

TWINFIX LIMITED
CONDITIONS OF CONTRACT – BAR AND SHEET

Definitions

1. Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated below:

Word or phrase	Meaning
Agreement:	These Conditions and the Supplier's quotation
CDM Regulations:	the Construction (Design and Management) Regulations 2007, as they apply to the works
Customer	The Company or person to whom the Supplier's quotation is addressed
Conditions:	clauses 1 to 22 of these Conditions,
Contract	The arrangement between Supplier and the Customer, comprising the documents set out in the Supplier's quotation and the Supplier's order acknowledgement.
Contract Documents:	the Supplier's quotation and any documents referred to therein and in addition the Supplier's order acknowledgement.
Contract Price	The price agreed by both parties for the Supplier to undertake the Contract Works
Contract Works:	the works briefly described in the Supplier's quotation, as varied (where applicable) under clause 11.
Supplier	Twifix Limited (TWF)
Goods	Materials and goods supplied by the Supplier as set out within the Supplier's order acknowledgement.
Pricing Documents:	any document(s) identified in the Supplier's quotation
Customer Specification	Mean's any description, specification, design Goods (including any relevant plans or drawings) that is provided by the Customer to the Supplier directly or by way of the Customer's appointed professional or other adviser.
Writing	Includes hand, email, fax, post and courier unless otherwise stated

General

- 2.1 These conditions shall:
- (a) apply to and be incorporated into the contract; and
 - (b) prevail over any inconsistent or conflicting terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, quotation or acceptance of quotation or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 These Contract Documents represent the entire obligations between the Supplier and the Customer. In the case of any inconsistency between any letter or quotation incorporating or referring to these Conditions and any Order, letter or form of contract sent by the Customer to the Supplier, whatever may be their respective dates, the provisions of these Conditions shall prevail.
- 2.3 Sending the Supplier's Order Acknowledgement by post or email to the Customer shall be deemed to be conclusive evidence of the Customer's acceptance of these conditions where no response is received within 7 days from the date of the Order Acknowledgement.

- 2.4 Any alteration to these conditions only applies where accepted in writing by a Director of the Supplier.
- 2.5 If at any time any one or more of the provision or part thereof of these Conditions becomes or is invalid, illegal or unenforceable in any respect under any law or is held by a court to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 2.6 No waiver by the Supplier of any breach of any provision of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision and the Supplier shall not be prejudiced by any forbearance or indulgence granted by it to the Customer .
- 2.7 The Supplier may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

Reckoning periods of days

3. Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday that day shall be excluded.

Contracts (Rights of Third Parties) Act 1999

4. Nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

Giving or service of notices and other documents

- 5.1 A notice or other document may be served by any effective means including by email, unless stated in clause 5.5.
- 5.2 Valid email addresses to which notices or other documents can be sent are those notified by the parties to each other.
- 5.3 A notice or other document is deemed to be received on the next business day after it has been sent. A business day excludes Saturdays, Sundays and public holidays.
- 5.4 Documents attached to emails must be in pdf, excel or the Supplier's current software drawing package. Documents sent in any other format are deemed not to have been received.
- 5.5 Notices which must be sent by Recorded Signed For or Special Delivery are:
(a) Notice of termination per clause 18
(b) Notice of defects per clause 12.1(a)

For such a notice to be valid, it must be served in the specified manner. Failure to issue notices in the manner specified will be treated as if they had not been served.

Description

- 6.1 Any figures, statements, descriptions, illustrations, photographs, drawings, weights or any other matters contained in the Supplier's catalogues, pamphlets, price lists or advertising literature are not guaranteed to be accurate and are intended merely to represent a general picture of the Contractor's products and services and shall not form part of the Contract nor be regarded as a warranty or representation relating to the Goods.
- 6.2 The Supplier and its servants and agents give no representations as to the condition of the Goods, their fitness for purpose or the measurements or specifications of any Goods unless it is confirmed in Writing by the Supplier.

Supplier's obligations

- 7.1 The Supplier shall carry out and complete the Contract Works in accordance with the Contract Documents, with due diligence.

- 7.2 The Supplier shall provide goods and materials of the standard stated in the Contract Documents or, where no standard is so stated, of a satisfactory quality.
- 7.3 The Supplier shall provide all materials in accordance with the Contract Documents.
- 7.4 The Supplier may subcontract any of the Contract Works.
- 7.5 The Supplier shall comply with, and give all notices required by, any statute, any statutory instrument, rule or order or any regulation or bye-law applicable to the Contract Works (including the CDM Regulations). Any payable fees and charges in respect of the Contract Works shall be paid by the Customer.

Customer's obligations

- 8.1 The Customer shall comply with the CDM Regulations, shall provide sufficient delivery access for the Supplier to perform his obligations under this Contract and shall in no way hinder or prevent the Supplier, whether by act or omission, from performing such obligations.
- 8.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, Contract or deal in any other manner with all or any of its rights or obligations under this Contract.
- 8.3 The Customer must provide the Supplier with their specification details, all the information stipulated in the tender or quotation and any other information requested by the Supplier. If this information is not provided the Supplier may at its option, cancel the Contract or claim a suitable extension of the Contract period and charge the Customer any additional costs resulting from such extension.
- 8.4 When the Goods are supplied for use in conjunction with equipment and/or structures which are not supplied by the Supplier, the Customer shall be solely responsible for ensuring that such equipment and/or structures are in all respects suitable and adequate for the purpose, and are properly installed. The Supplier shall not be liable for any adaptation of the Supplier's designs or manufactures made by someone other than the Supplier to suit the Customer's own circumstances.
- 8.5 The Customer must provide suitable resource's and equipment to facilitate safe offloading of materials from the Supplier's vehicles. No offloading equipment i.e fork lift trucks, special crange equipment is supplied by the Supplier.
- 8.6 If manufacture or delivery is prevented, delayed, impeded or otherwise rendered more expensive by any act or omission of the Customer (including but not limited to any Contractors/agents employed by the Customer or any other third party to which the Customer is responsible) including failure to advise the Supplier of special local Conditions, the Customer shall pay such extra charges as the Supplier shall reasonably require. Any alteration by the Customer in design, quantities or specifications may also involve adjustment to the price. Such work shall be carried out only against written instructions given to the Supplier by the Customer.

Delivery and completion

- 9.1 The Supplier shall deliver the Goods to the Customer's address as stated in the quotation unless advised in writing.
- 9.2 Times or dates for delivery are estimates only and, unless otherwise expressly stated, time is not of the essence. The Supplier will use reasonable endeavours to deliver by the date quoted, but will not be liable under any circumstances for any loss claimed to have arisen from any delay in delivery. No delay shall entitle the Customer to cancel or repudiate the Contract.
- 9.3 The Customer or their agent shall inspect the Goods immediately upon delivery and shall notify the driver of any apparent damage when signing for the Goods or the Customer shall be deemed to have accepted any such damage.
- 9.4 The Customer shall within 24 hours of delivery give notice in writing to the Supplier of any matter or thing by reason they allege that the supplied Goods are not in accordance with the Contract. Should the Customer fail to give such notice they shall be deemed to have accepted the Goods.
- 9.5 Subject to clause 9.3 and/or 9.4 the Customer shall be deemed to have accepted the Goods 24 hours after delivery.

- 9.6 Where Goods are collected by or on behalf of the Customer by its servants or agents, it is the Customer's responsibility to check all Goods upon collection and subject to clause 9.4 shall be deemed to have accepted Goods 24 hours after collection.
- 9.7 The number of deliveries is dependant on the nature/size of the Goods within the Contract works. The Supplier shall include within the Contract price for the appropriate number of deliveries for the quantity/size of the ordered Goods. Should the Customer require additional deliveries to those covered in the Contract price then an additional charge will be applied up to a maximum of £250 per delivery.

Customer's instructions

- 10.1 The Customer may issue written instructions which the Supplier shall carry out within a reasonable period, taking into account the availability of manufacturing slots and materials. The Supplier shall only be obliged to follow Customer instructions where the price has been agreed in accordance with clause 11.1.
- 10.2 The Supplier shall be entitled to additional payment in respect of the Customers instructions.
- 10.3 If despatch of the Goods is delayed due to any failure or default of the Customer the Supplier shall be entitled to arrange for storage of the Goods on the Customer's behalf and all charges for storage, transport, loading and unloading, insurance and demurrage will be payable by the Customer. The due date for payment for such costs will be as stipulated in Clause 14 of these Conditions

Variations and claims

- 11.1 Where the Customer wishes to instruct a variation to the Contract Works, then the Customer shall issue a request for a quotation, the Supplier shall price the additional works, and only when the price has been agreed, the Customer shall issue a written instruction to the Supplier to proceed with the works and confirming the agreed price. The Supplier reserves the right to refuse to complete any additional works instructed by the Customer until the price for the varied works has been agreed.
- 11.2 The Supplier shall in addition be paid any direct loss and/or expense incurred by the Supplier due to the regular progress of the Contract Works being affected by compliance with any Variation or for any impediment, prevention or default, whether by act or omission, by Others.
- 11.3 If the Customer's fails to provide any items required by these Conditions, the Supplier may in its discretion and at its sole option provide the items required and charge the cost incurred plus 20% to the Client

Limitation of Liability

- 12.1 The Supplier shall only be liable to make good any defects in the Contract Works which stem from his faulty design or his selection of unsuitable or inadequate materials or from faulty materials. If this is proved to be the case, then the Supplier undertakes, at its discretion, either to replace or repair the Goods or any part or parts thereof. Provided that:
- (a) written notice of the defect with full details thereof being received by the Supplier within 21 days of the discovery of the defect. Such notice may be given by email but must be confirmed by letter of the same date in accordance with clause 5.5; and
 - (b) the defective Goods or part or parts thereof being returned, securely packed, at the risk of the Customer and carriage paid by the Purchaser, to the Supplier or to such person as the Supplier may direct; and
 - (c) the Supplier receives written notice of any defect within 3 months from the date the Customer is deemed to have accepted the Goods as per clause 9.5
 - (d) the Contract Works have been used under proper operating conditions including having been operated within the classification for which it was designed; and
 - (e) in the case of materials and goods supplied but not manufactured by the Supplier, the extent of the Supplier liability in respect thereof shall not exceed the extent of their supplier's or the manufacturer's liability to the Supplier; and
 - (f) the Supplier is not liable if the defect is due to carelessness, improper treatment or any wilful or negligent act or omission, including lack of maintenance, inadequate lubrication, or any failure

- to comply with any instructions given by the Supplier or any use of the Goods with any part or parts which do not comply with the Supplier's specifications
- (g) the Supplier is not liable if the defect or failure is due to an installation error
 - (h) the Supplier is not liable if blockages result from failure by the Customer or End User to regularly clean out the gutters in accordance with any issued maintenance manuals
 - (i) the Supplier is not liable if the goods have been modified
 - (j) the Supplier is not liable if the defect or failure is caused by wear and tear
 - (k) the Supplier is not liable if the Customer has not paid the Supplier for all work invoiced on this or any other contract
 - (l) the Supplier's maximum liability for all loss/damage/expense as a result of the Supplier breach or negligence under the Contract is limited (capped) in total and in the aggregate to an amount equivalent to the initial Contract Price which shall not be exceeded under any circumstances.
- 12.2 The Supplier shall not be liable in respect of any defect which may occur in any previously existing system to which the Contract Works may be connected unless and to the extent that such defect is directly caused by a defect in the Contract Works for which the Supplier would be liable under this clause.
- 12.3 Save as is provided by this clause, the Supplier shall not be liable for any direct loss or damage as consequence of any defect in the Contract Works save to the extent that such defect is caused by the negligence of the Supplier, his servants or agents. The Supplier's liability for any direct claim arising under the Contract shall be limited to that proportion of recoverable direct loss as would be just and equitable to require the Supplier to pay in regard to the extent of the Supplier's responsibility for the same on the assumption that:
- 12.3.1 All other consultants and advisors, contractors, subcontractors and suppliers directly or indirectly involved with the works under the Contract have provided contractual undertakings on terms no less onerous than those set out herein.
 - 12.3.2 All the parties referred to in this clause have paid to the Customer such sum as it would be just and equitable for them to pay having regard to the extent of their liability for the direct loss incurred by the Customer.
- 12.4 For the avoidance of doubt, any condition or warranty implied by law shall cease to apply after the expiry of the period stated in Clause 12.1(c) above.
- 12.5 The Supplier will require a reasonable period of time to carry out any repairs or replacements.
- 12.6 The Supplier will charge for any visits to site caused by the Customers / End Users failure to properly install or maintain the goods.
- 12.7 The Customer shall indemnify and hold the Supplier and its officers, directors, employees and agents harmless against any claims, demands, liability, direct loss and/or damages including legal fees, arising from any misrepresentation and/or breach by the Supplier of the obligations set out in clause 9 or of any conditions set out in the quotation or subcontract.

Consequential loss or damage

13. Subject to the Unfair Contract Terms Act 1977 the Supplier hereby limits his liability to the Customer to the completion of the Contract with due care and skill in workmanship and with sound materials of satisfactory quality. The Supplier shall not be held responsible for any consequential loss or damage (including pure economic loss, damages, compensation, costs, expenses, losses or other liabilities of any nature, whether direct or consequential including, without limitation, any loss of profits, loss of goodwill, increased overheads or other financial loss of any nature suffered or incurred) arising out of or caused by the Supplier's workmanship or goods or equipment supplied by the Supplier.

Payment

- 14.1 Payment shall be due to the Supplier on production of an invoice in line with the terms stated in the quotation and special conditions.
- 14.2 The rates and prices are fixed for 30 calendar days from the date of this quotation.

- 14.3 The Customer shall determine and give a written notice to the Supplier not later than 5 days after the date on which a payment becomes due which shall specify the amount (if any) of the payment to be made and the basis on which that amount was calculated. The final date for payment is 3 days from the date the payment becomes due for monies due prior to the Supplier delivering Goods (ie to secure the manufacturing slot and prior to delivery) and 30 days from the date the payment becomes due for all other payments unless expressly stated elsewhere in these conditions.
- 14.4 Where payment is paid late by the Customer, the Supplier may enforce its statutory rights. In addition, any costs incurred by the Supplier will be charged to the Customer including but not limited to the costs of bounced cheques and time spent by the Supplier's employees.

Retention of title and risk

- 15.1 In no case will the property in the Goods pass to the Customer until payment has been made to the Supplier of all monies owed on any contract by the Customer to the Supplier including VAT on and until such payment the Customer will hold the Goods in a fiduciary capacity as bailee for the Supplier.
- 15.2 The risk in the Goods will pass to the Customer on despatch from the Supplier's place of business in Warrington, and the Customer shall insure and keep insured the Goods to the full price against "all risks".
- 15.3 In the case of default in payment by the Customer after despatch of the Goods and before the Goods has become the Customer's property or if, before the property in the Goods has passed to the Customer, the Customer becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof, the Supplier may give notice to the Customer terminating the Contract or the Customer's right to possession, as the case may be.
- 15.4 Where the Customer has defaulted on payment, whether due to insolvency or due to any other reasons, the Customer shall, if the Goods has been despatched, be bound at the Customer's own expense to re-deliver the Goods to the Supplier. In such cases the Supplier may (with or without previous notice) repossess the Goods and the Supplier or the Supplier's duly authorised Agents are in such circumstances irrevocably authorised by the Customer to enter the premises in which the Goods is located and to dismantle and remove the same at the Customer's expense.

Cancellation

16. The Customer has no right to cancel, but in the event of cancellation by the Customer following written agreement by the Supplier, the Customer will be liable to the Supplier to pay 75% of the Contract Price. The due date for payment of cancellation fees shall be the date of the invoice and the final date for payment shall be 7 days after the date of invoice.

Suspension

- 17.1 If the Customer fails to pay the sum due to the Supplier under this Contract or under any other contract with the Supplier by the final date for payment, and no notice of intention to withhold has been served, then the Supplier may give a written notice of his intention to suspend the performance of any or all of its obligations under this Contract. If the Customer's failure to make payment continues for 3 calendar days after the giving of such notice, then the Supplier may suspend such performance until payment in full is made under this Contract and under any other contract between the Customer and the Supplier.
- 17.2 Where the Supplier exercises his right of suspension under clause 17.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right.
- 17.3 Invoices in respect of any such costs and expenses shall be made to the Customer and the Supplier shall with his application or on request submit such details of the costs and expenses as are reasonably necessary to enable his entitlement to be ascertained.

Termination – breach or insolvency

- 18.1 Each Party ('the terminating Party') shall be entitled by written notice to the other Party to terminate the Supplier's employment under this Contract forthwith if the other Party at any time:

- (a) is in breach of his obligations under this Contract which he fails to rectify within 7 calendar days of a written warning from the terminating Party specifying the breach and requiring that it be remedied within that period; or
- (b) is insolvent within the meaning of s113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof

In the event of such termination the Customer shall immediately pay to the Supplier any monies owed. Any goods or materials which have not been fully paid for shall be returned by the Customer to the Supplier. If the Customer fails to do so, then the Supplier may enter the customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this contract.

- 18.2 The Customer agrees upon demand to indemnify the Supplier against all losses, damage, injury, costs and expenses of whatever nature suffered by the Supplier arising out of claims under the Consumer Protection Act 1987 and against all losses, damage, injury, costs and expenses of whatever nature suffered by the Supplier to the extent that the same are caused by or related to :-
- (a) designs, drawings or specifications given to the Supplier by the Customer in respect of Goods produced by the Supplier for the Customer, or
 - (b) defective materials or products supplied by the Customer to the Supplier and incorporated by the Supplier in goods produced by the Supplier for the Customer, or
 - (c) the improper incorporation, assembling, use, processing, storage or handling of goods by the Customer.

Copyright

- 19.1 Any drawings or other technical data provided in connection with the Contract shall remain in the custody of the Customer, who shall not divulge any details there from to any other person, firm or company without the approval of the Supplier. Such drawings or other technical data remain the property of the Supplier.
- 19.2 No right of ownership or interest in the Supplier's patents, registered designs, trade marks, copyrights or any other intellectual property owned by the Supplier shall pass in any way to the Customer in relation to the Goods or Services provided under these Conditions. The Supplier gives no warranties or representations in relation to the Supplier's patents, registered designs, trade marks, copyrights or any other intellectual property and, in particular, does not warrant or represent that any registered patents, registered designs, trade marks, copyrights or any intellectual property are valid or will remain registered.
- 19.3 Where Goods are made or supplied to the Customer's own specification, pattern or design or where standard goods of the Supplier's are altered in accordance with the Customer's instructions the Customer warrants and undertakes full responsibility not only for the suitability and fitness of the specification, pattern or design but also that such specification, pattern or design does not infringe any patent. Trade mark, registered design, copyright or any other proprietary right of any third party and the Customer shall indemnify and keep the Supplier indemnified in full against any loss, damage or expense whatsoever (including costs) which the Supplier may incur in or arising from the performance of the Contract by reason of any infringement of any such patent, trade mark, registered design, copyright or any other proprietary right and the Customer acknowledges that the Supplier shall be under no liability of any description to the Customer if the Goods prove to be unsuitable for whatever reason for application or use.

Inspection and Testing

- 20.1 If any inspection or testing is required prior to despatch other than the Supplier's standard works inspection or tests, or if inspection or testing is required in the presence of the Customer's representative, the Supplier will carry out such inspection or testing or provide the facilities for the same, but the requirements of such inspections or tests shall be notified at the time of placing the order and shall be paid for by the Customer as an addition to the quoted price.
- 20.2 Where the Customer requires the equipment to be inspected or tested in the presence of its representative, the Supplier will notify the Customer that the Goods is ready for inspection and testing and the Customer's representative shall attend for such inspection and testing within 7 days

of the date of such notification otherwise the Supplier will carry out the inspection and testing and such inspection or testing shall be deemed to have been made in the presence of the Customer's representative.

Force Majeure

21. The Supplier shall have no liability to the Customer under this Contract if it is prevented from or delayed in performing its obligations under this Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, disorder, civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant or Goods, fire, flood, storm, lightning, explosion, severe weather, acts of local or central Government or default of the Supplier's suppliers or Sub-Contractors.

Applicable law

22. This agreement shall be governed by the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England.