

# Terms & Conditions

## CONDITIONS OF SUPPLY

### 1. Conditions:

1.1 These terms and conditions (the “Conditions”) supersede all previous conditions, including any terms and conditions of the Buyer and shall not be superseded, varied or waived other than by the express written consent of the Seller.

1.2 In the Conditions the following definitions shall apply:

(a) Buyer means the party contracting with the Seller to acquire the Work;

(b) Seller means Whiteworth Construction Ltd;

(c) Work means all services including estimating, valuation and consulting services;

(d) Preliminary Work means all work done in the preparatory stages including any services provided by a third party;

(e) Electronic File means any text, illustration or other matter supplied or produced by either party in digitised form on disc, through a modem or by ISDN or any other link;

(f) Intellectual Property means all copyright, patents, trademarks and trade names, design rights, inventions, know-how and other intellectual property including applications for registration and the right to make such applications;

1.3 Any order or request for Work by the Buyer to the Seller shall be conclusive proof of the Buyer’s acceptance of the Conditions.

### 2. Delivery:

2.1 The Seller shall have no liability for failure to deliver the Work (or any part of it) promptly notwithstanding such failure the Buyer shall be bound to accept delivery and to pay for the Work in full whenever that delivery shall be tendered.

2.2 The Work shall unless otherwise agreed in writing be delivered electronically to the Buyer. The Buyer shall make all arrangements necessary for printing, storage and distribution of the work within their organisation.

2.3 The Seller may deliver the Work by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the Conditions. The failure of the Buyer to pay for any one or more of the said instalments on the due dates, shall entitle the Seller (at its sole option) without notice to suspend further deliveries of Work pending payment by the Buyer and/or treat this contract as repudiated by the Buyer.

### **3. Payment:**

3.1 Quotations are based on the Seller's current costs and, unless otherwise agreed in writing, are subject to amendment to meet any additional work arising from new or amended project information being received.

3.2 Quotations are given exclusive of all taxes and the Buyer will pay (in addition to the price) all VAT and other taxes applicable.

3.3 All Work carried out shall be chargeable including Preliminary Work whether the Buyer agrees to it being carried forward to production.

3.4 Any additional Work required by reason of the Buyer supplying inadequate copy, incomplete or incorrect instructions or insufficient documentation or late delivery of any of them shall be chargeable.

3.5 Unless credit facilities have been agreed in accordance with clause 4 payment shall become due prior to commencement of the Work and the Seller will require part or full payment in advance to starting the Work.

3.6 If the Work is suspended or delayed for any reason other than the default of the Seller then the Seller shall be entitled to charge for storage and other resources used. In the event that such suspension or delay extends for more than 30 days the Seller shall be entitled to immediate payment for all Work already carried out including all additional costs.

3.7 The Buyer shall indemnify the Seller from and against all legal and other costs and fees incurred by or on behalf of the Seller in connection with the collection of any outstanding indebtedness owed by the Buyer to the Seller.

### **4. Credit Facilities:**

4.1 If credit facilities are granted by the Seller payment is due within 30 days of the date of invoice unless specifically otherwise agreed in writing. If any invoice remains unpaid by the due date interest and other charges will apply in accordance with section 5A and/or section 6 of the Late Payment of Commercial Debt (Interest) Act 1998 as amended and in addition all invoices (including those not otherwise then due for payment) shall become due and payable immediately and in any event all costs reasonably incurred by the Seller in collecting payment of any invoices shall be payable by the Buyer.

4.2 Credit facilities shall only be granted to applicants who complete the Seller's credit account application form and who satisfy the Seller's criteria from time to time applicable. Such facilities may be withdrawn by the Seller at any time without notice and without giving reasons in which event all invoices (whether or not otherwise due and payable) shall become due and payable immediately.

### **5. Materials Supplied or Specified by the Buyer:**

5.1 Electronic Files.

5.1.1 The Buyer shall maintain a copy of all Electronic Files provided by the Buyer to the Seller.

5.1.2 The Seller shall not be responsible for checking the accuracy of supplied input from any Electronic File unless otherwise agreed in writing.

5.1.3 Without prejudice to clause 5.1.2 if an Electronic File is not suitable for outputting on equipment normally adequate for such purposes without adjustment or other corrective action the Seller may either reject the file or charge for any additional costs incurred in taking such corrective action in each case without prejudice to its rights to payment for work done and materials purchased.

## 5.2 Other Materials.

5.2.1 The Seller may reject any Electronic Files or other materials supplied or specified by or on behalf of the Buyer which the Seller considers unsuitable for the intended purpose and any additional costs incurred shall be chargeable except to the extent that such additional costs could have been avoided but for unreasonable delay by the Seller in ascertaining the suitability of the materials.

5.2.2 Without prejudice to clause 5.2.1 where materials are so supplied or specified by the Buyer and the Seller so advises the Buyer of their unsuitability that the Buyer instructs the Seller to proceed anyway the Seller shall have no liability for the quality of the Work.

5.2.3 Any Quantities supplied by the Buyer shall be deemed as adequate and the Seller will not re-check that the quantities are correct prior to producing the Work. Any costs incurred as a result of shortages, including amending the Work will be chargeable.

## 5.3 Risk and Storage.

5.3.1 All property supplied to the Seller by or on behalf of the Buyer shall, while it is in the Seller's possession or in transit to or from the Seller, be deemed to be at the Buyer's risk unless otherwise agreed in writing.

5.3.2 The Seller shall be entitled to make reasonable charges for the storage of any property supplied by or on behalf of the Buyer before receipt of the order (in sufficient detail to commence Work) or after notification to the Buyer of completion of the Work.

5.3.3 The Buyer warrants to the Seller that the Buyer owns or has absolute rights to use all Intellectual Property and/or other proprietary interests in all materials (including Electronic Files) supplied by or on behalf of the Buyer and shall indemnify the Seller in accordance with clause 13.2 in respect of any and all claims, costs and expenses arising.

## 5.4 Finished Goods.

5.4.1 Risk in the Work shall pass to the Buyer on despatch.

5.4.2 On completion of the Work the Seller will store the Work and other materials for a maximum of twelve months after which time the Seller may destroy them without notice.

## 6. Materials & Equipment Supplied by the Seller:

6.1 All materials owned or supplied by or on behalf of the Seller in the production of any part of the Work shall remain the Seller's exclusive property.

6.2 Printed material shall be distributed and film and plates, tapes, discs, Electronic Files and other materials destroyed immediately after the Work is completed unless agreed otherwise in writing in which case storage shall be chargeable. The Seller reserves the right to retain Electronic Files of printed materials.

6.3 The Seller shall not be obliged to provide any data from its equipment or supplied to the Buyer in any format.

## **7. Proofs & Variations:**

7.1 The Work is undertaken by the Seller on the basis that all information will be provided, diligently checked by the Buyer for errors and omissions and approved prior to production of the Work and the Seller shall not be liable for any errors or omissions (including errors introduced by the Seller) not corrected by the Buyer prior to the information being provided.

7.2 Amendments required by the Buyer (except to the extent caused by the default of the Seller) and additional copies of the estimate necessitated thereby shall be chargeable.

7.3 The Buyer is required to fully examine the final estimate prior to submitting their tender. The Seller shall not be liable for any errors in the finished Work once the tender has been submitted or the tender date has passed.

7.4 Colour documents: due to differences in equipment, paper, inks and other conditions between colour proofing and production runs it is hereby agreed and accepted by the Buyer that a reasonable variation in colour between the documents will be acceptable (unless otherwise specifically agreed in writing).

7.5 All implied and express terms, conditions and warranties relating to quality and/or fitness for purpose of the Work are excluded whether made by the Seller or its servants or agents or otherwise.

## **8. Insurance:**

The Buyer acknowledges that it has read and fully understood the Conditions including specifically clauses 2, 5, 6, 7, 10 and 11 relating to delivery, risk, storage and exclusion of liability and acknowledges that it should insure such risks as it deems appropriate in all the circumstances.

## **9. Acceptance of the Work:**

9.1 The Buyer shall be deemed to have accepted the Work upon delivery. The Buyer shall inspect all the Work within 48 hours of delivery and shall within 72 hours notify the Seller of any defects or if the Work is not in accordance with the contract.

## **10. General Exclusion and Limitation:**

10.1 The Seller shall be under no liability whatever to the Buyer for any consequential or indirect loss and/or expense (including loss of turnover and profit) suffered by the Buyer arising out of a breach of this contract or negligence by the Seller.

10.2 In the event of a breach of this contract or negligence by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the price of the Work.

10.3 The Seller shall be under no liability whatever in respect of the following which are hereby expressly excluded, except insofar as such exclusions may be unlawful:

10.3.1 for injury, damage of any kind or nature, direct, indirect, consequential or contingent to personal property howsoever caused;

10.3.2 for any costs incurred by the Buyer without the prior written approval of the Seller to repair, replace, or carry out any work on any of the Work, defective or otherwise;

10.3.3 for any other damage, losses and/or costs (including loss of Work or any delays, loss arising from delay or due to or incurred by way of labour supplies, substitute purchases, liabilities to customers and third parties and all other such losses of any nature) whether direct or indirect and whether or not resulting from or contributed to or aggravated by the default or negligence of the Seller, or its servants or agents or by any defect in the Work.

10.4 Where the Seller offers to replace defective Work the Buyer must accept such an offer unless it can show clear and reasonable cause for refusing to do so. If the Buyer opts to have the Work re-done by any third party without notifying the Seller in writing then the Buyer automatically revokes his right to any remedies from the Seller including but not limited to the right to a credit/refund of the price.

10.5 Where the Work is to be forwarded by or on behalf of the Buyer to a third party for further processing the Buyer will inspect and approve the Work (and will be deemed to have so inspected and approved it) prior to forwarding and the Seller shall not be liable for claims arising subsequent to the third party's processing.

10.6 The Seller reserves the right to reject any Work forwarded to it after initial processing by a third party as soon as reasonably practicable without processing the Work any further. If the Buyer, notwithstanding such rejection, requires the Seller to continue, then the Seller shall only be obliged to so after confirmation from the Buyer in writing and the Seller shall have no liability for the quality of the Work.

## **11. Cancellation:**

11.1 The Buyer may cancel the order prior to completion of the Work in which event the Buyer shall pay to the Seller such charges as the Seller shall determine in respect of any materials ordered labour expended and other incidental expenses in connection with the order together with an amount equal to the Seller's reasonable estimate of its loss of profit from the order.

11.2 In the event of any cancellation under this contract the Buyer shall be liable to pay a reasonable administration charge to the Seller in addition to all other amounts referred to in clause 11.1.

## **12. Reservation of Ownership:**

12.1 Property, legal and beneficial, in any Work shall not pass to the Buyer until the Seller has received full payment for all sums then owed by the Buyer to the Seller.

12.2 Work in respect of which property has remained with the Seller shall be kept identifiable as the property of the Seller and the Buyer shall at the Buyer's own expense immediately return such Work to the Seller, or permit the Seller to enter into the Buyer's premises to collect it should the Seller so request.

12.3 Without prejudice to its other remedies, in respect of all debts due from the Buyer, the Seller shall have a general lien on all Work of the Buyer in its possession and shall be entitled, on the expiration of 14 days' notice to the Buyer, to dispose of such Work as agent for the Buyer in such manner and at such price as it thinks fit and to apply the proceeds of such disposal towards such debts and shall account to the Buyer for any excess.

### **13. Unlawful Matters:**

13.1 The Seller may properly refuse to carry out any Work which is in its opinion or may be of an unlawful or defamatory nature or an infringement of the proprietary or other rights of any third party.

13.2 The Buyer shall indemnify the Seller in respect of any and all claims, costs and expenses arising out of any Work relating to any unlawful or defamatory matter or which infringes Intellectual Property or other proprietary or personal rights of any third party together with all costs on a full indemnity basis.

### **14. Force Majeure:**

The Seller shall not be liable for any claims, costs, damages or other losses suffered by the Buyer to the extent resulting from any failure on the part of the Seller, its servants and / or agents caused by or directly or indirectly due to war, terrorism, act of any Government or other competent authority, civil unrest, embargo, computer system failure, storm, fire, accident, industrial action including strikes or lockouts, acts of God, illness, prevention from or hindrance in obtaining raw materials, energy or other supplies, or any other similar cause or matter beyond the reasonable control of the Seller.

### **15. Rights of Third Parties:**

It is acknowledged and agreed by the Buyer that the Conditions are not intended to be and shall not be enforced by any person other than the Buyer under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available apart from the said Act.

### **16. Jurisdiction:**

This contract is subject to the Laws of England and the non-exclusive jurisdiction of the English Courts.

### **17. Estimating Services:**

17.1 The Buyer shall provide a clear written specification to the Seller and will promptly respond to all enquiries raised by the Seller about such specification and the Buyer's requirements.

17.2 All Intellectual Property created by the Seller pursuant to this contract shall be the property of the Buyer provided always that the Seller shall be entitled to retain copies for the purposes of marketing and further design development.

17.3 The Seller shall be under no liability whatever to the Buyer in respect of any loss and/or expense suffered by the Buyer arising out of work required that has not clearly been stated in the specification or shown on the drawings.

**18. Data Protection:**

18.1 The Buyer warrants to the Seller that it has the absolute right to provide the personal data (if any) contained in materials supplied to the Seller in accordance with this contract and will indemnify the Seller from and against all claims, costs and expenses arising from any breach of this warranty or data protection legislation by the Buyer (including the cost of complying with any requests for information by third parties).

18.2 Any personal data may be stored by the Seller in providing its services to the Buyer but it is the practice of the Seller to destroy such data on completion of the contract.