

## Contractor Terms and Conditions

### **Definitions**

- 1) “Conditions” means these terms and conditions as amended from time to time.
- 2) “Contract” means the contract between the Contractor and the Client for the supply of Goods and/or Services in accordance with these Conditions.
- 3) “Client” is the person or firm who instructs the Contractor to carry out the Works and therefore purchases the Goods and/or Services included within the Works.
- 4) “Contractor” means Sense Design Build Limited.
- 5) “Goods” means the goods (or any part of them) set out in the Proposal.
- 6) “Services” means the services supplied by the Contractor to the Client as set out in the Proposal.
- 7) “Proposal” is the most recent proposal, including any specification and amendments thereto, which has been issued by the Contractor to the Client setting out the Works to be performed and the price to be paid by the Client to the Contractor in relation to the Works.
- 8) “Order” means the order to which these terms and conditions are attached and which constitutes the written acceptance of the Proposal.
- 9) “Contract Price” is the price included in the Proposal, which may be adjusted in accordance with these conditions, that the Client is to pay the Contractor in consideration for providing the Works.
- 10) “Site” is the property or place where the Works described in the Proposal are to be carried out.
- 11) The “Works” are the works, including the supply of Goods and/or Services, described and set out in the Proposal and any associated document expressly referred to in the Proposal.

### **Basis of Contract**

- 1) The Order constitutes an offer by the Client to purchase the Goods and Services in accordance with these Conditions.
- 2) The Order shall only be deemed to be accepted when the Contractor issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 3) Any samples or drawings issued by the Contractor and any descriptions of the Goods or illustrations or descriptions of the Services are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 4) These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 5) The Proposal shall not constitute an offer and is only valid for a period of 30 days from its date of issue.
- 6) All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### **The Contractor’s Obligations**

The Contractor shall supply the Services required to complete the Works in accordance with the applicable law, the Conditions, and in a workmanlike manner.

- 1) The Contractor shall use all reasonable endeavours to meet any date(s) for completion of the works specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for the performance of the works.
- 2) Irrespective of whether there are date(s) for completion are included in the Proposal or a programme agreed or not, The Contractor shall use all reasonable endeavours to complete the Works regularly and diligently and within a reasonable time.
- 3) If the progress of the Works is delayed for any reason that is outside the reasonable control of the Contractor (“Qualifying Delay”), the Contractor shall notify the Client of the delay and shall provide an estimate of the delay or likely delay to any dates(s) for completion included in Proposal and the dates s) for completion will be extended by the period of the Qualifying delay.
- 4) The Contractor shall be entitled to be compensated for any loss that the Contractor reasonably incurs as a result of any Qualifying Delay and the Contract Price shall be adjusted accordingly.
- 5) The Contractor shall notify the Client of the date when, in the Contractor’s opinion, the Works are practically complete (“Date of Practical Completion”).

The Contractor warrants that any Goods supplied which are required to complete the Works and which are set out in the Proposal shall:

- conform in all material respects with their description; and
- will be free from material defects in design, material and workmanship.

### **The Client’s Obligations**

The Client shall, at all times, provide the Contractor with clear and uninterrupted access to the Site to allow the Contractor to provide the Works, unless any specific access restraints have been agreed and are set out in the Proposal.

- 1) The Client shall be responsible for the preparation of the Site to allow the Works to commence including, but not limited to, the relocation of all the Client’s furniture and equipment, unless it has been agreed, and stated in the Proposal, that it is the Contractor’s responsibility to move the Client’s furniture and equipment.
- 2) If the Contractor agrees to move (or relocate) the Client’s furniture and equipment, or the Client fails to relocate the same prior to the Works commencing, then the Contractor accepts no liability for any loss and or damage that may be caused for any reason while the Contractor is moving and or relocating such furniture and equipment. In such circumstances, if it had not been stated in the Proposal that the Contractor would move or relocate the furniture and equipment, the Contractor shall be entitled to recover its reasonable charges for doing so.
- 3) Unless specified otherwise in the Proposal, the Contractor shall not be responsible for the cutting out or any adaptations to the existing structures to the Site and all such cutting out or adaptations shall be undertaken by the Client prior to the commencement of the Works.
- 4) The Client shall be responsible for ensuring the adequacy of all existing structures that may be affected by the Works.
- 5) The Client shall be responsible for the supply of all power, lighting and waste disposal that is necessary to provide the Works.
- 6) If the Works includes the laying of any new floor finishes the Contractor shall not be liable to the Client for any defect, loss and/or damage that is caused because of moisture being present within the concrete sub-floor; and the Client shall be responsible

for ensuring the moisture levels are satisfactory prior to the Contractor laying any new floor covering as part of the Works unless the parties agree otherwise in the Proposal.

- 7) Unless specified otherwise in the Proposal, the Contractor shall not be responsible for the cutting out or any adaptations to the existing structures to or surfaces in the Site and all such cutting out or adaptations shall be undertaken by the Client prior to the commencement of the Works.
- 8) The Client shall be responsible for ensuring the adequacy of all existing structures, services and surfaces that maybe affected by the works.

### **Defects**

If a defect is discovered in the Works the Client shall immediately notify the defect to the Contractor, and the Contractor shall use all reasonable endeavours to rectify the defect within a reasonable time after receiving such notice.

The Contractor shall correct all those defects that are notified by the Client at its own cost for a period of 6 months from the Date of Practical Completion, provided always that:

- the defect has been notified by the Client to the Contractor in a timely manner after being discovered by the Client; and
- the defect was caused by an error or omission of the Contractor.

The Client will be invited to undertake their own review and snagging of the installation once offered to them by the Contractor. On phased programmes this will apply on the completion of each phase.

### **Payment**

The Payment terms for the Contract are as follows.

- 1) All payments shall be made to the Contractor by the Client in accordance with the agreed stage payment plan specified in the Proposal.
- 2) If no payment plan is agreed in the Proposal, the Contractor shall be entitled to receive interim payments from the Client at fortnightly intervals, and each interim payment shall become due 7 days after receipt of the Contractor's invoice and/or application for payment. The Contractor shall be entitled to make an application for payment (which may be in the form of an invoice or may accompany an invoice) any time after achievement of the stage set out in the payment plan or before the 1st or 15th day of each month if no payment plan is agreed.
- 3) The final date for payment of the invoice shall be no later than 14 days from the invoice date.
- 4) If the Client fails to pay the Contractor an amount which is due by the final date for payment, the Contractor shall have the right to suspend all his obligations under the Contract by first giving the Client 7 days' notice of his intention to suspend the Works under this provision.
- 5) The title in any moveable materials or goods (whether delivered to the Site or not) shall remain vested with the Contractor until the Contractor has received payment in full for such moveable materials or goods.
- 6) All costs in the Proposal are exclusive of VAT but all payments by the Client shall be inclusive of VAT, after adding VAT, and shall be made when the invoice becomes payable.
- 7) Payment shall be made in accordance with the following schedule.
  - a) 40% of the Contract Price prior to the date of commencement of the Works.
  - b) 30% of the Contract Price within 1 week of the date of commencement of the Works.

- c) 25% of the Contract Price within 3 weeks of the date of commencement of the Works.
  - d) 5% upon the Date of Practical Completion or occupation of the Site (in part or full) of the Site by the Client, whichever is the earlier.
- 8) Should the Client terminate the Works either before or after commencement on site:
- a) the Contractor has the right to withhold any stage payment already made; or
  - b) if the Contractor has reasonably incurred costs prior to the date of termination which are greater than the amount of any payment received, the Contractor has the right to withhold any payment already made and the Client shall be liable to pay to the Contractor the balance; or
  - c) if no deposit has been paid and the Contractor has reasonably incurred costs or irrevocably committed to costs prior to the date of termination, the Client shall be liable to pay to the Contractor the full amount of such reasonably incurred costs.
- 9) In the event of the Client's insolvency or the Client failing to pay for any Goods when due, then the Contractor is entitled to a general lien over all Goods of the Client in the Contractor's possession or under its control.
- 10) The Client shall not be entitled to deduct from or set off against any payment which is due to the Contractor hereunder any sums which the Contractor is or may be liable to pay the Client, howsoever arising.

### **Variations**

The Client may issue instructions to the Contractor that may vary quality, quantity or design (the scope) of the Works ("Variation"). An alteration to access to the Site, limitations of working spaces or working hours, or an alteration to the planned execution of the Works in a specific order or in certain conditions is also a Variation. Within 7 days of receiving an instruction to undertake a Variation the Contractor shall provide the Client with a revised Proposal, which will include any delay to the progress of the Works and additional cost arising from the proposed Variation. No Variation or instruction will vitiate this Contract.

- 1) Once the Client and the Contractor have agreed the Variation, the Contract Price shall be adjusted accordingly, and the Variation shall be deemed to be included in the Order for the Works.
- 2) Should no agreement be possible either regarding whether or not the Works are a Variation or regarding the cost of the Variation, the Contractor shall proceed with the instruction to carry out the Works and shall be entitled to be paid its costs in supplying a Variation plus 35%.

### **Insurances**

Unless stated otherwise in the Proposal.

- 1) the Contractor shall take out and maintain an all risks insurance policy to cover any physical loss and/or damage to the Works (and any moveable materials and goods delivered to the Site), and such insurance shall cover loss caused by specified perils namely fire, lightning, explosion, storm, flood, escape of water from any tank, apparatus or pipe, earth quake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion but excluding nuclear contamination or pressure waves caused by aircraft or aerial devices or acts of terrorism (All Risks Cover)
- 2) If the Works are carried out on or in an existing structure, the Client is responsible for taking out and maintaining All Risks Cover to cover loss or damage to existing structures and the Works.
- 3) The Contractor shall maintain appropriate public liability insurance and employers' liability insurance policies.

### **Termination**

The Contractor shall be entitled to terminate the Contract with immediate effect by giving written notice to the Client if:

- 1) the Client fails to pay the Contractor, and any tranche of payment has is overdue by more than one month, or
- 2) the Client fails to provide adequate access for the Contractor to provide the Works as provided for under these Conditions, or
- 3) the Client commits any other material breach of the Contract.

### **Limit of Liability**

- 1) Save as otherwise provided in these Conditions, neither the Contractor nor the Client shall be liable to the other for any loss of profit or business opportunity, or any indirect or consequential losses, that may arise from any breach of the contract.
- 2) Insofar as is permitted by the applicable law, the Contractor's total liability to the Client for all claims made by the Client under the contract shall be limited to the Contract Price.

### **Dispute Resolution**

Either party may, at any time, refer any dispute or difference arising under the Contract to Adjudication in accordance with Part I of the Scheme for Construction Contracts (England and Wales) Regulation 1998 (Amendment) (England) Regulation 2011 or any subsequent amendment thereto.

### **GDPR and Client Confidentiality**

The Contractor undertakes that any confidential information which is acquired from the Client will not be used or disclosed to any other company or person, except when required to do so by law.

If required, the Contractor will sign and adhere to the reasonable conditions of a reasonable NDA used by the Client.

The contract data including contact details and correspondence are not to be considered confidential for the purposes of GDPR and both the Client and the Contractor accept that the transfer of data other than that required to be covered by an NDA or other instrument shall not be considered confidential or under GDPR.

It is agreed that whilst no personal data as defined under GDPR will be exchanged between the parties it is agreed that if during the Works it becomes apparent that it is necessary to exchange such personal data then the Contractor will be the data processor and the client will be the data controller and the parties will enter into a data processing agreement.

### **General**

- 1) The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 2) Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 3) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 4) Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

- 5) The Contractor is not responsible for ascertaining whether any planning permission,

party wall agreements, licence for alterations or any other agreements are required to allow the Works to be carried out. Any such permissions, consents and agreements are the responsibility of the Client. If the Works are required to comply with any such agreements these are to be attached to the Proposal. If after the date of this Order the Client informs the Contractor of any such permissions, consents, licenses, or agreements, any changes to the Works to deal comply with the same will be treated as Variation.

- 6) The Contractor shall when carrying out any design in relation to the Works exercise the reasonable skill and care to be expected of a competent designer experienced in carrying out work of a similar size, nature, value, complexity and scope to the Works. Nothing in this contract shall be interpreted as imposing an absolute obligation in relation to any design or supervision related to this carrying out of the Works.
- 7) For the purposes of this agreement the Contractor shall act as the Principle Designer and The Principle Contractor.