



TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES BY JOHN MERISON BUILDING MAINTENANCE CONTRACTORS LTD

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions.
Customer: the person, firm or company who purchases Services from the Company.
Company: John Merison Building Maintenance Contractors Ltd.
Company's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Company or its subcontractors and used directly or indirectly in the supply of the Services.
Contract: the Customers purchase order and the Company's acceptance of it, or the Customers acceptance of a quotation of services by the Company.
Goods: any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them).
Scheduled Interim Payment Dates: the dates set out in the Contract or the Invoice on which payment of the amount specified is due from the Customer to the Company.
Services: the services to be provided by the Company under the Contract.
VAT: value added tax chargeable under English Law for the time being and any similar additional tax.
- 1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

- 2.1 The Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all the Company's Services and any variation to these conditions and any representations about the Services shall have no effect unless expressly agreed in writing. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 The Customer accepts the terms of this document by signing and returning one copy to the Company. In doing this the Customer is accepting the quotation provided by the Company and is agreeing to the Services being carried out.
- 2.5 Any quotation is given on the basis that no Contract shall come into existence until the Company receives these Terms and Conditions back duly signed. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
- 2.6 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.

3. DESCRIPTION

- 3.1 The quantity and description of the Services shall be as set out in the Company's quotation.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures 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 and this is not a sale by sample.

4. COMPANY'S OBLIGATIONS

- 4.1** The Company shall use reasonable endeavours to provide the Services to the Customer and will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services.
- 4.2** The Company shall:
- (a) co-operate with the Customer in all matters relating to the Services;
 - (b) use reasonable skill and care in the performance of the Services;
 - (c) observe, and ensure that all employees, consultants, agents and subcontractors which it engages in relation to the Services observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises; and
 - (d) notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services.
- 4.3** The Company shall use reasonable endeavours to meet any performance dates specified at the time the Contract was made, but any such dates shall be estimates only and time shall not of the essence for performance of the Services.

5. CUSTOMER'S OBLIGATIONS

- 5.1** The Customer shall:
- (a) co-operate with the Company in all matters relating to the Services;
 - (b) provide such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Company for the purposes of the Services;
 - (c) provide such information as the Company may reasonably request and the Customer considers reasonably necessary, in order to carry out the Services in a timely manner and ensure that it is accurate in all material respects;
 - (d) inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
 - (e) be responsible (at its own costs) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with the applicable laws, before and during the supply of the Services at those premises, unless the identification, monitoring, removal and disposal of any hazardous materials falls within the Service that the Company has agreed to provide.
 - (f) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, before the date on which the Company starts to perform the Services.
- 5.2** If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

6. PAYMENT

- 6.1** In consideration of the provision of the Services by the Company the Customer shall pay the charges as per the invoice sent to them. The invoice will set out the time spent working and specify the materials used and any scheduled interim payment dates.
- 6.2** Payment is due in full and in cleared funds within 30 days from the date of the invoice, or alternatively on the Scheduled Interim Payment dates if applicable.
- 6.3** Time for payment shall be of the essence.
- 6.4** All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 6.5** If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of the National Westminster Bank accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.



6.6 The Customer agrees to reimburse the Company for any costs levied by the Company's bank in connection with any cheque delivered by the Customer which is dishonoured.

7. **LIMITATION OF LIABILITY**

7.1 This condition 7 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

7.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

7.3 Nothing in these Conditions limits or excludes the liability of the Company:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company; or
- (c) for any liability incurred by the Customer as a result of any breach by the Company of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

7.4 Subject to condition 7.2 and condition 7.3

- (a) the Company shall not be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of good, loss of contract, loss of use, loss of corruption of data or information, any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Services.

8. **COMPANY'S PROPERTY**

8.1 All materials, equipment and tools, drawings, specifications and data used by the Company shall, at all times, be and remain the exclusive properties of the Company, until payment has been made by the Customer and received in cleared funds.

9. **ASSIGNMENT**

9.1 The Company may assign the Contract or any part of it to any person, firm or company.

9.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

10. **TERMINATION**

10.1 Either party may terminate this Contract by given written notice to the other party.

10.2 On termination of the Contract the Customer shall immediately pay to the Company all of the monies due to it (including interest if necessary) up to the date of termination.

11. GENERAL

- 11.1** The Company may, from time to time, and without notice, change the Services it offers and/or change these Terms and Conditions.
- 11.2** The Company reserves the right to defer the date it starts to provide the Service to the Customer, or cancel the Contract or reduce the Service ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 30 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 11.3** The Customers rights under these conditions are in addition to the statutory terms implied in favour of the Customer by the Supply of Goods and Services Act 1982 and any other statute.
- 11.4** Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 11.5** If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 11.6** Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 11.7** Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 11.8** The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 11.9** The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.