

NATIONAL MUSEUMS AND GALLERIES ON MERSEYSIDE [operating as National Museums Liverpool (NML)]

SMALL WORKS / SERVICES CONTRACT - TERMS AND CONDITIONS

Background

1. The Works Order and any appendices thereto and these Terms and Conditions and any appendices thereto together form the contract between the Employer and the Contractor ("the Contract").

Contractor's Obligations

2. The Contractor will upon and subject to the conditions and documents referred to in this Contract provide everything which is necessary for the proper and timeous execution and completion of the works set out in the Works Order (the "Works") in accordance with all drawings, specifications, requirements and/or instructions and deliver up the Works to the Employer complete in every respect to the satisfaction of the Employer (and his agents, representatives or servants).
3. The Contractor shall be responsible for all mistakes, inaccuracies, discrepancies and omissions in all drawings, details, documents and information provided by him.
4. Any tender quotation or estimate issued by the Contractor is subject to acceptance by the Employer and a contract will not be formed until the Employer has placed its written order upon an official Works Order. These terms and conditions shall prevail over any other terms and conditions which are inconsistent with them which the Contractor seeks (where before or after the date hereof) to impose upon the Employer, irrespective of any provision therein purporting to exclude or supersede all or any of these terms and conditions and shall further prevail (to the extent to which they are inconsistent) over any other terms and conditions which are said to apply to a Works Order.
5. The Contractor is deemed to have visited the site of the Works (the "Site") and satisfied himself both as to the nature and content of the Works, any existing structures, any restrictions of access to the Site and the conditions under which the Works are to be carried out. No claim will be allowed which is based upon either lack of knowledge of the condition or efficacy of other works carried out, being carried out or to be carried out on the Site.
6. Any conduct of the Contractor in relation to the execution of all or part of the Works shall be deemed to be an acceptance of the willingness to comply with the terms and conditions of the Works Order and in any event no variation of any of these terms and conditions shall be binding upon the Employer unless expressly first agreed in writing by the Employer.
7. The Contractor must forward details of a valid Contractor's CIS tax certificate together with proof of the Employers Liability, Public Liability, Contractors All Risk and Professional Indemnity (where appropriate) insurance policies before the Contractor is entitled to receive any payment under the terms of this Contract.
8. The Contractor shall carry out and complete the Works in a proper and workmanlike manner (all workmanship to be of a satisfactory quality) and in compliance with any plans and/or specification produced in respect of the Works and shall select suitable materials that comply with any higher specifications of materials or workmanship contained in the description of the Works.

Access and Carrying out the Works

9. The Contractor, his staff and all sub-contractors when entering the Site must report to security each day, sign in and obtain a security badge which must be worn at all times.

10. Food and drink shall only be consumed in designated areas.
11. The Contractor must not trespass beyond the authorised areas of work and access thereto.
12. The Contractor will not use any electronic or battery powered device to play music or listen to the radio whilst carrying out the Works.
13. The Contractor is restricted to working 8.30am - 5.00pm Monday to Friday. Working outside these hours will be by arrangement only. Any additional cost for working outside of these hours must be authorised in advance by the Employer.
14. The Contractor, his staff and sub-contractors may be required to work in secure areas of the building(s). The Contractor will only be permitted to carry out the Works in these areas when a member of the Employer's staff is available to accompany him. Members of staff may not always be available and therefore continuity of work cannot be guaranteed.
15. Goods lifts may be used where considered appropriate by agreement between the Contractor and Employer.
16. All necessary precautions shall be taken by the Contractor to keep the distribution of dust to a minimum.
17. The Contractor shall keep noise and vibration to a minimum. The positions of all fixed plant and equipment shall be agreed with the Employer before installation on the Site.
18. The Contractor, his staff and all sub-contractors shall comply with the 'Standard Fire Precautions for Contractors Engaged on Crown Works' (a copy of which is available on request) whilst carrying out the Works. No naked flames, welding or spark producing apparatus, equipment or processes are to be used to carry out the Works without prior specific authority from the Employer.
19. The Contractor warrants that it has not used and/or specified and shall not use and/or specify for use in relation to the Works any products or materials which do not conform to British and European Standards or Codes of Practice; or are generally known within the industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or durability of the building or structure.
20. Where the Contractor has been involved in any design aspects of the Works or has selected materials for incorporation therein, the Contractor shall use all reasonable skill, care and diligence as may be expected of a competent designer of the appropriate discipline with experience in carrying out works similar to the Works and in connection with works of a similar size, scope and complexity to the Works.
21. The Contractor shall comply with any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Contract together with any regulation or bye-law of any local authority or statutory undertaker which has jurisdiction with regard to the Works or with those systems the Works are, or are to be, connected, including any

statutory provisions and/or any decision of a relevant local authority which control the right to develop the Site.

22. The Contractor shall pass to the Employer all approvals received by the Contractor in connection with statutory requirements.
23. Each party acknowledges that he is aware of and undertakes to the other that in relation to the Works and/or the Site he will duly comply with the Construction (Design and Management) Regulations 2015.
24. Where the Contractor is required to handle or move long items, it shall comply with the following requirements:
 - (a) Items over 6' long must be carried by an operative at each end;
 - (b) Items over 9' long must have a third operative to safely guide the movement of the item.
25. The Contractor shall instruct an adequate number of personnel to move heavy or bulk items. Special care is to be taken when passing through confined areas or when trolleys are being used.
26. Under no circumstances shall the Contractor, its staff or sub-contractors touch or move any works of art, sculptures, statues or any other past, present or future exhibition pieces within the Site.

Commencement and Completion of the Works

27. The Contractor shall commence the Works on the start date set out in the Works Order and shall thereafter proceed with the same without delay.
28. The Contractor shall complete the Works by the completion date specified in the Works Order (the "Completion Date"), or if sectional completion applies, each section shall be completed by the relevant sectional completion date specified within the Works Order (the "Sectional Completion Date"). If it becomes apparent that the Works will not be completed by the Completion Date, or if applicable, a section of the works shall not be completed by the relevant Sectional Completion Date, for reasons beyond the control of the Contractor, including compliance with any instructions of the Employer, and the Contractor can evidence, to the reasonable satisfaction of the Employer, that the cause of the delay is not his, then the Contractor shall thereupon in writing so notify the Employer and the parties shall agree such extension of time for completion as may be reasonable.
29. It shall be a condition precedent to the granting of any extension of time to the Contractor that the Contractor shall have given written notice to the Employer within 7 days of becoming aware of the delay that completion of the Works, or if applicable a section of the Works, will or may be delayed beyond the Completion Date, or if applicable the Sectional Completion Date, and stating all relevant matters relied upon in support of such a claim.
30. If the Contractor does not complete the Works, or if applicable a section of the Works, by the Completion Date, or Sectional Completion Date as applicable, (as adjusted by any extension of time that may have been granted), then Employer shall be entitled to withhold or deduct liquidated damages at the rate stated in the Works Order.

Defects

31. The defects rectification period shall be 12 months from the date of completion of the Works in accordance with the Works Order ("Practical Completion"), (the "Defect Rectification Period").
32. If any defects, shrinkages or other faults in the Works appear within the Defect Rectification Period these shall be specified in a schedule of defects produced and delivered to the Contractor by the Employer requiring such defects, shrinkages or other faults to be made good.
33. The Contractor shall, within a reasonable time after receipt of such schedule of defects, at no cost to the Employer make good any such defects, shrinkages or other faults identified and notify the Employer when such defects have been rectified.

34. The Employer shall issue a notice of completion of making good when all defects, shrinkages or other faults notified during the Defects Rectification Period have been remedied but there is no obligation to issue the same prior to the end of the Defects Rectification Period.
35. The Contractor shall advise the Employer in writing of all work involving an addition to the Works within 7 days of such addition becoming apparent and at the same time submitting detailed and priced calculations based upon the contract price showing such price adjustment, if any. The Employer shall have unfettered discretion to decide if the said work does constitute an addition to the Works. Additions to the Works cannot be undertaken by the Contractor nor shall he receive payment for such additions without prior written authority from the Employer. Where the Contractor's price is not accepted by the Employer then if the Employer requires the additional work to be carried out the Employer shall notify the Contractor accordingly and the said work shall be valued by reference to the Contractor's rates and prices for this contract.

Insurance

36. The Contractor confirms that adequate insurance is in place to cover the Works including Employers Liability, Public Liability, Contractors All Risk and Professional Indemnity (where appropriate) insurance policies for such amounts as may be detailed in the Works Order.
37. As and when reasonably required by the Employer, the Contractor shall produce for inspection satisfactory documentary evidence that such insurance is being maintained.
38. The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury or death of any person arising out of or in the course of or caused by the carrying out of the Works.
39. The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor, its sub-contractors or suppliers.
40. The Contractor shall not sub-let or assign the Works in full or in part without written consent first being obtained from the Employer and such consent shall not relieve the Contractor from any liability under this Contract.

Liability and Third Party Rights

41. The Contractor's liability for any breach of the terms of this Contract shall cease upon the expiry of 6 years after the date of Practical Completion, or Sectional Completion of a section, of the Works except where proceedings have been commenced before the expiry of that period in respect of any such breach.
42. Notwithstanding any other provision of this Contract, 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.

Payment Obligations

43. If the duration of the Works will be, or is estimated to be, less than 45 days, the following clauses 44(a) to 44(g) shall not apply and the Contractor shall be paid on completion of the Works.
44. Payment shall be made to the Contractor by monthly instalments in accordance with the provisions of this clause 44.
 - (a) The Contractor shall submit an application for payment to the Employer in respect of each instalment. The application for payment shall be supported by all relevant documentary evidence including a statement showing how the total

amount claimed in the application has been calculated. The application for payment shall set out in full the name of the contract and the contract order number. An application for payment will only be effective to the extent that the information accompanying the application is sufficient for the Employer to validate the accuracy of the amount claimed.

- (b) The first application for payment shall be made on the day of the month, as stated in the Works Order, in the month during which the Works were commenced on Site. Thereafter applications for payment shall be made at monthly intervals.
 - (c) The payment due date shall be 7 days from receipt of the application for payment ("Due Date").
 - (d) The final date for payment shall be 28 days from the Due Date.
 - (e) Not later than 5 days after the Due Date the Employer shall notify the Contractor of the sum he considers to have been due at the payment due date (or "zero" if no payment is due), and the basis on which that sum is calculated ("the Payment Notice")
 - (f) Unless the Employer has served a notice under clause 44(g), he shall pay the Contractor the sum referred to in the Payment Notice or if the Employer has not served a Payment Notice, the sum referred to in the Contractor's application ("the Notified Sum") on or before the final date for payment.
 - (g) Not less than 5 days before the final date for payment ("Prescribed Period"), the Employer may give the Contractor notice that it intends to pay less than the Notified Sum ("Pay Less Notice"). Any Pay Less Notice shall specify the sum the Employer considers to be due on the date the notice is served; and the basis on which the sum is calculated.
 - (h) The contract sum is exclusive of VAT and in relation to any payment to the Contractor under the Works Order, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.
45. If the Contractor becomes insolvent after the Prescribed Period, the Employer shall not be required to pay the Contractor the Notified Sum on or before the final date for payment.
46. The Employer shall be entitled to deduct from or set off against any money (including any retention) otherwise due to the Contractor under the Works Order or any other agreement any sum or sums which the Contractor is or may be liable to pay to the Employer or such sum finally awarded in arbitration or litigation in favour of the Employer.
47. The final date for payment to the Contractor of any retention shall be as to one half after the issue of the certificate of Practical Completion, or the last certificate of Sectional Completion as applicable, and as to the remaining half thereof the final date shall be after the issue of the certificate of making good defects.

Termination and Suspension

48. Where the Employer has failed to pay a Notified Sum by the final date for Payment, the Contractor may suspend performance of his obligations under the Contract but not before first giving the Employer at least 7 days' notice of his intention to suspend performance, stating the ground or grounds on which it is intended to suspend performance.
49. The right to suspend ceases where the Employer makes payment in full of the amount due.
50. To the extent that a suspension is found to be invalid the Contractor shall indemnify the Employer in respect of any costs, charges or other loss arising out of the invalid suspension.
51. The Employer may terminate the Contractor's employment under this Contract forthwith upon notice in writing to the Contractor to this effect. Following termination the Contractor

shall be entitled to be paid for the Works performed up to the date of such termination.

52. Notwithstanding clause 51 above the Employer may without prejudice to any other of its rights or remedies summarily determine the Contractor's employment under this Contract if:
- (a) The Contractor suspends the Works or any part thereof (otherwise than by way of a valid suspension under clause 48 herein) or fails to proceed diligently with the Works to the reasonable satisfaction of the Employer;
 - (b) The Contractor fails forthwith upon notice from the Employer to commence work to remedy any defective workmanship and/or materials or incomplete work or fails to proceed with such remedial work with due diligence or to complete such remedial work to the satisfaction of the Employer within a reasonable time;
 - (c) The Contractor fails to complete and deliver up the whole or any portion or section of the Works by the Completion Date or relevant Sectional Completion Date or by such extended time or time as may be allowed by the Employer;
 - (d) The Employer becomes aware of any cessation of trading, intention to cease operations, notice of Insolvency (as defined by s.113 of the Housing Grants Construction and Regeneration Act 1996, as amended or re-enacted), Administration or Receivership relating to the Contractor.

53. Upon determination under clause 51 or 52, the Employer may employ and pay other persons to carry out and complete the Works and they may enter upon and take possession of the Site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and site materials for those purposes.

54. The Contractor shall not be entitled to any further payment until after Practical Completion, or Sectional Completion of a section, of the Works when, within a reasonable time after the completion of the Works, or section of the Works, the Employer shall issue a final account certificate setting out:

- (a) the amount of expenses properly incurred by the Employer as a consequence of the termination;
- (b) the amount of payments made to the Contractor; and
- (c) the total amount which would have been payable for the Works in accordance with this Contract.

55. If the sum of the amounts stated under clauses 54 (a), (b) and (c) exceeds the amount claimed by the Contractor then the difference shall be a debt payable by the Contractor to the Employer or, if that sum is less, by the Employer to the Contractor.

Disputes and Governing Law

56. If any dispute or difference arises under this Contract, then either party may refer it to adjudication. The adjudication procedures and the agreement for the appointment of an Adjudicator shall be as set out in the Scheme for Construction Contracts (England) Regulations 2011.
57. This Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree to submit to the exclusive jurisdiction of the Courts of England and Wales.
58. If any term or condition of this Contract is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Contract and the validity and enforceability of the remainder of this Contract shall not be affected or impaired thereby.