

ON-DEMAND PERFORMANCE BOND

It shall be a condition precedent to a Contract based on the acceptance of the Tender:

- a) that the Contractor shall provide an On -Demand Performance Bond with a bank or insurance company, acceptable to the employer, and authorised by the Department of Trade, by which they shall be jointly and severally bound to the Employer in a sum equivalent to 10% of the Contract Price conditioned for the due fulfilment of the terms and conditions of the Contract.
- b) that the Contractor shall furnish in confidence to the insurers, information as to the Contractor's financial position and any other relevant information reasonably required by them.
- c) 90% of the Bonding shall be released at Practical Completion and 10% remaining and Final Completion 12 months later. The Bond premium shall not exceed 3.5% of the Bond amount.
- d) it is the Contractor's responsibility to inform the Employers Representative with regard to release at bonding stages.
- e) that as part of their submission the Contractor will provide a letter from their intended Bondsman confirming that a Bond will be provided as the pro-forma within 10 working days of the Contractor being notified of acceptance of their tender.
- f) the wording of the Performance Bond shall be as described within of this documentation.

THIS ON-DEMAND PERFORMANCE BOND is made as a deed BETWEEN the following parties whose names and registered office addresses are set out in the Schedule to this Bond ('The Schedule'):-

- (1) The 'Contractor' as principal
- (2) The 'Guarantor' as guarantor, and
- (3) The "Employer"

WHEREAS

- (1) By a contract ('the Contract') entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works ('the Works') upon and subject to the terms and conditions therein set out
- (2) The Guarantee has agreed with the Employer at the request of the Contractor agreed to guarantee performance of the obligations of the Contractor under the Contract upon the terms and conditions of this On-Demand Performance Bond subject to the limitation set out in Clause 2

NOW THIS DEED WITNESSES as follows:

1. The Guarantor guarantees to the Employer that in event of a breach of the Contract by the Contractor the Guarantor shall subject to the provisions of this On-Demand Performance Bond satisfy and discharge the financial damages sustained by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and taking into account all sums due or to become due to the Contractor. Any written demand for payment hereunder, stating the amount demanded and that the Contractor is in default of its obligations under the Contract, shall be accepted by the Guarantor as conclusive evidence for all purposes that the amount claimed is properly due to the Employer.
2. The maximum aggregate liability of the Guarantor and the Contractor under this Demand Performance Bond shall not exceed the sum set out in the Schedule (the 'Bond Amount').
3. The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the works, and no allowance of time by the Council under or in respect of the Contract or the works shall in any way release reduce or affect the liability of the Guarantor under this Demand Performance Bond.
4. Whether or not this On-Demand Performance Bond shall be returned to the Guarantor the obligations of the Guarantor under this On-Demand Performance Bond shall be and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been received by the Guarantor before Expiry.
5. The Contractor having requested the execution of this On-Demand Performance Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.
6. This On-Demand Performance Bond and the benefits thereof shall not be assigned without the prior written consent of the Guarantor and the Contractor.

7. For the avoidance of doubt it is not intended that any of the terms of this On-Demand Performance Bond should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any third party referred to in the contract.
8. This On-Demand Performance Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

THE SCHEDULE

The Contractor:

The Guarantor:

The Employer:

The Contract:

The Bond Amount:

Expiry:

IN WITNESS whereof the Contractor and the Guarantor have executed and delivered this Demand Performance Bond as a Deed this day of Two Thousand and XXXXXXXXXXXX

EXECUTED AND DELIVERED as a deed by

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(THE COMMON SEAL of XXXXXXXXXXXXX)