



menard OCEANIA

GENERAL WORKING TERMS AND CONDITIONS OF CONTRACT

1. TENDER VALIDITY

This offer is available for written acceptance within (30) days of date of issue, unless otherwise stated in our offer, and is subject to the availability of plant, labour and materials. Your order is deemed to accept all the terms and conditions of our Tender and General Working Condition. We reserve the right to withdraw this quotation at any time prior to commencement of work.

2. CONTRACT CONDITIONS

This offer is based on the AS4900 series as amended by the Piling Federation, we do not accept any conditions of contract, work rate, damages and the like provided with tender documents. Our offer is based on the conditions and scope of work defined in our offer which will have precedence over any other document.

3. SECURITY

Security will be provided in the format of 2 bank guarantees for 2.5% each of the contract sum with expiry dates of the date for practical completion and the end of the defects liability period.

4. GROUND CONDITIONS

This tender is based on reasonable assessment of the information provided for tendering. Should this prove deficient, any additional costs incurred may be chargeable. A charge will be made at our standard charge out rates for all costs associated with:

- a) obstructions, including but not limited to old buildings, foundations, services, rubble, boulders and filling unsuitable for our operations; and
- b) Voids, including waiting time to fill, machinery, material and labour costs; and
- c) Change in conditions, whereby the conditions experienced on site do not align with the conditions stated in the Information documents provided by Others.

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5. TESTING

Material tests, probing, coring or ground tests will be conducted as ordered, at the purchaser's expense +25%, provided they do not interfere unreasonably with the works.

Long term test results are excluded from the requirements of Completion

6. CLAIMS

MO shall be entitled to claim for Extensions of Time and variations in the following circumstances;

- (a) Encounter Obstructions or Voids
- (b) Incorrect/ inaccurate Geotechnical Inspection
- (c) Ground heave, ground vibration, subsidence or redesign
- (d) Encounter Latent condition
- (e) Non-sequential work access
- (f) Working platform deficiencies e.g. excessive water on platform not linked to works
- (g) Impingement by Clients or other contractors on site
- (h) Delays in Deliveries by the Client

Extensions of Time and Variations will be calculated based on the circumstances outlined, including additional time and materials required.

7. LIABILITY

We accept no liability for damages in the following;

- (a) Existing properties or services where our work is to the specification and/or design by others.
- (b) Drains, sewers, services or other subsurface works unless;
 - I. we are advised in writing as to their positions and they are accurately located for us on site by others.
 - II. the anchor positions relative to such items are in accordance with our requirements and/or the additional costs of special measures, pre-boring and coring are paid as an extra to the Contract.

Total liability/ indemnity is to be capped at the agreed Subcontract Sum.

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8. SEQUENCE & INTERRUPTIONS

- a) We reserve the right to determine the sequence of the works whilst working in conjunction with the purchaser/client and other trades.
- b) An extension of time must be granted for delays and interruptions caused by factors beyond our control which include but not limited to; inclement weather, poor access, strikes, failure of the head contractor to carry out associated works.
- c) Our price is strictly based on continuous productive work and any delays shall be reimbursed at applicable hourly rates. These delays include but are not limited to poor access, lack of continuity of work, unforeseen conditions, obstruction, strikes, latent conditions.
- d) Damages, liquidated or otherwise are excluded unless otherwise agreed to in writing which will be capped at an aggregate maximum of 5% of the Subcontract sum.
- e) Pass through Damages such as Head Contract Liquidated Damages or other costs are excluded.
- f) Variation rates for any Additional Works are available upon request.

9. GST

- a) G.S.T. is not included in the price quoted.

10. PAYMENT TERMS

- a) Progress claims will be made monthly, made on receipt of the written order or establishment on site, whichever occurs first. Monies will be due 20 Business days after the date of the progress claim.
- b) No retention is to be withheld unless otherwise agreed in writing.
- c) There will be no time bar for the notification of any claim or variation. All claims and variations raised must be settled as soon as practically possible.
- d) Irrespective of any conflicting condition contained elsewhere in the Contract, non-payment of Progress Claim in excess of 60 days, will allow for Suspension of works until payment is received.
- e) If work ceases then we will be entitled to payment for the delay charges computed as per clause 6 of these General Working Terms and Conditions but if the breach continues for five (5) working days then we may terminate the contract, demobilise and refer the matter to arbitration or litigation under Clause 13 of these General Working Terms and Conditions.

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- f) Interest on any overdue payments will be charged at the rate of 2.5% per month on monies payable under the contract.

11. COMPLETION OF WORKS AND HANDOVER

The completion of our scope of works will constitute timing for any outstanding claims. Claim schedules under any subsequent agreement cannot override the right for any claims within 1 year of completion of the installation works.

12. SUBCONTRACTORS

Any conditions of a main contract shall be deemed only to apply insofar as they do not conflict with our Tender and Conditions.

13. ARBITRATION

Any dispute not settled by negotiation between the parties may be referred either to arbitration or litigation or other form of dispute resolution at our option. Effusion of time shall not bar any claim or variation irrespective of head subcontractor conditions.

14. Consequential Loss

All Consequential losses are excluded.

Consequential Loss means any:

- a) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of investment return, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production or failure to realise anticipated savings (whether the loss is direct or indirect);
- b) increase in direct or indirect financing costs; or
- c) any loss, damage, cost, expense or Liability that is:
 - I. not a loss, damage, cost, expense or liability that may fairly and reasonably be considered to arise naturally (being according to the usual course of things) from the breach or relevant matter; or
 - II. not fairly and reasonably contemplated by both the Contractor and the Subcontractor at the date of this Subcontract as the probable result of the breach or relevant matter, whether present or future, fixed or unascertained, actual or contingent.

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