

Section 3: Terms and Conditions of Engineering and Construction Short Contract

Terms of this Agreement

1. The Authority appoints the Contractor in accordance with the terms set out in the NEC3 Engineering and Construction Short Contract (April 2013) together with the Additions and Amendments to Conditions of this Agreement and the Additional Conditions of this Agreement – Option Z.

2. This Agreement comprises the following:

Section 3.2.1 Parties & Recitals

Section 3.2.2 Terms and Conditions of NEC3 Engineering and Construction Short Contract Agreement
- Contract Data and the Contractors Offer

Section 3.2.3 Works Information & Site Information

Section 3.2.4 Additional Conditions

Section 3.2.1: Parties & Recitals

 **Engineering and Construction**

Short Contract

A contract between

**THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND
RURAL AFFAIRS** of Nobel House, 17 Smith Square, London, SW1P
3JR, acting through the Department for Environment Food and
Rural Affairs (DEFRA) and its executive agencies

and **Walter Lilly & Co Limited**

for **32121 – BMS Control Room Upgrade**

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Conditions of Contract CC1

Notes about this contract are printed in boxes like this one. They are not part of the contract.

Section 3.2.2: Terms and Conditions of NEC3 Engineering and Construction Short Contract Agreement - Contract Data and the Contractors Offer

Contract Data

The Employer is

Name **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**
Address
Telephone Nobel House, 17 Smith Square, London SW1P 3JR.
E-mail address 0208 225 8755.
[REDACTED]

The works are
BMS Control Room Upgrade

The site is Animal and Plant Health Agency
Woodham Lane, New Haw, Addlestone, Surrey
KT15 3NB

The starting date is 24 August 2021

The completion date is 16 February 2022

The period for reply is Two (2) weeks.

The defects date is 52 weeks after Completion.

The defect correction period is Four weeks.

The delay damages are £600 per day

The assessment day is the 28th of each month.

The retention is Nil %.

Does the United Kingdom Housing Grants, Construction and Regeneration Act (1996) apply?

Yes

The Adjudicator is nominated by:

Name The Royal Institution of Chartered Surveyors
Address 12 Great George Street, Parliament Square, London, SW1P 3AD.

Telephone 024 7686 8555 Fax 020 7334 3811

E-mail address

Contract Data

The interest rate on late payment is 3 % per complete week of delay.

Insert a rate only if a rate less than 0.5% per week of delay has been agreed.

The Contractor's liability to the Employer for indirect or consequential loss is limited to

For any one event, the Contractor's liability to the Employer for loss of or damage to the Employer's property is limited to £2 million

The Contractor's liability for Defects due to his design which are not listed on the Defects Certificate is limited to £1 million

The Contractor's total liability to the Employer for all matters arising under or in connection with this contract, other than excluded matters, is limited to £5m

The end of liability date is 6 years after the Completion of the whole of the work

The *Employer* provides this insurance Insurance against loss or damage to the Employer's property

The minimum amount of cover for the third insurance stated in the Insurance Table is £2m.

The minimum amount of cover for the fourth insurance stated in the Insurance Table is £10m

The *Adjudicator nominating* body is The Royal Institution of Chartered Surveyors.

The *tribunal* is The Courts of England and Wales.

If the *tribunal* is arbitration, the arbitration procedure is

The *conditions of contract* are the NEC3 Engineering and Construction Short Contract April 2013 and the following additional conditions

See section 3.2.4 Additional Conditions

Contract Data

The Contractor's Offer

The Contractor is

Name Walter Lilly & Co Limited
Address 17 Addiscombe Road
Croydon, CR0 6SR
Telephone 0208 730 6200
E-mail address [REDACTED]

The percentage for overheads and profit added to the Defined Cost for people is %.

The percentage for overheads and profit added to other Defined Cost is %.

The Contractor offers to Provide the Works in accordance with the *conditions of contract* for an amount to be determined in accordance with the *conditions of contract*.

The offered total of the Prices is

Enter the total of the Prices from the Price List. £156,040.13

Signed on behalf of the Contractor

Name
Position
Signature Date

The Employer's Acceptance

The Employer accepts the Contractor's Offer to Provide the Works

Signed on behalf of the Employer

Name
Position
Signature Date

Price List

Entries in the first four columns in this Price List are made either by the *Employer* or the tenderer.

If the Contractor is to be paid for an amount for an item which is included in the Supplier Price Workbook of the Framework Agreement, the tenderer enters this amount.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price column only; the Unit, Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

Item number	Description	Unit	Quantity	Rate	Price
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As contained within attachment area of BMS Control Room Upgrade – itt_8480 – 32121 – BMS Control Room Upgrade and Walter Lilly's tender submission dated 14/05/21 and post tender commercial clarifications dated submitted via the portal / 10.06.2021 09:18

The total of the Prices

£156,040.13

Section 3.2.3

Works Information & Site Information

Contract Data

Works Information

The Works Information should be a complete and precise statement of the *Employer's* requirements. If it is incomplete or imprecise there is a risk that the *Contractor* will interpret it differently from the *Employer's* intention. Information provided by the *Contractor* should be listed in the Works Information only if the *Employer* is satisfied that it is required, is part of a complete statement of the *Employer's* requirements and is consistent with the other parts of the Works Information.

1 Description of the *works*

As contained within attachment area of BMS Control Room Upgrade – itt_8480 – 32121 – BMS Control Room Upgrade

Give a detailed description of what the *Contractor* is required to do and of any work the *Contractor* is to design.

The Contractor provides the Works in accordance with the General Works Information (Section 2.1 of the Framework Agreement), and the following Specific Works Information:

2 Drawings

Drawing number	Revision	Title
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As contained within attachment area of BMS Control Room Upgrade – itt_8480 – 32121 – BMS Control Room Upgrade

Works Information

3 Specifications

List the specifications which apply to this contract.

As contained within attachment area of BMS Control Room Upgrade – itt_8480 – 32121 – BMS Control Room Upgrade

Title	Date or revision	Tick if publicly available
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4 Constraints on how the *Contractor* Provides the Works

State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the *Employer*.

As contained within attachment area of BMS Control Room Upgrade – itt_8480 – 32121 – BMS Control Room Upgrade

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Contract Data

Works Information

5 Requirements for the programme

As contained within attachment area of BMS Control Room Upgrade – itt_8480 – 32121 – BMS Control Room Upgrade

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

State what the use of the *works* is intended to be at their Completion as defined in Clause 11.2(1).

6 Services and other things provided by the *Employer*

As contained within attachment area of BMS Control Room Upgrade – itt_8480 – 32121 – BMS Control Room Upgrade

Describe what the *Employer* will provide, such as services (including water and electricity) and “free issue” Plant and Materials and equipment.

Item	Date by which it will be provided

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Contract Data

Site Information

Give information about the *site* such as the ground conditions and any other information which is likely to affect the *Contractor's* work such as limitations on access and the position of adjacent structures.

As contained within attachment area of BMS Control Room Upgrade – itt_8480 – 32121 – BMS Control Room Upgrade

Section 3.2.4: Additional Conditions

**Z1 The Public
Contract
Regulations 2015**

- 1.1 The Employer may terminate the Contractor's obligation to Provide the Works if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the Employer terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the Contractor at the date when this contract came into existence, the procedures and amounts due on termination are the same as if the Contractor has substantially failed to comply with this contract.

If the Employer otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if an event which the Parties could not reasonably prevent has substantially affected the Contractor's work for a continuous period of more than thirteen weeks.

- 1.2 The Contractor notifies the Employer of the name, contact details and legal representatives of each Subcontractor before appointing the Subcontractor. The Contractor does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

- 1.3 The Employer makes payment to the Contractor under the contract no later than 30 days after receipt of a valid and undisputed invoice, unless the contract requires the Employer to make earlier payment to the Contractor.

- 1.4 The Contractor includes in any subcontract awarded by him provisions requiring that
- payment due to the Subcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Contractor to make earlier payment to the Subcontractor or supplier,
 - invoices for payment submitted by the Subcontractor or supplier are considered and verified by the Contractor in a timely fashion,
 - undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
 - any contract awarded by the Subcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions.

Z2 Definitions

- 2.1 Others are people or organisations who are not the Employer, the Adjudicator, the Contractor or any employee, Subcontractor or supplier of the Contractor.
- 2.2 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.

Z3 The Law

3.1 References to "this contract" mean the contract between the Employer and the Contractor including the documents listed as forming the contract in the Form of Agreement and the Framework Agreement.

3.2 References in this contract to "applicable law" are deemed to include Statutory Requirements and include:

- that law as from time to time amended, re-enacted or substituted and
- any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law.

The Contractor complies with the applicable law. Laws are regarded as applicable to the Contractor where they impose duties, obligations or restrictions on the Employer, and the Contractor performs his obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the Contractor.

3.3 Failure by the Employer to exercise his rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the Contractor from any of his obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement.

3.4 If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions shall continue to be valid.

Z4 Communication

4.1 The Employer and the Contractor comply with the communications requirements in the Works Information.

4.2 A notification which this contract requires is communicated separately from other communications.

Z5 The Employers Authority and Delegation

5.1 The Employers Framework Manager is for relevant purposes the "specified person" as defined in section 110A(6) of the Act.

Z6 Early Warning	6.1 Delete Clause 16.1 and insert: “The Contractor and the Employer give an early warning by notifying the other as soon as either becomes aware of any matter which could • increase the total of the Prices, • delay Completion, • impair the performance of the works in use, • adversely affect the work of Others, or • adversely affect the Employer (including by increasing the monies payable by the Employer to Others engaged on the Science Estate). In the notification the Contractor and the Employer state whether the early warning must be dealt with immediately or can wait until the next scheduled risk reduction meeting. The Contractor may give an early warning by notifying the Employer of any other matter which could increase his total cost. The Employer enters early warning matters in the Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required.”
Z7 Ambiguities and Inconsistencies	7.1 The Employer or the Contractor notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The Employer gives an instruction resolving the ambiguity or inconsistency.
Z8 Illegal and Impossible Requirements	8.1 The Contractor notifies the Employer as soon as he considers that the Works Information requires him to do anything which is illegal or impossible. If the Employer agrees, he gives an instruction to change the Works Information appropriately.
Z9 Providing the Works	9.1 These conditions of contract and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the Contractor both before and after the <i>starting date</i>.
Z10 Working with the Employer and Others	10.1 The Contractor co-operates with Others in obtaining and providing information which they need in connection with the works. He co-operates with Others and shares the working areas with them as stated in the Works Information. The Employer and the Contractor provide services and other things as stated in the Works Information. Any cost incurred by the Employer as a result of the Contractor not providing the services and other things which he is to provide is assessed by the Employer and paid by the Contractor.

Z11 Other responsibilities

11.1 The Contractor obtains approval of his design from Others where necessary. The Contractor's responsibility includes obtaining

- all Licences required for the carrying out of the works except for those which the Works Information expressly states will be obtained by the Employer and
- such Licences required for the use of the completed works as the Works Information expressly states will be obtained by the Contractor.

In relation to Licences which it is the Employer's responsibility to obtain, the Contractor (without taking the risk that such Licences are not obtained, save to the extent that this is caused by the Contractor's failure to provide support required by this contract and/or the Works Information)

- provides such support as the Works Information states the Contractor is to provide to the Employer in applying for and obtaining such Licences and
- provides such other support as the Employer reasonably requires, not entailing excessive cost to the Contractor (or if entailing such cost, provided the same is reimbursed by the Employer).

The Contractor ensures that the works comply with all Licences and laws.

12.1 For the purposes of the CDM Regulations

- the Contractor takes full responsibility for the adequacy stability and safety of all site operations and methods of construction and complies fully with the requirements of the CDM Regulations,
- the Contractor warrants that it is fully conversant with the guidance and any codes of practice published by the Health and Safety Executive in relation to the CDM Regulations,
- the Contractor throughout the progress of the works and while the Contractor has access to the Site in accordance with this contract has full regard for the safety of all persons entitled to be upon the Site and keeps the Site (so far as the same is under his control) and the works (so far as the same have not been handed over to or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons and, without limitation, in connection with the works, provides and maintains at his own cost all lights guards fencing warning signs and watching when and where necessary or where required by any competent statutory or other authority for the protection of the works or for the safety and convenience of the public or Others,
- where the Contractor is the Principal Contractor and/or the Principal Designer, the Contractor performs all the functions and duties of and exercises the powers of the “principal contractor” and/or the “principal designer” as defined in the CDM Regulations,
- where the Contractor is not the Principal Contractor and/or the Principal Designer, the Contractor performs all the functions and duties of a “contractor” and (where the Contractor is responsible for design) a “designer” as defined in the CDM Regulations,
- the Contractor warrants to the Employer that it has the skills, knowledge, experience, organisational capability and level of resources necessary to meet the requirements of the CDM Regulations and to fulfil the role of “principal contractor”, “principal designer”, “contractor” and “designer” (as applicable) as defined in the CDM Regulations,
- the Contractor at all times co-operates, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Site, including the Principal Contractor and the Principal Designer (where these roles are not being performed by the Contractor) for the effective discharge of those responsibilities,
- the Contractor procures that each Subcontractor and indirect Subcontractor complies fully with the requirements of the CDM Regulations,
- the Contractor to the extent that he is in control of the Site or any part of it within the meaning of Section 4 of the Health and Safety at Work etc. Act 1974 keeps the Site, its access and egress, safe and without risk to the health of persons using it.

**Z13 Compensation
Events**

13.1 Delete Clause 60.1(2) and insert:

“Subject to the requirements of the Works Information regarding access and provided that the Contractor has co-ordinated access in accordance with the Employer’s requirements, the Employer does not allow access to and use of a part of the Site in accordance with the provisions of this contract by the later of its *starting date* and the date shown on the Accepted Programme.”

13.2 Delete Clause 60.1(4) and insert:

“The Employer gives an instruction to accelerate or to stop or not to start any work”.

13.3 Delete Clause 60.1(13) and insert:

“A weather measurement is recorded

- within a calendar month,
- before the Completion Date for the whole of the works and
- at the place stated in the Contract Data

the value of which, by comparison with the weather data, is shown to occur on average less frequently than once in ten years.

Only the difference between the weather measurement and the weather which the weather data show to occur on average less frequently than once in ten years is taken into account in assessing a compensation event.”

13.4 The Contractor notifies the Employer if he does not accept the Employer’s assessment and at the same time of his reasons for not accepting the Employer’s assessment. If the Contractor does not provide this notification within four weeks of notification of the Employer’s assessment, he is treated as having accepted the Employer’s assessment.

Z14 Limitation of the Contractors liability to reasonable skill and care

14.1 The Contractor is not liable for Defects in the works due to his design so far as he proves that he used all the reasonable skill and care and diligence normally used by an appropriate and competent professional designer experienced in carrying out design works similar to those included in the works in connection with projects of a similar size, scope and complexity to the Project to ensure that his design complied with the Works Information.

If the Contractor corrects a Defect for which he is not liable under this contract it is a compensation event.

Z15 Limitation of Liability

15.1 The Contractor's total liability to the Employer for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract.

The excluded matters are amounts payable by the Contractor as stated in this contract for

- loss of or damage to the Employer's property,
- delay damages as stated in the Contract Data,
- any liability arising for death or bodily injury,
- any liability arising for losses caused by fraudulent acts or acts of a criminal nature.
-

Z16 Programme

16.1 Delete Clause 30 and insert:

"The Contractor does not start work on the Site until the *starting date* and does the work so that Completion is on or before the Completion Date.

The Contractor notifies the Employer when in his opinion the works will have been completed in accordance with this contract and requests an inspection. The Employer and the Contractor undertake such inspection in accordance with the requirements set out in the Works Information.

The Contractor provides all information and evidence listed or identified in the Works Information as being required to demonstrate that the works have been so completed. If the Employer is satisfied that the works have been so completed, the Employer decides the date of Completion. The Employer certifies Completion within one week of Completion. If the Employer is not so satisfied, he notifies the Contractor of his reasons for not accepting that the works have been completed."

16.2 Within two weeks of the Contractor submitting a programme to him for acceptance, the Employer either accepts the programme or notifies the Contractor of his reasons for not accepting it. A reason for not accepting a programme is that:

- the Contractor's plans which it shows are not practicable,
- it does not show the information which this contract requires,
- it does not represent the Contractor's plans realistically or
- it does not comply with the Works Information.

Z17 Access to and use of the site

17.1 Subject to the provisions of the Works Information regarding access, the Employer allows access to and use of each part of the *site* to the Contractor which is necessary for the work included in this contract.

The Employer does not guarantee uninterrupted or exclusive access to or use of the *site* or any working area and access is limited in accordance with this contract.

Z18 Testing and inspection before delivery

18.1 The Contractor does not bring to the *site* those plant and materials which the Works Information states are to be tested or inspected before delivery until the Employer has notified the Contractor that they have passed the test or inspection.

Z19 Correcting Defects – Intervening Events

19.1 The Contractor corrects a Defect to its works notwithstanding that the defect was in part caused or contributed to by the action or inaction of Others. The Contractor notifies the Employer of a compensation event if he considers that a defect was in part caused or contributed to by the action or inaction of Others in accordance with Clause Clause 60.1(14).

Z20 Net Contribution

20.1 The Contractor is responsible for the costs to the Employer of correcting Defects proportionate to the extent that the Contractor caused or contributed by action or inaction to a Defect by Others on *site*.

Z21 Accepting Defects

- 21.1 The Contractor and the Employer may each propose to the other that the Works Information should be changed so that a Defect does not have to be corrected.

If the Contractor and the Employer are prepared to consider the change, the Contractor submits a quotation for reduced Prices or an earlier Completion Date or both to the Employer for acceptance. If the Employer accepts the quotation, he gives an instruction to change the Works Information, the Prices and the Completion Date accordingly.

Z22 Acceleration

- 22.1 The Employer may instruct the Contractor to submit a quotation for an acceleration to achieve Completion before the Completion Date. A quotation for acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date. The Contractor submits details of his assessment with each quotation.

The Contractor submits a quotation or gives his reasons for not doing so within the period for reply.

When the Employer accepts a quotation for acceleration, he changes the Prices or the forecast of the total Defined Cost and the Completion Date accordingly and accepts the revised programme. If the Employer does not accept a quotation for acceleration, or does not accept the Contractor's reasons for not submitting a quotation, the Employer may issue an instruction to the Contractor to accelerate and the Contractor proceeds to accelerate in accordance with that instruction and the Employer makes his own assessment of the compensation event.

Z23 Payment

- 23.1 If any parent company guarantee required by this contract is not procured by the Contractor and delivered to the Employer within four weeks of the *starting date*, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the Contractor until such documents have been delivered.

- 23.2 In addition to any other rights of the Employer whether at law or equity under this contract, whenever

- under this contract or any other contract between the Employer and the Contractor any sum of money is recoverable from or payable by the Contractor or
- any Losses are reasonably and properly owed to, or incurred by, the Employer under or arising out of this contract or any other contract between the Employer and the Contractor

the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the Contractor under this contract.

- 23.3 If the Employer is or at any time up to the making of the final payment under this contract becomes a 'contractor' for the purposes of the Construction Industry Scheme, his obligation to make any payment under this contract is subject to the provisions and requirements of the Construction Industry Scheme and the Contractor complies with the provisions of the Works Information regarding the Construction Industry Scheme.
- 23.4 Not later than five days after receipt of the payment certificate the Contractor delivers to the Employer a VAT invoice in the amount of the certificate with a copy of the certificate attached. The Contractor issues a corrected VAT invoice, where required, within five days of receipt of a Pay Less Notice.
- 23.5 If the amount to be paid to the Contractor is less than the amount to be paid by or retained from the Contractor, the difference is recoverable from the Contractor as a debt due on demand.

**Z24 Parent
Company Guarantee**

- 24.1 If a parent company owns the Contractor, the Contractor gives to the Employer a guarantee by the parent company of the Contractor's performance in the form set out in the Works Information. If the guarantee was not given by the *starting date*, it is given to the Employer within four weeks of the *starting date*.

**Z25 Sectional
Completion**

- 25.1 In these conditions of contract, unless stated as the whole of the works, each reference and Clause relevant to
- the works,
 - Completion and
 - Completion Date

applies, as the case may be, to either the whole of the works or any section of the works as defined in the Works Information.

Z26 Delay Damages

- 26.1 The Contractor pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the earlier of
- Completion and
 - the date on which the Employer takes over the works.

If the Completion Date is changed to a later date after delay damages have been paid, the Employer repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.

If the Employer takes over a part of the works before Completion, the delay damages are reduced from the date on which the part is taken over. The Employer assesses the benefit of taking over the part of the works as a proportion of the benefit of taking over the whole of the works not previously taken over. The delay damages are reduced in this proportion.