

Buildtech Essex & Buildtech Heritage of Essex Ltd Terms & conditions – Proposal & Contract.

1. Definitions and Interpretations

1.1 "Agreement" shall mean these agreed Terms and Conditions for the supply of Products and provision of Services.

1.2 "Consumer" shall mean the person who deals as a consumer as defined by section 12 of the Unfair Contract Terms Act 1977.

1.3 "Customer" (If a Business Client) shall mean the person or organisation that orders the Products and Services from the Supplier; or (If a Consumer Client) shall mean the person that orders the Products and Services from the Supplier and who is defined as a consumer in accordance with section 12 of the Unfair Contract Terms Act 1977.

1.4 "Order" shall mean the formal acceptance of the Proposal by the Customer.

1.5 "Products" shall mean all Products supplied by the Supplier in the course of this Agreement.

1.6 "Proposal" shall mean the written statement of the Products and Services that the Supplier offers to the Customer summarised at Schedule I.

1.7 "Services" shall mean all Services supplied by the Supplier in the course of this Agreement.

1.8 "Supplier" shall mean the party contracted to provide the Products and Services under this Agreement.

1.9 "Terms and Conditions" shall mean this agreed written contract between the Supplier and the Customer.

1.10 "Works" shall mean the work carried out as part of this Agreement and the physical location of the work being carried out.

1.11. Unless the context otherwise admits words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa.

1.12 Reference to any statutory provisions in this Agreement shall include any statutory provisions, which amends or replaces it.

2. Introduction

2.1 No addition, alteration, substitution or waiver of these terms and conditions will be valid unless expressly accepted in writing by the Supplier or a person authorised to sign on the Supplier's behalf.

January 2021

2.2 (If a Consumer Client) Nothing in these Terms and Conditions shall affect the Customer's statutory rights.

3. Proposal

3.1 The Proposal given on or attached to these Terms and Conditions will only remain valid for a period of 60 days.

3.2 The Proposal must be accepted by the Customer in its entirety and without modification.

3.3 Acknowledgment and acceptance of this Proposal is made by the Customer placing an Order within the period specified in paragraph 3.1 above, at which time the Customer will be bound by these Terms and Conditions. Such contract is hereinafter referred to in these Terms and Conditions as "an Order".

3.4 An Order is only accepted once the Supplier confirms acceptance to the Customer in writing or verbally or electronically.

3.5 The Supplier reserves the right to refuse any Order.

4. Products and Services Specification

4.1 The Products and Services provided by the Supplier to the Customer are those detailed in the proposal at Schedule I of these Terms and Conditions.

4.2 If the Customer wishes to vary any of the Products and Services provided the written consent of the Supplier must be obtained. The Supplier must be informed in writing within 7 days (or such longer period if mutually agreed) of acceptance of the Order of any changes, alterations, reductions or cancellations.

4.3 The Supplier reserves the right to make additional charges for any agreed written variation to Schedule I of these Terms and Conditions.

4.4 Any descriptions, promotional material, drawings or sketches provided by the Supplier or third parties are for illustrative purposes only and to provide an outline of what will be provided, unless agreed in writing between the parties.

4.5 Where necessary the Supplier may have to use alternative materials from alternative sources, where this is required the Supplier will provide written notification to the Customer.

5. Price

5.1 The price for the Products and Services is exclusive of Value Added Tax (VAT) if any applies and such other charges that may apply.

5.2 If the rate of VAT increases between the date of the Order and the date of delivery and/or completion the Supplier will add the necessary additional amount of value added tax to the price of the Products and Services

5.3 If the price of the Products and Services increases for any other reason between the date of the Order and the date of delivery and/or completion the Supplier will notify the Customer of this.

6. Title and Payment

6.1 Unless otherwise stated in the Order payment for the Products and Services comprised in each Order shall become due 14 days after delivery unless otherwise specified.

6.2 [If a Business Client] The Supplier reserves the right to claim statutory interest at 8% above the Bank of England reference rate in force on the date the debt becomes overdue and at any subsequent rate where the reference rate changes and the debt remains unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.

6.3 Furthermore the Supplier will claim all additional costs (including, but not limited to legal costs) incurred in obtaining payment from the Customer where the Customer is late paying the Supplier.

6.4 Title to the Products comprised in the Order shall not pass to the Customer until the Customer has paid the full price. Furthermore the Supplier reserves the right to sue for the price once payment becomes due notwithstanding that title may not have passed.

7. Delivery and Risk

7.1 Unless otherwise stated in the Order, the price quoted includes delivery to the address specified in the Order.

7.2 Whereas the Supplier will try to ensure compliance with any delivery times and dates given, such times and dates are an estimate only. The Supplier will not be responsible for any loss whatsoever arising from or consequential upon delay in delivery.

7.3 Risk in the goods shall pass to the Customer upon delivery.

8. Supplier Obligations

8.1 Before starting any works the Supplier will carry out an inspection to make sure that all works quoted for are appropriate and practicable.

8.2 The Supplier will carry out all works in accordance with the Proposal and subsequent Order.

8.3 The Supplier may where necessary sub-contract parts or the whole of the works to suitably qualified sub-contractors. In these circumstances the Supplier will provide the Customer with a full project management service in addition to the other Services provided under this Agreement.

8.4 The Supplier will ensure that all materials supplied comply with safe building practices and are free from defects when used or installed.

8.5 The Supplier will comply with all relevant health and safety regulations, including (but not limited to) site safety and personal safety of employees, contractors and visitors.

8.6 The Supplier will at all times hold appropriate and valid insurance, including public liability insurance.

8.7 The Supplier shall ensure that all works are carried out with reasonable care and skill and to a reasonable standard.

8.8 The Supplier shall ensure that where required all relevant codes of practice and building regulations are complied with.

8.9 The Supplier may at any time refuse or withdraw direct access to the works where required for health and safety reasons.

8.10 If during the works any issues are found that require additional time or materials or because of alterations in design, specification or otherwise and this causes an increase in costs the Supplier will send the Customer a further Proposal giving details of the extra costs and will only proceed with the works once the Customer's written acceptance has been received.

8.11 The Supplier shall take all reasonable care to protect all furniture and belongings owned by the Customer and will advise the Customer which, if any, the Customer must remove before the works commence. If the customer fails to remove any furniture or belongings advised to be removed before the commencement of works the Supplier accepts no responsibility for any damage or breakages to those items.

8.12 The Supplier will make good any damage caused whilst carrying out the works.

8.13 The Supplier shall ensure that the works do not cause any movement or damage to any existing structure or parts of the structure. where any such damage does occur the Supplier will repair or replace the structure to return it to its condition before the damage.

8.14 The Supplier shall ensure the safe and proper disposal of all waste materials generated by the works.

8.15 Where required the Supplier shall ensure that all subsequent building inspections of the completed works are carried out before the Supplier leaves the site.

9. Customer Obligations

9.1 The Customer will permit the Supplier access during normal working hours to carry out an inspection and thereafter to undertake the works according to the programme set out in the Proposal.

9.2 The Customer will remove all items necessary to allow the Supplier to commence the works and cover and protect all fixtures and fittings, which cannot be removed.

9.3 The Customer will be responsible for any redecoration required due to the works, which is not expressly included in the Proposal.

9.4 The Customer will obtain all consents, licenses and permissions, (including if necessary planning permission) from landlords, local authorities and others, which are required before the works can commence and in a timely manner so as not to delay the works. If agreed before commencement of the works, the Supplier will assist the Customer with these procedures or will, as the Customer's agent, undertake these procedures on the Customer's behalf.

9.5 The Customer shall ensure that where required all necessary party wall agreements are entered into prior to commencing the works.

9.6 Where the Customer is required to provide the Supplier with measurements or other information such measurements or information must be correct. If the Supplier relies on the measurements or information given when preparing the Proposal and such measurements or information are incorrect the Supplier reserves the right to increase the price to make good any errors or additional work required as a result.

9.7 The Customer shall only access the immediate area of the Works with the Supplier's express permission.

9.8 If the Customer does access the works they (and any third party under their control) shall observe all relevant health and safety regulations and follow the advice and directions of the Supplier at all times.

9.9 It is the Customers responsibility to verify whether the works carried out under this Agreement renders the Customer a "non-domestic client" under the Construction (Design and Management) Regulations 2015. Generally speaking most

Business Clients are a non-domestic client but some Consumer Clients will also be a non-domestic client if, for instance, they will derive a income from the works.

9.10 Where the Customer is a non-domestic client the Customer is jointly responsible with the Supplier and any sub-contractor for any health and safety matters relating to the works.

10. Warranties and Guarantees

10.1 The Supplier warrants that the Products supplied and used will be free from defects.

10.2 The Supplier warrants that the works will be carried out using all reasonable skill and care.

10.3 The Supplier guarantees the Products fitted and Services provided shall be free from all defects for a period of 6 months after completion of the works.

11. Defects and Snagging

11.1 The Supplier will not be responsible for defective Products caused by incorrect storage or handling of the Products by the Customer when on site.

11.2 The Supplier will not be responsible for defective Products and/or Services where caused by the negligence or poor workmanship of third party contractors not employed by the Supplier.

11.3 The Supplier working with the Customer shall agree and produce a comprehensive "snagging list" of faults to be corrected before the Works end and any final payment is made to the Supplier.

11.4 The Supplier reserves the right to delay completion of any snagging list where payment for work previously and satisfactorily completed is late.

12. Exclusions

12.1 The Supplier does not exclude liability for death or personal injury.

12.2 The Supplier shall not be liable for any direct loss or damage suffered by the Customer howsoever caused, as a result of any negligence, breach of contract, misrepresentation or otherwise in excess of the combined price of the works and the cost of the Services provided under this Agreement.

12.3 The Supplier shall not under any circumstances be liable for any indirect or consequential loss howsoever caused whether by negligence, breach of contract, misrepresentation or otherwise.

12.4 The Supplier or the Supplier's insurers shall not be liable or investigate any claim for loss unless the Customer provides written notice within 30 days of its occurrence and gives the Supplier or the Supplier's insurer every facility to investigate such occurrence.

13. Indemnities

13.1 The Supplier undertakes to indemnify and hold the Customer harmless against all claims, proceedings, costs, expenses, damages and fines arising from the Supplier's negligent performance, breach or failure to perform its obligations under these Terms and Conditions.

13.2 The Customer will indemnify the Supplier against all claims, costs, damages or fines the Supplier may incur arising from the Customer's breach of its obligations under these Terms and Conditions.

14. Complaints

The Supplier aims to provide a high level of service. If the Customer has an enquiry or complaint regarding the general service or specific Products and Services provided by the Supplier the relevant parties within the Supplier should be contacted immediately. See Schedule 1 for contact details.

15. Cancellation (If a Business Client)

15.1 The Customer may cancel the Order by giving the Supplier written notice of cancellation within 7 days of the Order having been made. A suitable form of Cancellation Notice is provided at Schedule 2

15.2 The Supplier reserves the right to retain the amount sufficient to fully compensate it for outlay on materials that cannot be returned and to cover all reasonable expenses already incurred in respect of the Order.

15.3 Any balance owed to the Customer will be refunded within 30 days without any further retention.

15.4 If the Customer seeks to cancel the Order outside the cancellation period stated in paragraph 15.1 above the Supplier reserves the right to retain any monies paid by the Customer to cover all reasonable expenses incurred by the Supplier.

15.5 If such retained monies do not cover the reasonable expenses incurred by the Supplier the Supplier reserves the right to seek additional payment from the Customer to cover these reasonable expenses.

16. Cancellation and Cooling Off Period (If a Consumer Client)

16.1 In accordance with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (and any other relevant legislation), where this Agreement is concluded

at the Customer's home or office (either as a result of a solicited or unsolicited visit by the Supplier) the Customer has an initial minimum statutory 14 days "cooling off" period. This allows the Customer 14 days in which to change their mind and cancel the Order.

16.4 The "cooling off" period runs from receipt of this Agreement by the Customer.

16.5 Notice of cancellation by the Customer must be given to the Supplier in writing by Royal Mail registered post. Please see the suggested form of cancellation at the Schedule 2 of this Agreement.

16.6 The Supplier reserves the right to retain monies or seek payment for all reasonable costs incurred in respect of the Order where the Customer has specifically requested in writing that goods or services be supplied within the initial "cooling off" period.

16.7 The Supplier will not supply any goods or services during the initial cooling off period unless a specific written request is received from the Customer to do so.

16.8 If the Customer seeks to cancel the Order outside the cooling off period stated in paragraph 16.1 above the Supplier reserves the right to retain any monies paid by the Customer to cover all reasonable expenses incurred by the Supplier.

16.9 If such retained monies do not cover the reasonable expenses incurred by the Supplier the Supplier reserves the right to seek additional payment from the Customer to cover these reasonable expenses.

17. Termination

17.1 Either party may terminate this Agreement immediately in the event that:

17.1.1 Either party commits a serious, grave or material breach or persistent breaches of this Agreement including non-performance, default or neglect of its duties, responsibilities and obligations under this Agreement, and

17.1.2 Such breach remains unremedied for a period of 30 days from written notice given by the other party specifying the breach and requiring its remedy.

17.2 Furthermore this Agreement may be terminated in the event that:

(a) Either party is unable to pay or has no reasonable prospects of paying their debts the amount or aggregate amount of which equals or exceeds the bankruptcy level within the meaning of the Insolvency Act 1986 [if an individual], or

(b) Either party being a company becomes subject to an administration order or goes into liquidation, (other than for the purpose of amalgamation or reconstruction), or

(c) Has a receiver appointed to administer any of its property or assets, or

(d) Ceases or threatens to cease to carry on Business, or

(e) Either party makes any voluntary agreement or enters into a compromise for the benefit of its creditors, or

(f) The Customer fails to make payment in accordance with the terms of this Agreement.

17.3 Any termination of this Agreement shall be without prejudice to any rights accrued in favour of either party in respect of any breach committed prior to the date of (or giving rise to) such termination and to those provisions of this Agreement which are by their construction intended to survive such termination.

18. Notices

18.1 Any notice given by either of the parties under this Agreement shall be served on the other party and addressed to that party's signatory by email, personal delivery, pre-paid recorded delivery, first-class post, or facsimile transmission to the receiving party.

18.2 Any such notice shall be deemed to be effectively served as follows:

18.2.1 In the case of service by pre-paid recorded delivery or first-class post 48 hours after posting.

18.2.2 In the case of service by email, or facsimile transmission on the next working day.

19. Force Majeure

Neither party shall be liable for delay or failure to perform any

obligation under this Agreement if the delay or failure is caused by any circumstances beyond its reasonable control, including but not limited to Acts of God, war, civil disorder or industrial disputes. If such delay or failure continues for a period of at least Sixty (60) days the party not subject to the force majeure shall be entitled to terminate this Agreement by written notice to the other.

20. Waiver

Failure by either party to enforce any accrued rights under this Agreement is not to be taken as or deemed to be a waiver of those rights unless the waiving party acknowledges the waiver in writing.

21. Assignment

Neither party may assign their rights under this Agreement without the prior consent in writing of the other party.

22. Severance

The paragraphs, sub paragraphs and clauses of this Agreement shall be read and construed independently of each other. Should any part of this Agreement or its paragraphs, sub paragraphs or clauses be found invalid it shall not affect the remaining paragraphs, sub paragraphs and clauses.

23. Joint Venture or Partnership

Nothing in this Agreement shall be construed as creating a partnership, joint venture or an agency relationship between the parties and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party.

24. Entire Agreement

This Agreement sets out the entire agreement and understanding of the parties and is in substitution of any previous written or oral agreement between the parties.

25. Jurisdiction

These terms and conditions shall be construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English court.