

TERMS AND CONDITIONS

The following definitions will apply in relation to these Terms and Conditions, the Agreement and the Estimate.

1. Definitions

Agreement	the agreement between the Supplier and the Customer for the supply of the Services in accordance with these Terms and Conditions together with the Estimate/Quote;
Charges	the charges payable in Sterling by the Customer for the supply of the Services in accordance with the Estimate and any additional Estimates and/or Day Work agreed between the Supplier and the Customer during the Term and subject to this Agreement. GST payable at the current rate will be added to the Charges;
Customer	Shall be as set out in the Estimate;
Customer Default	any act or omission by the Customer or failure by the Customer to perform any relevant obligations;
Data Subject	an individual who is the subject of Personal Data;
Day Work	means work undertaken in addition to the Estimated Work which will be at the current rate at the time the Services are carried out and charged in addition to the Estimate and shall be notified to the Customer (in advance where possible) of the Day Work being undertaken during the Term;
Estimate	means an estimate provided by the Supplier which is not a fixed amount and is subject to change during the course of the supply of the Service, subject to the Exclusions, and is valid for a period of 60 days from the date of issue of the Estimate;
Estimated Work	the Services provided within the Estimate;
Exclusions	means the items set out in Clause 6 or the Estimate which are not included within the Service;
GST	means the Goods and Service Tax (Jersey) Law 2007;
Order	means a copy of the Estimate and this Agreement signed by the Customer;
Personal Data	shall have the same meaning as the definition under Article 1 of the Data Protection (Jersey) Law 2018;
Provisional Sums	any sums which the Supplier may require which sums will be added or offset (as applicable) against the Charges in the final invoice.
Services	the Services listed in the Estimate (Estimated Work) and/or Quote (Quoted Work) and any agreed Day Work during the term of this Agreement;
Specification	the description or specification of the Services as may be provided in writing by the Supplier to the Customer during the Term';

Supplier	K & D Builders (2008) Limited;
Supplier Materials	materials, equipment, documents and other property belonging to the Supplier;
Term	the term of this Agreement being the time taken to complete the Services or otherwise terminated in accordance with this Agreement;
Terms and Conditions	the agreement between the Supplier and the Customer for the supply of the Services in accordance with these conditions together with the Estimate. The Supplier may change these Terms & Conditions upon giving the customer three months' notice of any changes.

2. Basis of Agreement

- 2.1. The Order constitutes an offer by the Customer to purchase the Services in accordance with this Agreement.
- 2.2. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order, at which point, and on which date the Agreement shall come into existence.
- 2.3. The Supplier shall not be under any obligation to provide an Estimate or carry out any Day Work for the Customer and shall only be bound by Estimates and Day Work provided in writing by a duly authorised representative of the Supplier. The Supplier shall not be bound by any Estimates or Day Work given orally.
- 2.4. Any samples, drawings, descriptive matter or advertising issued by the Supplier are issued and published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement.
- 2.5. The Agreement shall apply to the exclusion of any other terms the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

3. Supply of Services

- 3.1. The Supplier shall supply the Services to the Customer in accordance with the relevant Schedule to the Agreement and any Specification in all material respects.
- 3.2. The Supplier shall use all reasonable endeavour to meet any performance dates as requested to it in writing by the Customer, but any such dates shall be estimates only and shall not be binding upon the Supplier.
- 3.3. The Supplier warrants to the Customer that the Services will be provided using prudent local building practices.

4. Customer Obligations

- 4.1. The Customer shall:
 - 4.1.1. ensure that the terms of the Order and any information it provides in the Schedules to the Agreement and any Specification are complete and accurate;
 - 4.1.2. co-operate with the Supplier in all matters relating to the Services;

- 4.1.3. provide the Supplier, its employees, agents, consultant and sub-contractors with access to the Customer's premises and other facilities, as reasonably required by the Supplier, including, but not limited to, adequate power supply and running water and a toilet. If the Customer cannot provide a toilet then the Supplier will invoice the cost of providing a portalo to the Customer.
 - 4.1.4. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Service, and ensure that such information is complete and accurate in all material respects;
 - 4.1.5. prepare the Customer's premises for the supply of the Service;
 - 4.1.6. obtain and maintain all necessary licences, permission and consents which may be required for the Services before the date upon which the Services are to start;
 - 4.1.7. comply with all applicable laws as are relevant to the Services, including health and safety laws;
 - 4.1.8. keep all Supplier Materials at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose or use the Supplier Material other than in accordance with the Supplier's written instructions or authorization; and
 - 4.1.9. comply with any additional obligations as set out in the any Schedule to the Agreement or the Specification.
- 4.2. If the Supplier's performance of any of its obligations under the Agreement is prevented or delayed by any Customer Default:
- 4.2.1. without limiting or affecting any other right or remedy available to it, the Supplier shall 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 in each case to the extend the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 4.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of the its obligations as set out in this Clause 4.2; and
 - 4.2.3. 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 Payments

- 5.1. The Charge for the Services shall be in accordance with the Estimate except where any of the Exclusions apply.
- 5.2. In addition, the Supplier shall be entitled to charge the Customer for any Day Work and Materials at the current rate.
- 5.3. The Supplier shall invoice the Customer as agreed between them.
- 5.4. The Customer shall pay each interim invoice submitted by the Supplier within 7 days of the date of the Supplier's invoice and in full and cleared funds to the bank account included on each invoice, all other invoices are payable within 14 days.

- 5.5. The Supplier may require the Customer to pay for Supplier Materials in advance of placing the order for the Supplier Materials, otherwise they will be invoiced at the same time as the Charges.
- 5.6. If the Customer fails to make a payment due to the Supplier under the Agreement by the due date, then, without limiting the Supplier's remedies under Clause 9 the Customer shall pay interest on the overdue sum from the due date until the payment of the overdue sum at the rate of 2.5% per month above the base rate of the Lloyds Bank Offshore Limited.
- 5.7. All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Exclusions

- 6.1. The Supplier is not responsible for, or licensed to handle, any asbestos or materials containing asbestos. Should any be found whilst carrying out the Service a regulated appropriately qualified specialist shall be engaged by the Customer. Any investigation(s) (including but not limited to the detection, surveying, reporting and removal of asbestos), would be carried out by such appropriately qualified specialist, at the cost of the Customer and are not included in the Estimate.
- 6.2. Where an Estimate has been supplied to the Customer, the total charge to the Customer referred to in the Estimate may be revised in the following circumstances:
 - 6.2.1. If after submission of the Estimate, the Customer instructs the Supplier (whether orally or in writing) to carry out additional works not referred to in the Estimate;
 - 6.2.2. If after submission of the Estimate, there is an increase in the cost of materials;
 - 6.2.3. If after submission of the Estimate, it is discovered that further works need to be carried out which were not anticipated when the Estimate was prepared;
 - 6.2.4. If Works need to be carried out outside of normal working hours 08.00 and 16.40 on a usual business day;
 - 6.2.5. If, at any time during the carrying out of the Services, it is discovered that further works need to be carried out which were not anticipated when the Estimate was prepared; or
 - 6.2.6. If after submission of the Estimate, it is discovered that a manifest error was made when the Estimate was prepared.
- 6.3. In the event that clause 6.2 applies, the parties will agree whether the Estimate is revised or whether the additional Service is carried out as Day Work.
- 6.4. The Supplier is not responsible for any warranties or guarantees in respect of Supplier Materials or other items or equipment ordered by the Supplier for the Customer. The Customer must refer to the manufacturer's own terms and conditions in relation to any warranties or guarantees.

7. Data Protection and Data Processing

- 7.1. The Customer and the Supplier acknowledge that for the purposes of the Data Protection (Jersey) Law 2018 the Customer is the Data Controller and the Supplier is the data processor in respect of any Personal Data held.

- 7.2. The Supplier shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any other purpose than those expressly authorised by the Customer.
- 7.3. Supplier shall take reasonable steps to ensure the confidentiality of all its employees who have access to the Personal Data.
- 7.4. Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, regulation, and rules.
- 7.5. The Supplier warrants that, having regard to the state of technological development and the costs of implementing any measures, it will:
 - 7.5.1. take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
 - 7.5.1.1. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - 7.5.1.2. the nature of the data to be protected; and
 - 7.5.1.3. take reasonable steps to ensure compliance with those measures.
- 7.6. Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this Clause 7.
- 7.7. The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Customer's instructions.
- 7.8. The Supplier may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:
 - 7.8.1. is on terms which are substantially the same as those set out in the Agreement; and
 - 7.8.2. terminates automatically on termination of the Agreement for any reason.
- 7.9. The Supplier will provide the Customer with a separate schedule which the Customer will sign and return to the Supplier to consent to the processing of their Personal Data by the Supplier.

8. Limitation of Liability: The Customer's Attention is Particularly Drawn to this Clause

- 8.1. Nothing in the Agreement shall limit or exclude the Supplier's liability for:
 - 8.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; and
 - 8.1.2. fraud or fraudulent misrepresentation.

- 8.2. Subject to Clause 8.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:
- 8.2.1. loss of profits;
 - 8.2.2. loss of sales or business;
 - 8.2.3. loss of agreements or contracts;
 - 8.2.4. any costs associated with the inability of the Customer to use the premises during the Services;
 - 8.2.5. loss of anticipated savings;
 - 8.2.6. loss of use or corruption of software, data or information;
 - 8.2.7. loss of or damage to goodwill; or
 - 8.2.8. any indirect or consequential loss.
- 8.3. Subject to Clause 8.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to the total amount of the total Charges paid under the Agreement].
- 8.4. This Clause 8 shall survive termination of the Agreement.

9. Termination

- 9.1. Without affecting any other right or remedy available to it, either party may terminate the Agreement by giving the other party shall immediately terminate the Services.
- 9.2. Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 9.2.1. the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of that party being notified in writing to do so;
 - 9.2.2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 9.2.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 9.2.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

Without affecting any other right or remedy available to it, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Agreement on the due date for payment.

9.3. Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Agreement or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Agreement on the due date for payment, the Customer becomes subject to any of the events listed in 9.2.2 to Clause 9.2.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

10. Consequences of Termination

10.1. On termination of the Agreement:

10.1.1. the Customer shall immediately pay to the Supplier all the Supplier's outstanding unpaid invoices and interest 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;

10.1.2. the Customer shall return all 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 Customer's premises 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 the Agreement.

10.2. Termination of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

10.3. The Supplier shall be entitled to invoice the Customer for its reasonable time and expenses incurred in removing its tools and equipment from the Customer's premises.

10.4. Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the Agreement shall remain in full force and effect.

11. General

11.1. Force majeure

Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2. Assignment and other dealings

11.2.1. The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.

11.2.2. The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of the Supplier.

11.3. Confidentiality

- 11.3.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 11.3.2.
- 11.3.2. Each party may disclose the other party's confidential information:
 - 11.3.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 11.3; and
 - 11.3.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.

11.4. Entire agreement

- 11.4.1. The Agreement 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.
- 11.4.2. Each party acknowledges that in entering into the Agreement 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 Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Agreement.
- 11.4.3. Nothing in this clause shall limit or exclude any liability for fraud.

11.5. Variation

Except as set out in these Conditions, no variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.6. Waiver

A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.7. **Severance**

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

11.8. **Notices**

11.8.1. Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or by pre-paid post or other next working day delivery service at its registered office (if a company) or to the Customer's address as set out in the Agreement.

11.8.2. Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting or at the time recorded by the delivery service.

11.8.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

11.9. **Governing law**

The Agreement, 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 the Island of Jersey.

11.10. **Jurisdiction**

Each party irrevocably agrees that the Courts of the Island of Jersey shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.