



General Conditions of Contract

1. Definitions for the purpose of these Conditions:

“DIS” or “We” or “Us” or “our”:	Dragon Infrastructure Solutions Limited
“The Employer” or “You”:	Any person, company or other entity with whom DIS agree to provide the Works including any person who appears to us to act with your authority“
The Works”:	The works to be carried out by DIS under the terms of this offer/contract

2. In the absence of formal written acceptance by DIS of alternative contract terms and conditions the following shall prevail and apply.
- 3.1 The contract sum shall be as set out in our proposal. The quotation shall remain open for 30 days from the date of this quotation thereafter we reserve the right to review and amend the quotation. We shall be entitled to be paid in accordance with the express payment terms set out in our proposal. We reserve the right to submit invoices in respect of materials held off site and for disbursements paid in advance, e.g. licences. The due dates for payment will be on the first working day of each month from commencement of the Works or as set out in the express payment terms set out in our proposal (“the payment due date”). DIS shall submit an application for payment (a “Payment Notice”) to the Employer not later than 5 days after the payment due date setting out:
 - 3.1.1 The amount that DIS considers to be or to have been due as at the payment due date in respect of the payment; and
 - 3.1.2 The basis on which the sum due has been calculated.
- 3.2 The final date for payment of a Payment Notice, whether interim or final, shall be 30 days from the payment due date referred to above.
- 3.3 The sum set out in the Payment Notice shall be treated as the “notified sum” and must be paid on or before the final date for payment unless the Employer issues a Pay Less Notice in accordance with clause 3.4 below.
- 3.4 If the Employer intends to pay less than the notified sum, it must issue a Pay Less notice to DIS. In order to be valid, a Pay Less Notice must:
 - 3.4.1 Set out the amount that the Employer considers to be due (irrespective of whether that sum is zero); and
 - 3.4.2 Set out the basis on which that sum has been calculated; and
 - 3.4.3 Be given not later than 14 days before the final date for payment.
- 3.5 Any sum due under the contract which is not paid by the final date for payment shall carry interest at the rate of 5% over the bank lending rate from time to time of Lloyds TSB Bank plc for the period between the final date for payment and the date on which payment is made including before and after any Court Judgment. DIS will also be entitled to recover from the Employer any expenditure reasonably incurred in obtaining payment including, but not limited to, legal costs.
- 3.6 If the Employer does not comply with clause 3.3 or 3.4 (whichever applies), DIS shall be entitled (without prejudice to any other remedy) to suspend performance of any or all of its obligations under this contract. DIS may not exercise the right of suspension unless it first (i) gives the Employer at least 7 days’ notice of its intention to do so and (ii) specifies in that notice the ground or grounds for the intended suspension. The right of suspension ceases when the Employer makes payment in full of the sums required by clause 3.3 or 3.4 (whichever applies). Where DIS exercises the right of suspension, the Employer must pay to DIS a reasonable amount in respect of the costs and expenses reasonably incurred by DIS as a result of having exercised that right. Where DIS exercises the right of suspension and performance of the Works is delayed as a result, the Employer shall extend by a reasonable amount any contractual deadline by such period as is necessary in order to account for the period of delay which the suspension caused to DIS.
- 4.1 The quoted price is based upon our normal working practices in safe and environmentally friendly working areas and on the basis that the site for the Works is ready for Works to commence. If working areas are excessively hot, dirty, wet or constitute a threat to health or safety and such conditions were not expressly brought to our attention prior to submission of the quotation, then we reserve the right at our discretion to either (a) make additional charges to the Employer for extra costs incurred by us if as a result special working practices are required or we incur downtime costs for example with our subcontractor(s) or staff, or (b) withdraw from site.
- 4.2 The quoted price is based upon the route agreed for the Works. If it is necessary in the Employer’s reasonable opinion to change an agreed route for the Works, then we reserve the right to make such additional charges as are incurred as a result of the change of route, including but not limited to profit or loss of profit thereon. Please note that the quoted price does not include allowance for any Planning permissions, consents or unusual or abnormal traffic measures being required and if such permissions, consents or measures prove necessary then we reserve the right to charge the Employer a reasonable sum for any additional works necessitated thereby including any profit thereon. Further, in the event that you refuse to accept delivery of or make payment for goods ordered on your behalf and at your request, then DIS reserve the right to charge a re-stocking fee in the event that DIS are unable to re-use the said goods within a reasonable period using reasonable endeavours to do so.
- 4.3 The quoted price is based upon a visual inspection for the site of the Works only. We do not accept responsibility for the ground conditions encountered. We reserve the right to re-quote for the Works in the event of ground conditions being encountered which could not reasonably have been foreseen following a visual inspection. We reserve the right to charge for any abortive costs thus occasioned. If trial pits are required by the Employer then we will charge a reasonable sum including profit to the Employer for carrying out such additional works.
- 4.4 You shall provide free of charge to us such facilities and services as we reasonably require in order to carry out the Works, including so that we may satisfy all Health and Safety requirements. You will comply with any obligations applying to you under the Construction (Design and Management) Regulations 2007 and you will co-operate with DIS and any contractors or consultants engaged in relation to the Works in regard to their obligations under the said Regulations
- 4.5 You will be required to appoint a meter asset supplier and a gas and/or electricity supplier for the connection. The connection cannot be energised until a gas and/or electricity and meter supplier has been registered for the connection. In the absence of you appointing the above suppliers DIS will nominate the suppliers on your behalf.
- 4.6 Please note the exclusions contained at the end of these conditions as to further matters not included within the quoted price (“Exclusions”). DIS shall be entitled to subcontract any part of the Works.
5. The parties may terminate this contract if either is in material default of its obligations under the contract and fails to remedy the default after being given reasonable written notice to do so. Any suspension of any or all of the Works or the termination of the contract shall not affect the obligations of the parties in respect of the Works actually performed by DIS which shall continue to apply. If either party is unable to pay their debts within the meaning of the Insolvency Act 1986 s123 or is the subject of a bankruptcy notice or petition or a bankruptcy order is made against them, or being a

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company, either party has a receiver, liquidator or administrator appointed or a winding up order made or a resolution for winding up is passed, or a voluntary arrangement is made with creditors, or a petition is presented for a winding up order or an administration order, or any distress or execution is levied or threatened over any of a party's assets, the other party shall be entitled, without prejudice to any other remedies available, forthwith to suspend the Works and to remove all unused materials from the other party's premises and (at the other party's complete discretion) to terminate the contract forthwith but without prejudice to the rights which have accrued up to the date of such termination and to the rights which have accrued as a result of such termination..

6. Unless stated otherwise, all our prices are subject to the addition of VAT exclusive of any discounts and make no allowance for main contractor's discount, retentions, liquidated damages for delay, other conditions of contract, payment for any building regulation plan or inspection fees of any other statutory charges including but not limited to, planning consents or approvals, unusual or abnormal traffic measures, party wall notices or other notices. DIS will use reasonable endeavours to carry out the Works within the agreed period or within a reasonable time frame, however should we delay the Works then DIS's sole responsibility to the Employer for delay will be 0.5% of the contract sum for each week or part thereof of the period of delay subject to a maximum of 10% of the contract sum, Such payments will be DIS sole liability to you associated with delay. If we are delayed, disrupted or prevented in the execution of the Works owing to either (a) any act or omissions due to matters beyond our control or (b) you, then we shall be entitled to recover from you any additional costs arising from such delay or disruption, including but not limited to, the increased cost of materials. We shall endeavour to provide notice of delay to you within a reasonable period of the delaying/disrupting event, providing details of the delay, the impact on the programme and the costs incurred; however we shall not be obliged to do so. In the event of delays we reserve the right to invoice on the dates envisaged in the original programme and not as revised by the delay. It is a condition precedent to any liability on the part of DIS to pay any compensation to you for delay, that you should inform DIS in writing within seven days of the date of commencement of the alleged delay, providing full particulars of the delay and why it is alleged to be the responsibility of DIS. Failing such written notice no liability for delay will be accepted by Dragon other than at their absolute discretion.
7. Without prejudice to clause 6, DIS warrant that the materials supplied will be of a satisfactory quality and that we shall undertake the Works with reasonable skill and care. If we are found to be in breach our liability shall be limited to the cost of repair or replacement of the materials provided and in any event our liability to you whether in contract or in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed £5,000,000 (five million pounds) in any single year of insurance and DIS shall have no liability in respect of claims relating to civil disorder, war, terrorism, mould, spores and asbestos. The Employer shall indemnify DIS against the cost of any claim or liability for pollution or contamination howsoever caused whether or not arising out of DIS' design or construction of the Works. Other than as stated, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
8. You may instruct a variation to the Works with our consent. The instruction must be in writing unless we waive this requirement in our absolute discretion. The variation shall be valued by us and paid for by you at either (a) the sum agreed between us in advance of the variation being carried out by us or in the absence of such agreement (b) on the basis of the rates appended to our proposal or in the absence of such rates (c) on a fair and reasonable basis. Where your actions have resulted or will result in a change to the Works, we shall advise you as soon as possible of any cost and time implications. We shall be entitled to a reasonable extension of time in relation to each variation. Please note that there is a design freeze once the design for the Works is submitted by us to the electricity supplier for approval. This is usually between 3 to 4 weeks after your order is placed with us. Any changes to the design after this period will constitute a variation.
9. It is a condition of any contract entered into that ownership of the goods supplied does not pass until the full contract sum has been paid, but the risk in such goods passes to the Employer upon the supply of the said goods to the Employer by DIS. Until DIS been paid in full for the goods supplied you will act in a fiduciary capacity as bailee for us and you shall store any unfixed goods in such a manner that they are clearly identifiable as our property.
10. Any notice given by one party to another under this contract shall be in writing, delivered by hand or by prepaid first class or special delivery post to the address given at the start of this contract, or to the registered office or principal place of business of the parties.
- 11.1 In the event of any dispute or difference arising between the parties under, out of or in connection with this Agreement (a "Dispute"), the parties may procure, but shall not be bound to procure, that their respective senior management representatives shall, within 7 working days of a written request from either party to the other, meet in a good faith effort to resolve the Dispute without recourse to adjudication or legal proceedings.
- 11.2 If the matter is not resolved through negotiation, the parties may attempt, but shall not be bound to attempt, in good faith to resolve the dispute through a mediation procedure. If the parties need advice in appointing a suitable neutral to assist in the mediation procedure they will seek assistance from the Centre of Dispute Resolution or another comparable body.
- 11.3 Either party may at any time refer a Dispute to adjudication in which case the provisions of Part One of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended or re enacted) shall apply.
- 11.4 The adjudicator shall be agreed upon if the parties so wish or alternatively the referring party shall seek a nomination from the Royal Institute of Chartered Surveyors.
- 11.5 Either party may refer any Dispute to the Northampton County Court or to the Northampton District Registry of the High Court of the Courts of England for determination, provided that proceedings in relation to any Dispute which has been referred to adjudication may not be commenced until after the party commencing such proceedings shall have received a determination in respect of the dispute from the adjudicator.
12. This contract shall be governed and construed in accordance with the laws of England and the English courts shall have jurisdiction over any dispute or difference between DIS and the Employer that arises out of or in connection with this contract.
13. The parties hereby agree that notwithstanding any other provision of this contract that no provision shall or shall purport to grant any right to any other party to enforce any term or condition of this Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999.

Exclusions

1. Any unusual or onerous Council by-laws, conditions or similar.
2. Any third party payments, including but not limited to, legal fees and land owner/occupier charges.
3. Any type of concrete other than used for normal road working conditions, for example that required for type 2 roads, unless otherwise stated in the quoted price.

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