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# Terms Conditions & Warranty



## THE ATTENTION OF THE CUSTOMER IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8.

### 1 INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.8.

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

**Customer or Client:** the person, firm or company who purchases the Services from the Supplier.

**Deliverables:** the data, drawings, plans, documents, test results produced by the Supplier for the Customer.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** the order by the Customer for the supply of Services, as set out in the purchase order form of the Customer.

**Practical Completion:** it is the point at which a building project is complete, except for minor defects that can be put right without undue interference or disturbance to an occupier.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification and the provision of consultancy, testing, survey, training, inspection or other services for which the Supplier undertakes to perform the Client under the Contract.

**Site:** the premises where the Services are delivered.

**Specification:** the description or specification for the Services provided in writing (quotation for works or supplied bill of quantities) by the Supplier to the Customer.

**Supplier:** Retain Limited (registered in England and Wales with company number 6602362).

**Supplier Materials:** has the meaning set out in clause 4.1(m).

**Working Day:** is governed by the amount of daylight hours available to undertake roof works in safety, that is to say it can be variable and so during the months of April, May, June, July, August and September it will be between the hours of 0800 and 1700 and in the months of October, November, December, January, February and March it will be between the hours of 0800 and 1600.

**Writing:** includes electronic mail, facsimile transmission and comparable means of communication.

1.2 Construction. In these Conditions, the following rules apply:

- a. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- b. A reference to a party includes its personal representatives, successors or permitted assigns.
- c. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- d. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- e. A reference to writing or written includes faxes and e-mails.

## 2 BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written or provides verbal acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 No Order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in Writing of the Supplier and on condition that the Customer shall indemnify the Supplier in full against all loss including loss of profit, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as the result of cancellation.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the catalogues or brochures of the Supplier, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 The Customer shall be responsible to the Supplier for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Customer, and for giving the Supplier any necessary information relating to the Services within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.
- 2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.8 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of one calendar month from its date of issue.

## 3 SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in writing, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## 4 OBLIGATIONS OF THE CUSTOMER

- 4.1 The Customer shall:
  - a. ensure that the terms of the Order [and any information it provides in the Specification] are complete and accurate;
  - b. co-operate with the Supplier in all matters relating to the Services;
  - c. provide the Supplier, its employees, agents, consultants and subcontractors, with access to the premises of the Customer, office accommodation and other facilities as reasonably required by the Supplier;
  - d. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - e. prepare the premises of the Customer for the supply of the Services and will accept that water ingress may occur at the Site as a result of the water repelling cover being removed and replaced and the Customer should make all reasonable efforts to protect against undue water ingress by the provision of a temporary metal roof which the Supplier can cost and provide for the Customer if requested;
  - f. provide electricity water and ablutions for the Supplier at the Site and if they should not be made available by the Customer, the Supplier reserves the right to charge the Customer a hire charge to supply necessary electricity, water and ablutions services;
  - g. pay the Supplier on a per tonne basis for the removal of any waste produced as a result of the provision of Services by the Supplier;
  - h. be responsible for the removal of any fly tipping that may occur on the Site during the provision of Services by the Supplier;
  - i. pay for the provision of heras fencing required by the Supplier at the Site for the purposes of security at the hirers rate plus 20% administration charge;
  - j. provide Health and Safety requirements to the Supplier in writing prior to the commencement of the Contract;
  - k. ensure maintenance of the roof sheets is undertaken annually;

- l. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
  - m. keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the premises of the Customer in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the written instructions or authorisation of the Supplier.
  - n. not enter the roof area without wearing appropriate harnesses and suitable PPE and the Supplier will not be held responsible for the provision of such equipment
  - o. be under a duty to mitigate any losses howsoever caused.
- 4.2 If the performance of the Supplier of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- a. the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the performance of the Supplier of any of its obligations;
  - b. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the failure or delay of the Supplier to perform any of its obligations as set out in this clause 4.2;
  - c. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 5 CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be on a time and materials basis:
- a. the Charges shall be calculated in accordance with the standard fee rates of the Supplier, taking into consideration the Working Day and as set out in the Specification Payment will be 30% of contract value paid within 5 days of placement of Order. A further 50% of contract value will be paid within 5 days from delivery of material, material will not be touched except for unload in this time until this is paid. The Supplier shall be entitled to charge site reoccupation fees should no payment be showing as cleared funds by close of business (5pm) on the fifth day, these will be charged on a full day basis regardless of what time the payment is received during the subsequent Business Days. Charges for re-occupation will be reflective upon amount of operatives onsite and hire that would need to be reinstated. The remaining 20% of the contract value will be paid within 14 days of practical completion. Alternative payment schedules are to be agreed prior to ordering of materials and must be in writing. All prices quoted are valid for one calendar month only or until earlier acceptance by the Customer.
- b. the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.2 The Supplier reserves the right to increase its standard fee rates, by giving notice to the Customer at any time before commencement or during the Service, to increase the price of the Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (such as adverse weather affecting programme of works, without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) or any other delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions. The Supplier will give the Customer written notice of any such increase 1 week before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 1 week of the date of the notice provided by the Supplier and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 1 weeks' written notice to the Customer.
- 5.3 The Supplier shall invoice the Customer on completion of the Services.
- 5.4 The Customer shall pay in pounds sterling each invoice submitted by the Supplier:
- a. on the date of completion; or
  - b. within the terms stated on the issued invoice; and
  - c. in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (Due Date), the Supplier shall have the right to charge interest on the overdue amount at the rate of 8% per annum above the then current base rate of Bank of England accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

5.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

5.8 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:

- a. Cancel the Contract or suspend any further provisions of the Services to the Customer. Any such period of suspension shall be disregarded for the purpose of contractual time limits previously agreed for the completion of the services.
- b. Charge the Customer the costs of recovery of any outstanding amount including legal costs on a full indemnity basis and disbursements and any bank charges incurred on representing cheques or requesting special clearance thereof.

## 6 INTELLECTUAL PROPERTY RIGHTS

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the use by the Customer of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

6.3 All Supplier Materials are the exclusive property of the Customer.

## 7 CONFIDENTIALITY

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the business of Disclosing Party or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the obligations of the Receiving Party under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 7 shall survive termination of the Contract.

## 8 LIMITATION OF LIABILITY

8.1 Nothing in these Conditions shall limit or exclude the liability of the Supplier for:

- a. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
- b. fraud or fraudulent misrepresentation; or

c. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.2 Subject to clause 8.1:

- a. the Supplier warrants to the Customer that all asbestos samples will be analysed by an accredited UKAS laboratory;
- b. the Supplier guarantees its workmanship for one year;
- c. any works not undertaken by the Supplier that affect the integrity of the materials such as fitting flues or any works that penetrate the roof material installed will negate the warranty;
- d. coating to metal roof sheets will not be included in any guarantee as the manufacturers guarantee will take precedence unless a cut edge to the coating of the roof sheets has been made on site and has not been treated by the Supplier;
- e. annual maintenance of the roof area is to be undertaken and evidenced to the Supplier by the Customer in the event an application under the guarantee is made by the Customer and failure to do so will negate the manufacturers guarantee;
- f. the guarantee is only valid if the Customer complies with the manufacturers instructions;
- g. guarantee revisits will only be undertaken by the Supplier if an independent report by a suitably qualified surveyor has been provided by the Customer to the Supplier;
- h. the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
- i. the Customer shall indemnify and keep the Supplier indemnified against all costs, expenses, damage or other losses incurred or suffered by the Supplier as a result of any claims made against the Supplier due to the infringement of any regulation, enactment or legislation by the Customer;
- j. the Services are provided to and for the benefit of the Customer exclusively and all collateral warranties are hereby excluded. The Supplier shall not be liable to any third party who seeks to use the Services without the Supplier's express written permission for any loss, damage, expense or injury of any kind whatsoever, consequential or otherwise, arising out of or due to or caused by any defects or deficiencies of any sort in the Services whether such defects or deficiencies are caused by the negligence of the Supplier or its employees or agents or otherwise;
- k. the total liability of the Supplier to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed a multiple of 20 (twenty) times the Supplier's charges for the provision of the Services under the Contract;

- l. the Supplier shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Customer which are incomplete, incorrect, inaccurate, or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer.
- 8.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 This clause 8 shall survive termination of the Contract.
- ## 9 TERMINATION
- 9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- a. the other party commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing of the breach;
  - b. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - c. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - d. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - e. the other party (being an individual) is the subject of a bankruptcy petition order;
  - f. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - g. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- h. a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - i. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - j. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(b) to clause 9.1(i) (inclusive);
  - k. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - l. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 9.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party one month's written notice.
- 9.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- ## 10 CONSEQUENCES OF TERMINATION
- On termination of the Contract for any reason:
- a. the Customer shall immediately pay to the Supplier all of the outstanding unpaid invoices and interest of the Supplier and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - b. the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the premises of the Customer and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - c. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - d. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 11 GENERAL

### 11.1 Force majeure:

- a. For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- b. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- c. If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 12 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

### 11.2 Assignment and subcontracting:

- a. The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- b. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

### 11.3 Notices:

- a. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- b. Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- c. This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

### 11.4 Waiver:

- a. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- b. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

### 11.5 Severance:

- a. If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- b. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

11.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.8 Variation: Except as set out in these Conditions, any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.

11.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.



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