

Guidance notes for supply and erection terms

Putting the contract together

The general Conditions assume that the timber frame supplier has produced a separate Quotation. This Quotation MUST contain the following:

- A Date for Completion (considered below)
- A description of the Goods and services to be provided
- A Place of Delivery (where the Goods are to be delivered)
- A Specification (considered below)
- A price. This can be lump sum or re-measurable based on rates and prices. It is considered further below.
- Validity period. This is the period during which the rates and prices will be fixed.
- Valuation date. This is a date which is agreed in order to make the payment provisions operable. It is considered further below.

When the Quotation is produced it should be sent with the General Conditions, Specification, pricing documents and any other documents (for example minutes of meeting) which record specific agreements between the parties.

These documents will only become the contract if agreed. If the Buyer reacts by returning his own terms and conditions, this becomes a counter offer and the Seller's documents will be replaced by this counter offer. It is important therefore to make sure that you only proceed once you are sure that the quotation general conditions and accompanying documents have been agreed.

Specification

The specification must set out what you are building/producing (including design parameters), but also how you are building/producing it, for example the methods used, the sequence/programme of the works, the conditions you are building/producing in etc. This might include working hours, time of year, access to the site, access to the workforce, unloading and distribution of materials, attendances, levels of supervision (e.g. working or non-working) levels of preliminaries etc.

The Specification is the starting points against which to measure any kind of change. It should therefore expressly set out any assumptions made when putting together the price and arriving at the Date for Completion/any incorporated programme.

Price

When putting together the Price, it should be broken down in sufficient detail that it can be used to value change as the rates and prices in the price are the starting point for evaluating change.

Variations

A variation under the General Conditions is any change to the Specification. This could be something instructed by the buyer but it could encompass any change outside of the Seller's control, for example, adverse weather, statutory authority work or other trades getting in the way/not being ready.

If it is not something instructed by the Buyer, it must be notified by the Seller.

The Seller should issue a variation quotation, based on the rates and prices in the contract for each variation. The quotation, where possible should also include the time impact of the variation.

It is important to issue these quotations because the terms state that if they are not rejected in writing within 7 days they are deemed to be accepted.

Payment

The payment terms have been drafted so as to comply with the updated Housing Grants Construction and Regeneration Act.

It is absolutely vital that the Seller makes an application for payment on time. At the moment applications are to be made no later than 7 days prior to each Valuation Date. As set out above the Valuation Date should be included in the quotation.

It is vital the applications are made timeously as, if the Buyer does not give proper or timeous payment notices, as required by the General Conditions, the application for payment becomes the sum due.

Completion date

It is important to note that the General Conditions specify that the Date for Completion is an estimate only unless otherwise agreed in writing. Care will need to be taken therefore about what is agreed in negotiations.

If possible, the Seller should include in the Quotation periods for design, off site fabrication and overall delivery/erection.

If the parties agree in writing that the Date for Completion is not an estimate (i.e. the Seller has a contractual obligation to achieve the date, subject to any extension of time), an LAD's provision is included in the general provisions, which is capped at 10 weeks of LADs or 5% of the Price. This is automatically deductible if the Seller is late but is the maximum sum the Buyer will be able to deduct, unless something else is negotiated.

If a date is agreed that is not an estimate. It is important that the Seller notifies the Buyer of any delay due to "circumstances outside the control of the Seller". This clause is widely drafted to include any delay not caused by the Buyer, which would include delay caused by neutral events such as weather.

Exclusions schedule of attendances

The Standard Conditions include a generic list of exclusions and attendances to be provided by the Buyer. These should be adapted as necessary.

Retention

The following points should be borne in mind when agreeing the application of retention to the subcontract for supply and fit of timber frame kits:

- The Standard Terms and Conditions as drafted state that retention is not applicable. If retention is agreed therefore, the terms will need to be amended to include the retention amounts and the procedure for retention release.
- Retention is not automatically applicable to all projects.
- It is usually within the Main Contractor's power to apply or waive retention on Subcontractors.
- It is not usually a contractual obligation that the retention percentage applied to Subcontractors matches that held against the Main Contractor. So it is quite possible to agree 3% retention on a subcontract whilst there is 5% retention provision in the Main Contract.
- The retention release dates in the subcontract do not have to match those in the Main Contract.
- The Construction Act prohibits Main Contractors withholding payment of retention sums due to Subcontractors on the basis that the Main Contract retention has not been released unless the withholding of main contractor retention relates specifically to the relevant subcontract works.
- Release dates for subcontract retention sums can only be tied in to performance objectives of the subcontract OR be specific calendar dates.

Amendments

The STA recommend that these terms should not be amended.

In the event that amendments are made, then they should be the subject of a separate "Numbered Document" that is appended to the terms forming the Contract.