees that since the potential loss or damage which the Customer might suffer is likely to be disproportionate to the sums that can reasonably be charged by BMSI, the Customer acknowledges and accepts that it is fair and reasonable for BMSI to limit or exclude its liabilities in accordance with these Conditions and

accepts:

8.1.1. it would be prudent for the Customer to insure against any losses which the Customer could suffer as a result of any default by BMSI;
8.1.2. the Contract Price has been agreed commercially and at arms length on the basis of BMSI's potential liability as set out in these Conditions.

- 8.2. Nothing in this Contract excludes either party's liability for death personal injury including death or personal injury caused by negligence or fraudulent misrepresentation or any other matter to the extent that such exclusion or limitation would be unlawful.
- 8.3. Subject to Condition 8.2 under no circumstances shall BMSI be liable whether in contract tort (including negligence) under statute or otherwise for any indirect special or consequential loss or damage of any kind whatsoever including (but not limited to) loss of expected savings, loss of profit, loss of revenue, goodwill or business opportunity, whether or not such loss or damage was reasonably foreseeable or even if BMSI had been advised of the same.
- 8.4. Subject to Condition 8.2 but notwithstanding any other provisions of this Contract BMSI's total liability applicable on an aggregated basis across all claims brought by the Customer in respect of the Contract under or in connection with this Contract whether in contract tort (including negligence) under statute or otherwise will be limited to the Contract Price.

9. RETENTION OF TITLE

- 9.1. Title in the Goods (excluding Software) will not pass to the Customer until BMSI has received in full, in cash or cleared funds, all sums due to it in respect of the Goods and or Works and all other sums which are or which become due to BMSI from the Customer on any account. Until such time as title in the Goods passes to the Customer, the Customer:
- 9.1.1. holds the goods on a fiduciary basis as BMSI's bailee;
- 9.1.2. will not remove, deface or obscure any identifying mark on the Goods;
- 9.1.3. maintain the Goods in good condition;
- 9.1.4. shall give BMSI such information about the Goods as BMSI may require from time to time.

10. TERMINATION AND SUSPENSION

- 10.1. Without prejudice to any rights and remedies available to it, whether under the Contract or otherwise, BMSI shall be entitled in its absolute discretion and upon giving to the Customer written notice of its intention to do so, either to terminate wholly or in part the Contract and/or any other contract with the Customer or to withhold, vary or suspend performance of all or any of its obligations under the Contract or any other Contract in any one or more of the following events:-
- 10.1.1. If any sum owing to BMSI from the Customer on any account whatsoever shall be unpaid after the due date for payment;
- 10.1.2. If the Customer shall refuse to take delivery or collect any of the Goods in accordance with the terms of the Contract;
- 10.1.3. If an Insolvency occurs;
- 10.1.4. If the Customer shall commit any breach of any Contract with BMSI;
- 10.1.5. If BMSI in good faith shall have doubts as to the solvency of the Customer;
- 10.2. Where it is necessary to make alternative arrangements to deal with supply shortages. In such circumstances, the Customer's obligation to purchase Goods hereunder shall remain binding to the extent that BMSI meets the Customer's order;
- 10.3. If the Customer shall exceed the credit limit agreed between it and BMSI from time to time on any account. BMSI shall be entitled to require as a condition of resuming performance under the Contract in such circumstances, the payment of such proportion of the sums or sum outstanding on any such account by the Customer or such further sums as BMSI sees fit in its absolute discretion to bring the Customer back within its agreed credit limit;
- 10.4. If the Customer refuses to permit or hinders performance of Services. BMSI shall be entitled to exercise its rights of termination or suspension hereunder at anytime during which the event giving rise thereto shall not have ceased or been remedied, and in the circumstances of any such suspension, BMSI shall be entitled to require as a condition of resuming performance under the Contract, pre-payment of or such security as it may stipulate for the payment of any sum or sums due or to become due to it. Upon any such event happening BMSI shall also have a general lien over all monies and property of the Customer in its possession for any sums due to BMSI.

11. GENERAL

- 11.1. BMSI may assign the benefits of this Contract to any third party without the consent of the Customer. BMSI may assign any of its obligations under this Contract to any third party (including subcontracting any part of the Works) subject to the consent of the Customer (such consent not to be unreasonably withheld or delayed). The Customer may not assign any benefits or burdens of this Contract without the express written consent of BMSI.
- 11.2. In the event that any provision or part of a provision of this Contract is held invalid illegal or unenforceable the remainder of the Contract shall remain valid and enforceable.

12. THIRD PARTY RIGHTS

- 12.1. The parties to this Contract do not intend that any term of this Contract will be enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

13. VAT DOMESTIC REVERSE CHARGE

- 13.1. In accordance with the VAT Domestic Reverse Charge for Building and Construction requirements and for BMSI's own records, BMSI require receipt of the Customers confirmation of the following; VAT number, CIS UTR number, Confirmation if the Customer is the end user for the purposes of Section 55 VAT Act 1994 and whether the customer intends to record this supply through CIS.
- 13.2. This information is required to ensure that the correct invoicing documents are raised. This requirement will be a condition precedent to acceptance of any orders received after 1st October 2020 and/or any order where works are likely to still be ongoing as at the 1st October 2020.

14. JURISDICTION AND APPLICABLE LAW

- 14.1. The construction, validity and performance of the Contract shall be governed by English Law and any disputes arising out of or in connection with this Contract shall be subject to the exclusive jurisdiction of the English courts.