

09 / Terms & Conditions

STANDARD TERMS AND CONDITIONS OF TENDER/QUOTATION/CONTRACT

The following terms and conditions shall apply to any acceptance of **Suspension Painting Services t/a Ultimate Height Contractors** (hereinafter "the Contractor") tender/quotation:

1. QUOTATIONS/TENDERS

- 1.1 Quotations/Tenders shall be valid
- 1.11 only if given in writing
- 1.1.2 for a period of 30 days from the date thereof.
- 1.2 A binding contract shall come into existence upon acceptance by the client (hereinafter "the Employer").

2. DOMICILIUM CITANDI ET EXECUTANDI

The Employer nominates, for all purposes in terms of the contract, his domicilium citandi et executandi address to be the physical address referred to on the face of the tender/ quotation.

3. SCOPE OF CONDITIONS

These conditions shall govern all business dealings by the Contractor whether in respect of advice given, services rendered or goods repaired or supplied and each condition shall be deemed to be incorporated in any agreement between the Contractor and the Employer.

4. PRICE

- 4.1 Any tender/quotation shall be increased from the date of acceptance until the completion of the contract by the amount of:
 - 4.1.1 any increase in labour or material costs.
 - 4.1.2 any increase in the price of work to be undertaken by subcontractors.
 - 4.1.3 any increase in government levies or taxes.
 - 4.1.4 any new tax or levy or other lawfully imposed charges which may be introduced by any authority.
 - 4.1.5 any variations to the works.
 - 4.1.6 any work required to conform with any law, regulation or by law of any local or other competent authority which shall be regarded as an extra.
 - 4.1.7 any fees and charges due by law under any of the aforesaid laws in respect of the works.
 - 4.1.8 any alterations to either the council power line connection or the internal wiring as these are not included in the contract price and they shall be regarded as extras.

5. PAYMENTS

- 5.1 Payments are to be made every two weeks, according to the value of the work completed and material on the site. Final payment for any works is due within 7 (seven) days of completion of said works. The date of completion as aforesaid shall be determined by the Contractor who shall advise the Employer in writing of the date of completion. The Employer shall have the right within 6 (six) days to dispute completion of the works. Should the Employer not dispute completion of the works in writing within 6 (six) days of being notified thereof the work shall be confirmed as completed and/or deemed to be completed.
- 5.2 The Employer shall not be entitled to deduct any retention monies in respect of amounts due to the Contractor, unless agreed to in writing before commencement of the contract.
- 5.3 Payment may not be withheld or deferred on account of any counterclaim or set off – applied by the Employer.
- 5.4 Any amount not paid on due date shall, at the discretion of the Contractor, bear interest from due date until payment thereof in full at a rate of 2 per cent per annum above the prime overdraft rate charged from time to time by ABSA Bank Limited.
- 5.5 Non-payment or late payment will invalidate any guarantee or warranty issued by the Contractor.
- 5.6 Ownership of all items supplied by the Contractor will only pass onto the client once the contract sum and any variation or increase thereof has been paid in full by the Employer and until such time no goods may be alienated, pledged or hypothecated in any way.

6. SCOPE OF WORK VARIATIONS

- 6.1 The Employer shall be liable for the costs arising from any variations to the scope of work or the works programme.
- 6.2 The Contractor shall not be liable to carry out any variations to the scope of work or works programme unless they are reduced to writing and signed by the Employer or main contractor.
- 6.3 Any doorframes, doors, window frames and items requiring cleaning before painting to be undertaken by the Contractor will be regarded as a variation to the contract.
- 6.4 No amount has been allowed for burning off or stripping of any surface unless otherwise specified. If required this will be regarded as a variation to the contract.
- 6.5 Should the Contractor carry out variations to the scope of work or works programme without receiving such in writing the Employer shall be liable for the cost thereof notwithstanding the absence of such written instruction.

PAINTING

- 6.6 Any colour change after a surface has been painted will be regarded as a variation to the contract.

CRACKS

- 6.7 The Contractor shall have no responsibility or liability arising from any cracks that re appears after repairs thereto.

RUST

- 6.8 The Contractor shall have no responsibility or liability arising from any rust that re appears after repairs thereto.

SKIMMING AND PLASTERING

- 6.9 The Contractor shall have no responsibility or liability for any conspicuous exaggerations or imperfections and trowel marks due to light thrown at an angle to the surface.
- 6.10 The Employer or main contractor shall, at his/its expense provide all power, water and lighting necessary for the work as well as storage facilities for the Contractor and his workers free of charge.

REMOVAL OF GOODS

All existing materials or other items pulled down or removed by the Contractor during the course of the works shall become the property of the contractor free of any compensation.

7. GUARANTEE

The Contractor guarantees any waterproofing work undertaken on the following terms and conditions based on letter of guarantee.

- 8.1 My guarantee or warranty issued is not transferable to third parties.
- 8.2 My guarantee or warranty issued is only valid provided full and timeous payment has been made.

- 8.3 Any Guarantee or warranty issued shall not be binding on the contractor unless reduced to writing and signed by both parties thereto.
- 8.4 Any Guarantee or warranty issued shall be deemed to be null and void in the event of any alterations or remedial work being done to the contact works by the employer or any party other than the contractor.
- 8.5 The Contractor must be notified forthwith and in writing if any leaks develop which need repair.
- 8.6 The guarantee provides that should a leak or fault develop in the waterproofing undertaken by the contractor within the period covered by the most suitable method decided upon by the Contractor, without charge.
- 8.7 The guarantee is strictly limited to the repair of leaks or faults and there is no contingent liability whatsoever offered or implied and no liability to any consequential damage in any form, including damage to the building or goods therein.
- 8.8 The guarantee does not cover damage or leaks arising from settlement, cracking, distortion or any failure of any material used in the roof screed, slab or structure. It does not cover any damage or leaks arising from an expansion or contraction of the building not covered by specifically designed expansion joints.
- 8.9 Should either the Employer or a third party undertake any work on the waterproofing undertaken by the Contractor then the Contractor will not be responsible in any way for the repair of any damages resulting from the work of the third party.
- 8.10 Where a specific guarantee provides for a painting and maintenance clause at a set time within the period of the guarantee then if the option of the painting and maintenance is not exercised at that time, the guarantee periods ends at that time and does not continue for the duration of the original guarantee.
- 8.11 Where the waterproofing undertaken by the Contractor is used as an underlay to another finished surface applied over the waterproofing then should any leaks arise the Contractor will attend to these leaks under terms of the guarantee once the finished surface has been removed by whoever laid the surface, at their expense, to expose the waterproofing.
- 8.12 Once repair have been effected the renewal of the finished surface will not be the responsibility of the Contractor in any way.

9. LIMITATION OF LIABILITY

- 9.1 Subject to the provisions of any guarantee or warranty issued, neither the Contractor nor any of the Contractors suppliers, associate companies, officers, employees or agents shall be liable of any loss or damage whether direct, indirect, consequential or otherwise, suffered by the Employer as a result of any cause arising in connection with any dealings between the Contractor and the Employer or the execution of the works (including without limitation, late completion for whatsoever reason and any cause arising from anything done or not done pursuant to the contract) whether such loss or damages results from breach of contract (whether fundamental/material or otherwise) delict, negligence or any other cause without limitations.
- 9.2 Without limitation to the aforesaid general limitation of liability the contractor shall not be liable for:
 - 9.2.1 any delays caused by political unrest, strikes or union action nor any delays caused by an Act of God, war, fire, and floods, excessive rains and dangerous rains and dangerous winds.
 - 9.2.2 any loss or damage to any property or injury or death of any person or any loss of any persons caused by or arising out of the use of or interference with plant, machinery or means of access by persons other than employees of the Contractor and the Employer indemnifies the Contractor against claims by the third parties in respect of such loss, damage, injury or death.
 - 9.2.3 any damages arising from instruction issued to its employees without its authority.
 - 9.2.4 any damage to the property of the Employer, including the works, whether such damages is consequential, reasonable foreseeable or otherwise.
 - 9.2.5 any loss of the Employer including any loss amounting to consequential loss or lost profit.
 - 9.2.6 any leakages occasioned by abnormal causes or agencies, including non specified traffic, interference by third parties, including abuse, abnormal use and design faults.

10. BREACH

- 10.1 In the event of the Employer failing to pay the Contractor any amount due to it or being in defaults of its obligations in any other manner, the Contractor shall be entitled to forthwith cease work until the Employer has made payment or until such time as the default has been rectified.
- 10.2 the time during which such contract works shall cease, shall operate as an extension of time for completion of the works.
- 10.3 In addition to suspending work in terms of this clause, the Contractor may, after giving 7 (seven) days' written notice to the Employer, terminate the contract, in the event of the Employer having been in breach of the terms of this contract, all of which shall be material.
- 10.4 The Contractor shall exercise this right without prejudice to any other rights which the Contractor may have in terms of the contract or in law.
- 10.5 The Employer consents to jurisdiction of the Magistrates Court in respect of any action arising out of this contract. The Contractor shall not be bound to issue summons out of Magistrates Court.
- 10.6 All costs and changes incurred by the Contractor as a result of the Employer's failure to comply with the agreed terms of payment or any other terms and conditions hereof, (including legal costs on an attorney and own client sale) shall be borne by the Employer.

11. NON VARIATION

- 11.1 All quotations and orders issued by the Contractor are subject to these terms and conditions of tender/quotation which shall apply to all contracts concluded between the Contractor and the Employer notwithstanding the fact that the other conditions may be printed on order forms issued by the Employer, it being clearly understood that the Contractor does not recognize or accept any other conditions of contract and that these conditions of contract shall not be deemed to agreed to in writing and signed by as a director of the contractor.
- 11.2 Any terms and conditions at variance with these conditions shall not be binding on the Contractor unless accepted by the Contractor in writing.
- 11.3 No variations to this contract shall be binding on the Contractor unless reduced to in writing and signed by both parties thereto.
- 11.4 No additions to, waiver of any rights, or modification of the contract, quotation or agreement shall be binding on the Contractor unless expressly agreed to in writing by a duly/authorised employee of the Contractor.
- 11.5 No agent or employee of the contractor, other than on the authority of a decision of the Board of Directors, has the contractor's authority to alter or vary these conditions by an undertaking or promise given to the Employer.