

TERMS AND CONDITIONS OF ENGAGEMENT AS MAIN CONTRACTOR
Bespoke Building Services North East Ltd
(hereinafter referred to as “the Contractor”)

Interpretation

In these Conditions:

'Conditions' means the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Employer and the Contractor

'Contract' means the contract made between the Employer and the Contractor

'Contract Sum' means the agreed sum to be charged by the Contractor for providing the Goods and Services referred to in the Contract

'Employer' means the party requesting the Goods and Services to be provided

'Employer's Equipment' means any equipment, systems, cabling or facilities provided by the Employer and used directly or indirectly in the supply of the Goods and Services

'Deliverables' means all documents, products, materials and plant developed by the Contractor or its agents, sub-contractors, consultants and employees in relation to the Goods and Services including any deliverables specified in the Contract or Quotation

'Document' includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form

'Goods' means the goods and materials (including any instalment of the goods or any parts for them) which the Contractor is to deliver in accordance with these Conditions

'Intellectual Property Rights' means all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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 right, 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 worldwide

'Material' means all documents, information and materials provided by the Employer relating to the Services including (without limitation) computer programmes, data, reports, specifications, surveys and any other such information required to enable the Contractor to effectively carry out the Services

'Pre-Existing Materials' means all Documents, information and materials provided by the Contractor relating to the Goods and Services which existed prior to the commencement of the Contract.

'Provisional Sum' includes a sum provided for work that the Employer may or may not decide to have carried out, or which cannot be accurately specified in the Contract

'Quotation' means the quotation for Goods and Services provided by the Contractor

'Services' means the services (including any part performance thereof) to be provided by the Contractor under the Contract together with any other services which the Contractor provides or agrees to provide to the Employer

'Site' means the site where the Contractor will provide the Services set out in the Contract

'Statutory Requirements' means any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Goods or Services or the performance of any obligations under the Contract and any regulation or bye-law of any local authority or statutory undertaker which has jurisdiction with regards to the Goods and Services

'Contractor's Equipment' means any equipment, including tools, systems, cabling or facilities, provided by the Contractor or its sub-contractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which the title passes to the Employer.

'Variation' means the alteration or modification of the design, quality or quantity of the work included in the Contract and accompanying specification including the addition, omission or substitution of any work and the alteration of the kind or standard of any of the Materials or Goods to be used in the work

'VAT' means value added tax chargeable under English law for the time being and any similar additional tax

'Writing/Written' includes facsimile transmission, electronic mail and comparable means of communication.

Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. The headings in these Conditions are for convenience only and shall not affect interpretation.

Applicability of Conditions

These Conditions shall:-

Apply to and be incorporated into the Contract; and

Prevail over any inconsistent terms and conditions contained, or referred to, in the Employer's purchase order, confirmation of order, acceptance of a Quotation, or specification or other Document supplied by the Employer, or implied by law, trade custom, practice or course of dealing.

The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter

Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty, whether made negligently or innocently (other than for breach of contract) as expressly provided in the Contract.

No variation to these Conditions shall be binding unless agreed in writing between the authorized representatives of the Employer and the Contractor.

Any advice or recommendation given by the Contractor or its employees or agents to the Employer or its employees or agents as to the storage, application of use of the Goods which is

not confirmed in writing by the Contractor is followed or acted upon entirely at the Employer's own risk, and accordingly the Contractor shall not be liable for any such advice or recommendation which is not so confirmed.

Any typographical, clerical or other error or omission in any sale literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Contractor shall be subject to correction without any liability on the part of the Contractor.

Documents and Specifications

The Employer shall be responsible to the Contractor for ensuring the accuracy of the terms of any documentation (including any applicable specification) submitted by the Employer, and for giving the Contractor any necessary information relating to the Goods and Services within a sufficient time to enable the Contractor to perform the Contract in accordance with its terms.

The quantity, quality and description of, and any specification for, the Goods and Services shall be those set out in the Contract and accompanying specification (where applicable).

If the Goods are to be manufactured or any process is to be applied to the Goods or the Services are to be provided by the Contractor in accordance with a specification submitted by the Employer, the Employer shall indemnify the Contractor against all loss, damages, costs and expenses awarded against or incurred by the Contractor in connection with or paid or agreed to be paid by the Contractor in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Contractor's use of the Employer's specification.

The Contractor reserves the right to make any changes in the specification of the Goods and Services which are required to conform with any applicable statutory or EC requirements or, where the Goods and Services are to be supplied to the Contractor's specification, which do not materially affect their quality or performance or provision.

Charges and Payment

In consideration of the provision of the Goods and Services by the Contractor, the Employer shall pay the Contract Sum, adjusted as necessary, in the manner agreed, including the payment of any deposit if required, and the payment of all instalments, if payment by instalments has been agreed

The Employer shall pay each and every payment in full by the date agreed, either by cheque or into a bank account nominated by the Contractor

Without prejudice to any other right or remedy that it may have, if the Employer fails to pay the Contractor in accordance with these Conditions the Contractor may:

Suspend all services until payment has been made in full; and

Claim interest on any outstanding payments at a rate of 8% per annum above the current base lending rate from time to time of the Bank of England, accruing on a daily basis

Time for payment shall be of the essence of the Contract

All sums payable to the Contractor under this Contract shall become due immediately on its termination

The Contractor may, without prejudice to any other rights it may have, set off any liability of the Employer to the Contractor against any liability of the Contractor to the Employer

Subject to Clause 12.1 should the Employer's default in payment continue for a continuous period of 7 days, the Contractor shall be entitled to terminate the Contract on giving the

Employer written notice of termination. The Contractor shall in addition be entitled to claim from the Employer the loss of profit suffered by the Contractor on the work left to complete at the date of termination

Commencement, Duration and Performance

The Goods and Services supplied under the Contract shall be provided by the Contractor to the Employer from the date specified in the Contract or as otherwise agreed between the parties. The Contractor shall not be obliged to continue to provide Services or deliver any Goods to the Employer until any outstanding payments in respect of the Goods or Services have been paid by the Employer in full and in cleared funds.

The Goods and Services supplied under the Contract shall continue to be supplied until the Services have been completed in accordance with the Contract or, if earlier, until the Contract is suspended or terminated in accordance with these Conditions

Delivery of the Goods shall be completed on the Goods arrival at the site

Any dates quoted for delivery of the Goods and performance of the Services are approximate only and the Contractor shall not be liable for any delay in delivery of the Goods and performance of the Services however caused. Time for delivery and performance shall not be of the essence of the Contract unless previously agreed by the Contractor in Writing. The Goods may be delivered and the Services performed by the Contractor in advance of the quoted date upon giving reasonable notice to the Employer.

The Contractor may deliver the Goods by instalments, and any delay in delivery or defect in an instalment shall not entitle the Employer to cancel any other instalment of the Goods.

Risk and property

Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Employer until the Contractor has received in cash or cleared funds payment in full of the price of the Goods and all other goods and services agreed to be sold by the Contractor to the Employer for which payment is then due.

Until such time as the property in the Goods passes to the Employer, the Employer shall hold the Goods as the Contractor's fiduciary agent and bailee, and shall keep the Goods separate from those of the Employer and third parties and properly stored, protected and insured and identified as the Contractor's property.

Until such time as the property in the Goods passes to the Employer the Contractor shall be entitled at any time to require the Employer to deliver up the Goods to the Contractor and, if the Employer fails to do so forthwith, to enter upon any premises of the Employer or any third party where the Goods are stored and repossess the Goods. The Employer shall give information relating to the whereabouts of the Goods as the Contractor may from time to time require.

The Employer shall not be entitled to sell or pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Contractor, but if the Employer does so all moneys owing by the Employer to the Contractor shall (without prejudice to any other right or remedy of the Contractor) forthwith become due and payable.

Liability

Nothing in this condition shall limit or exclude any liability for fraud.

The Contractor's total liability to the Employer for claims made by the Employer against the Contractor in contract, tort and/or common law, including negligence or breach of statutory duty, arising in connection with the performance of the Contract shall be limited to a sum not exceeding twice the Contract Sum or £25,000, whichever is lower. This clause does not apply to claims made against the Contractor involving death, personal injury or fraud

The Contractor shall be under no liability in respect of any defect in the Goods and Services arising from any drawing, design or specification supplied by the Employer;

The Contractor shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Contractor's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Contractor's approval;

Subject to Clause 12.1 the Contractor shall be under no liability under any warranty, condition or guarantee provided to the Employer if the total price for the Goods and Services has not been paid by the final date for payment;

Any warranty provided by the Contractor shall not extend to parts, materials or equipment not manufactured by the Contractor, in respect of which the Employer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Contractor and which is capable of transfer to the Employer.

Where any valid claim in respect of any of the Goods and Services which is based on any defect in the quality or condition of the Goods or the provision of the Services or the failure to meet specification is notified to the Contractor in accordance with these conditions, the Contractor shall be entitled to replace the defective Goods (or the part in question) or provide again the Services free of charge and the Contractor's liability shall not exceed the price charged by the Contractor in respect of the defective Goods or Services

The Contractor shall not be liable to the Employer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Contractor's obligations in relation to the Goods and Services, if the delay or failure was due to any cause beyond the Contractor's reasonable control.

The Employer shall be responsible for any unforeseen ground conditions (including without limitation, underground services, pipes and cables and running sand) which the Contractor may encounter during the provision of the Goods and Services. The Employer shall pay any costs incurred by the Contractor arising from the unforeseen ground conditions in accordance with the Contractor's rates where applicable or reasonable rates where not applicable.

Default by the Contractor

If, before practical completion of the works, the Contractor without reasonable cause, wholly or substantially suspends the carrying out of the Services or commits a material breach of contract the Employer may serve a notice in writing specifying the default and requiring the Contractor to remedy the breach within 14 days. If the Contractor fails to remedy the breach, the Employer may by notice in writing terminate the Contract

Default by the Employer

If the Employer shall commit a material breach of the Contract, the Contractor may by notice in writing to the Employer require the breach to be remedied within 7 days. If the Employer fails to

remedy the breach as required the Contractor may by notice in writing terminate the Contract. A material breach shall include, but not be exclusive to:

Repeatedly breaching any of the terms of the Contract in such a manner as to reasonably justify the opinion that the Employer's conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

The Employer 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 Insolvency Act 1986;

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 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

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 or, being an individual, bankruptcy proceedings, of the Employer other than for the sole purpose of a scheme of solvent amalgamation with one or more other companies or the solvent reconstruction of the Employer

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 Employer's assets

A floating charge holder over the assets of the Employer has become entitled to appoint or has appointed an administrative receiver

A person becomes entitled to appoint a receiver over the assets of the Employer or a receiver is appointed over the assets of the Employer

A creditor or encumbrancer of the Employer attaches or takes possession of, or a distress execution sequestration or other such process is levied or enforced or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days

Any event occurs or proceedings are taken with respect to the Employer in any jurisdiction to which it is subject but has an effect equivalent or similar to any of the events mentioned in condition 9.1.3 to 9.1.9 (inclusive)

The Employer suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business

There is a change of control of the Employer (as defined in section 574 of the Capital Allowances Act 2001)

On termination of the Contract:

The Employer shall immediately pay to the Contractor all of the Contractor's outstanding unpaid sums. Where Goods and Services have been supplied or ordered by the Contractor since the last payment date, the Contractor may submit an invoice for the value of the Goods and Services supplied or ordered up to the date of termination, which shall be payable immediately on receipt. Where termination has occurred due to a material breach of the Contract by the Employer, the Contractor shall additionally be entitled to claim a loss of profit on the Goods and Services remaining to be performed by the Contractor at the date of termination.

The Employer shall immediately return all of the Contractor's equipment, pre-existing Materials and Deliverables. If the Employer fails to do so, then the Contractor may enter the site and take

possession of them. Until they have been returned or repossessed the Employer shall be solely responsible for their safe-keeping

The accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

Contractor's Obligations

The Contractor shall use reasonable endeavours to provide the Goods and Services in accordance, in all material respects, with the Contract.

The Contractor shall use reasonable endeavours to meet any performance dates but such dates shall be estimates only and time shall not be of the essence of delivery of the Goods or performance of the Services.

The Contractor shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirement that applies at the Employer's premises and that have been communicated to it by the Employer.

Employer's Obligations

The Employer shall:

Co-operate with the Contractor in all matters relating to the Contract;

Obtain all relevant or necessary permissions and approvals, including, but not exclusive to, planning permission and building control approval.

Provide the Contractor, its agents, sub-contractors, consultants and employees, in a timely manner and at no charge to the Contractor, with access to and from the Site throughout the course of the Services

Provide to the Contractor, in a timely manner, such material and other information as the Contractor may require and ensure its accuracy in all material respects;

Inform the Contractor of all health and safety rules and regulations and any other reasonable security requirements that apply at the Site

If the performance of the Contractor's obligations under the Contract is prevented, delayed or otherwise affected by any act or omission of the Employer, its agents, sub-contractors, consultants or employees and the Contractor incurs any costs, charges or losses as a result, the Employer shall reimburse the Contractor for the costs, charges or losses sustained

The Employer shall not, without the prior written consent of the Contractor, at any time from the date of the Contract to the expiry of 6 months after the last date of supply of the Services, solicit or entice away from the Contractor or employ (or attempt to employ) any person who is, or has been, engaged as an employee or sub-contractor of the Contractor in the provision of the Goods and/or Services.

The Employer acknowledges that the Contractor has relied and continues to rely on the Employer to make full disclosure of all known, assumed and suspected structures, tanks, utilities, pipe lines, discharges, spillages or any hazardous substances at, under or near the Site and if the Contractor's inspection reveals any such matters which were not disclosed, the Contractor reserves the right to increase the price of the Contract accordingly

The Employer 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 the Employer by the Contractor, its employees, agents, consultants or

sub-contractors and any other confidential information concerning the Contractor's business or its products which the Employer may obtain.

The Employer may disclose such information:

to its employees, officers, representatives, advisers, agents or sub-contractors who need to know such information for the purposes of carrying out the Employer's obligations under the Contract; and

as may be required by law, court order or any governmental or regulatory authority

The Employer shall ensure that its employees, officers, representatives, advisers, agents or sub-contractors to whom it discloses such information comply with these conditions

The Employer shall not use any such information for any purpose other than to perform its obligations under the Contract.

All materials, equipment and tools, drawings, specifications and data supplied by the Contractor to the Employer (including pre-existing materials and the Contractor's equipment) shall, at all times, be and remain the exclusive property of the Contractor, but shall be held by the Employer in safe custody at its own risk and maintained and kept in good condition by the Employer until returned to the Contractor, and shall not be disposed of or used other than in accordance with the Contractor's written instruction or authorisation

General

If the Contract between the Employer and the Contractor is defined as a "Construction Contract" for the purposes of the Housing Grants Construction and Regeneration Act 1996 ("the Construction Act") the terms implied into a Construction Contract by the Construction Act and the Scheme for Construction (England and Wales) Regulations 1998 (as amended) ("the Scheme") shall, where considered to be applicable, be incorporated into these Conditions, but subject to any amendments to those implied terms made in these Conditions, which amendments where permissible shall take precedence.

Variations shall be valued as agreed between the Contractor and the Employer. In default of agreement, a reasonable sum shall be payable. The value of any variation shall be included in the payments claimed by the Employer in accordance with these terms.

The Contractor may, from time to time, change the Services in order to comply with any applicable safety or statutory requirements

The Contractor shall obtain and maintain during the execution of the works such insurance policies as the Contractor deem to be appropriate for the works. The insurances shall be subject to the limitations and exceptions contained in the insurance policies.

As between the Employer and the Contractor, all intellectual property rights and all other rights in the Deliverables and the pre-existing Materials shall be owned by the Contractor. Subject to payment in full made by the Employer to the Contractor, the Contractor licenses all such rights to the Employer free of charge and on a non-exclusive worldwide basis to such extent as is necessary to enable the Employer to make reasonable use of the Deliverables and the Services. If the Contract is terminated, this Licence shall also automatically terminate.

Neither the Employer nor the Contractor shall be entitled to assign the Contract

The Contractor may perform any of its obligations or exercise any of its rights hereunder by itself or through a competent subcontractor selected by the Contractor.

Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any notice may be served either by hand, first class letter post, facsimile transmission or electronic mail. Notice shall be deemed served if by hand upon delivery if by first class letter post 48 hours after posting and if by facsimile transmission or electronic mail upon being so transmitted. Any notice served shall be acknowledged in writing by the receiving party within 7 days of receipt.

No waiver by the Contractor of any breach of the Contract by the Employer shall be considered as a waiver of any subsequent breach of the same or any other provision.

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

The Contract shall be governed by the laws of England, and the Employer agrees to submit to the non-exclusive jurisdiction of the English courts.

These conditions do not confer or purport to confer on any third party any benefit or the right to enforce any term of the Contract between the Employer and the Contractor.

Under The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, the Employer may have the right to withdraw, without charge, within fourteen working days of the date on which the Contract comes into effect. However, if the Employer requires the Contractor to begin the performance of the services during the cancellation period, the Employer shall pay the Contractor an amount which is in proportion to what has been performed until the Employer has communicated to the Contractor the cancellation from the Contract, in comparison with the full coverage of the Contract. The Employer's acceptance of these terms and conditions and instruction to commence works will amount to such a consent. The Employer has a duty to restore any goods acquired before cancellation and to retain possession of any goods and take reasonable care of them. If the Employer seeks to withdraw instructions, the Employer shall give notice by telephone, email or letter to the Contractor. The Regulations require the Contractor to inform you that the work involved is likely to take more than 30 days.

Dispute Resolution

Before engaging in formal proceedings the parties shall firstly consider any appropriate form of Alternative Dispute Resolution including adjudication.

The adjudicator will be entitled to make a ruling as to their own jurisdiction;

Notwithstanding the above the Contractor and Employer both have the right to bring proceedings at Court.