
BUILDING TERMS AND CONDITIONS

BACKGROUND:

These Terms and Conditions shall apply to the provision of building services by Windsor Building Services Ltd of, 196, St. Leonard's Rd, Windsor, SL4 3DL ("the Builder") to customers that require his services.

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Agreement"	means the contract into which the Parties will enter on the Customer's acceptance of the Quotation and of these Terms and Conditions which shall incorporate, and be subject to, these Terms and Conditions [and which is attached hereto as Schedule 1];
"Agreed Date"	means the date on which the provision of the Services will commence as agreed by the Parties [as evidenced in Schedule 1];
"Agreed Times"	means the times which the Parties shall agree upon during which the Builder shall have access to the Property to render the Services [as evidenced in Schedule 1];
"Business Days"	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in our area and within 50m radius.
"Confidential Information"	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
"Customer"	means the individual or business that requires the Services subject to these Terms and Conditions and the Agreement;
"Final Fee"	means the total of all sums payable which shall be shown on the invoice issued in accordance with Clause 4 of these Terms and Conditions.
"Job"	means the complete rendering of the Services;
"Order"	means the Customer's initial request to acquire the Services from the Builder as set out in Clause 2 of these Terms and Conditions;
"Property"	means the Customer's property or premises, as detailed in the Order and the Agreement, at which the Services are to be rendered;

“Quotation”	means a quotation detailing proposed fees and services supplied to the Customer in accordance with Clause 2 of these Terms and Conditions;
“Quoted Fee”	means the Fee which will be quoted to the Customer following the Order which may vary according to the actual work undertaken as set out in Clause 4 of these Terms and Conditions;
“Services”	means the building services provided by the Builder as detailed in Clause 5 of these Terms and Conditions;
“Visit”	means any occasion, scheduled or otherwise, on which the Builder shall visit the Property to render the Services; and
“Work Area”	means the part of the Property within which the Services are to be rendered.

- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions and each of the Schedules as amended or supplemented at the relevant time;
 - 1.2.4 a Schedule is a schedule to these Terms and Conditions;
 - 1.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule; and
 - 1.2.6 a "Party" or the "Parties" refer to the parties to the Agreement.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

2. Orders

- 2.1 The Builder accepts orders for his Services through business emails.
- 2.2 When placing an Order the Customer shall set out, in detail, the Services required. Details required include the location and size of the Property, number and type of rooms in which work is required and the type(s) of work. [The Builder shall provide an order form to the Customer which shall provide prompts for all required information.] [All such details are set out in the

Agreement.]

- 2.3 Once the Order is complete and submitted the Builder shall prepare and submit a Quotation to the Customer either by email or first class post which shall set out the required Deposit and Fee, detailed in Clauses 3 and 4 respectively.
- 2.4 The Customer shall be free to make changes to the Order and Quotation prior to acceptance. The Customer may accept the Quotation by telephone, email or first class post.

3. **Deposit**

- 3.1 At the time of accepting the Quotation or not more than 7 days thereafter the Customer shall be required to pay a Deposit to the Builder. The Deposit shall be agreed as part of contract. Orders shall not be deemed confirmed until the Deposit is paid in full.
- 3.2 Subject to the provisions of Clause 9 the Deposit shall be non-refundable.

4. **Fees and Payment**

- 4.1 The Quoted Fee shall include the price payable for the Services and for the estimated sundry parts and other products required to render the Services [and is further evidenced in Schedule 1].
- 4.2 The Builder shall use all reasonable endeavours to use only the sundry parts and other products required (and quantities thereof) set out in the Quotation and the Agreement; however if additional sundry parts and other products required are required the Final Fee shall be adjusted to reflect this. Any such increases shall be kept to a minimum.
- 4.3 In the event that the prices of sundry parts and other products required or services increase during the period between the Customer's acceptance of the Quotation and the commencement of the Services, the Builder shall inform the Customer of such increase and of any difference in the Final Fee.
- 4.4 The Builder shall invoice the Customer when the provision of the Services is complete.
- 4.5 All invoices must be paid within 3 days of receipt by the Customer.
- 4.6 Any sums which remain unpaid following the expiry of the time period set out in sub-Clause 4.5 shall incur interest on a daily basis at 3%% above the current base rate obtaining at the time.

5. **Services**

- 5.1 Prior to the start of the Job the Builder shall carry out a full inspection of the Property in order to ensure that the agreed Services are appropriate for the Property, practical and can be rendered safely.
- 5.2 The Services shall be rendered in accordance with the specification set out in the accepted Quotation and in the Agreement (as may be amended by mutual agreement from time to time).
- 5.3 The Builder may provide sketches, plans, diagrams or similar documents in

advance of the Job. Any such material is intended for illustrative purposes only and is not intended to provide an exact specification of the Job nor to guarantee specific results.

- 5.4 The Builder shall ensure that the Services are rendered with reasonable care and skill and to a reasonable standard which is commensurate with best trade practice.
- 5.5 The Builder shall ensure that all products, parts, materials and other goods used in rendering the Services are in compliance with any relevant standards and are free of defects at the time of use.
- 5.6 Inasmuch as is reasonably possible, the Builder shall ensure that no work done will have any effect on the Property outside of the Work Area. Where any such effects occur, the Builder shall carry out all necessary remedial work at no additional cost to the Customer.
- 5.7 The Builder shall ensure that he complies with any and all relevant codes of practice.
- 5.8 While rendering the Services the Builder shall ensure that furniture, flooring and walls in the Work Area that are not the subject of the Services are suitably covered and protected for the duration of the Job.
- 5.9 The Builder shall properly dispose of all waste that results from his rendering of the Services.
- 5.10 If any damage is done by the Builder during the course of the Job the Builder shall make good that damage prior to completing the Job.
- 5.11 Where any inspections are required following the completion of the Job it shall be the Builder's responsibility to ensure that those inspections are carried out.
- 5.12 Time shall [not] be of the essence in the rendering of the Services under these Terms and Conditions or under the Agreement.

6. Defects

- 6.1 Under no circumstances will the Builder be responsible for any defects which result from the work of third party Contractors over which he has no control.
- 6.2 Prior to the completion of the Job the Builder and the Customer will work together to produce a snag list identifying any faults or defects in the Builder's work which will require rectification prior to completion.
- 6.3 All-natural stone products are subject to variances of colour, marking and veining.

7. Customer's Obligations

- 7.1 If any consents, licenses or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Customer's responsibility to obtain the same in advance of the commencement of the Services.
- 7.2 If any party wall agreements are required in order for the Services to be rendered, it shall be the Customer's responsibility to enter into those agreements prior to the start of the Job.
- 7.3 The Customer shall ensure that the Builder can access the Property at the

Agreed Times to render the Services.

- 7.4 The Customer shall have the option of giving the Builder a set of keys to the Property or being present at the Agreed Times to give the Builder access. The Builder warrants that all keys shall be kept safely and securely.
- 7.5 The Customer shall ensure that the Builder has access to electrical outlets and a supply of hot and cold running water.
- 7.6 The Customer shall ensure that the Work Area is kept clear of furniture, fixtures and fittings and out of use for the duration of the Job unless otherwise directed by the Builder.
- 7.7 If the Customer does access the Work Area at any time during the course of the Job they must observe all relevant health and safety rules and must comply with any additional instructions given to them by the Builder.
- 7.8 The Customer must give the Builder at least 48 hrs notice if the Builder will be unable to provide the Services on a particular day or at a particular time. The Builder will not invoice for cancelled Visits provided such notice is given. If less than 48hrs notice is given the Builder shall invoice the Customer at his normal rate.
- 7.9 Unless redecoration following completion of building work forms an agreed part of the Services, any such work (or the making of arrangements therefor) shall be the Customer's responsibility.

8. Cancellation

- 8.1 The Customer may cancel or reschedule the Job at any time before the Agreed Date. The following shall apply to cancellation or rescheduling:
 - 8.1.1 If the Customer cancels the Job more than 28 days before the Agreed Date the Builder shall issue a full refund of all sums paid, including the Deposit.
 - 8.1.2 If the Customer reschedules the Job more than 28 days before the Agreed Date the Builder shall retain all sums paid, including the Deposit and shall deduct all such sums from any related balance payable on the rescheduled Job.
 - 8.1.3 If the Customer cancels the Job less than 28 days but more than 14 days before the Agreed Date the Builder shall refund any sums paid less the Deposit.
 - 8.1.4 If the Customer reschedules the Job less than 28 days but more than 14 days before the Agreed Date the Builder shall retain any sums paid including the Deposit and shall deduct all such sums (excluding the Deposit) from any balance payable on the rescheduled Job. A new Deposit shall be payable on the rescheduled Job.
 - 8.1.5 If the Customer cancels the Job less than 14 days before the Agreed Date the Builder shall retain all sums paid and any outstanding sums shall become immediately payable. No refund shall be issued.
 - 8.1.6 If the Customer reschedules the Job less than 14 days before the Agreed Date the Builder shall retain all sums paid and any outstanding sums shall become immediately payable. No refund shall be issued and no sums paid will count toward the fees and Deposit payable on the rescheduled Job.

- 8.2 The Builder may cancel the Job at any time before the Agreed Date and shall refund all sums paid, including the Deposit.

9. **Liability, Indemnity and Insurance**

- 9.1 The Builder shall ensure that he has in place at all times suitable and valid insurance which shall include public liability insurance.
- 9.2 The Builder's total liability for any loss or damage caused as a result of its negligence or breach of these Terms and Conditions or of the Agreement shall be limited to the sum on its insurance policy.
- 9.3 The Builder is not liable for any loss or damage suffered by the Customer which results from the Customer's failure to follow any instructions given by the Builder.
- 9.4 Nothing in these Terms and Conditions shall limit or exclude the Builder's liability for death or personal injury.
- 9.5 The Builder shall indemnify the Customer against any costs, liability, damages, loss, claims or proceedings arising out of the Builder's rendering of the Services or any breach of these Terms and Conditions.
- 9.6 The Customer shall indemnify the Builder against any costs, liability, damages, loss, claims or proceedings arising out of the Customer's failure to meet any of its obligations or any other breach of these Terms and Conditions.

10. **Guarantee**

- 10.1 The Builder guarantees that the product of all Services provided shall be free from any and all defects for a period of 6 months following completion of the Job.
- 10.2 If any defects in the product of the Services appear during the guarantee period set out in sub-Clause 11.1 the Builder shall rectify any and all such defects at no cost to the Customer.

11. **Data Protection**

- 11.1 All personal information that the Builder may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation ("GDPR") and the Customer's rights under the GDPR.
- 11.2 For complete details of the Builder's collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Customer's rights and how to exercise them, and personal data sharing (where applicable)

12. **Confidentiality**

- 12.1 Except as provided by sub-Clause 12.2 or as authorised in writing by the other Party, each Party shall, at all times during the continuance of the Agreement and [for 12 months years] after its termination:

- 12.1.1 keep confidential all Confidential Information;
 - 12.1.2 not disclose any Confidential Information to any other party;
 - 12.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
 - 12.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 12.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 12.1.1 to 12.1.4 above.
- 12.2 Either Party may:
- 12.2.1 disclose any Confidential Information to:
 - 12.2.1.1 any sub-contractor or supplier of that Party;
 - 12.2.1.2 any governmental or other authority or regulatory body; or
 - 12.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 12.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 12, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
 - 12.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.
- 12.3 The provisions of this Clause 12 shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

13. **Force Majeure**

- 13.1 No Party to the Agreement will be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 13.2 [In the event that a Party to the Agreement cannot perform their obligations thereunder as a result of force majeure for a continuous period of 60 days, the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree

upon a fair and reasonable payment for all Services completed up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.]

14. **Termination**

- 14.1 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
- 14.1.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 7 days Business Days of the due date for payment;
 - 14.1.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 7 days Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 14.1.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - 14.1.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 14.1.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
 - 14.1.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 14.1.7 that other Party ceases, or threatens to cease, to carry on business; or
 - 14.1.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of this Clause 14, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 14.2 For the purposes of sub-Clause 14.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 14.3 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

15. **Effects of Termination**

Upon the termination of the Agreement for any reason:

- 15.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;

- 15.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain In full force and effect;
- 15.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which exist at or before the date of termination;
- 15.4 subject as provided in this Clause 15 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 15.5 each Party shall (except to the extent referred to in Clause 12) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

16. No Waiver

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

17. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

18. Costs

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

19. Set-Off

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

20. Assignment and Sub-Contracting

20.1 [Subject to sub-Clause 20.2] The Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

20.2 [The Builder shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled

sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of the Builder.]

21. Time

21.1 [The Parties agree that all times and dates referred to in the Agreement shall be of the essence of the Agreement.]

OR

21.2 [The Parties agree that the times and dates referred to in the Agreement are for guidance only and are not of the essence of the Agreement and may be varied by mutual agreement between the Parties.]

22. Relationship of the Parties

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

23. Third Party Rights

No part of the Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

24. Notices

24.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

24.2 Notices shall be deemed to have been duly given:

24.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

24.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

24.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

24.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

25. Entire Agreement

25.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

25.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

26. Counterparts

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

27. Severance

In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

28. Dispute Resolution

28.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

28.2 [If negotiations under sub-Clause 28.1 do not resolve the matter within 7 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.]

28.3 [If the ADR procedure under sub-Clause 28.2 does not resolve the matter within 7 days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.

28.4 The seat of the arbitration under sub-Clause 28.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.]

28.5 Nothing in this Clause 28 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

28.6 The decision and outcome of the final method of dispute resolution under this Clause 28 shall [not] be final and binding on both Parties.

29. **Law and Jurisdiction**

- 29.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 29.2 Subject to the provisions of Clause 28, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

SCHEDULE 1

SERVICE AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:

- (1) <<Name of Builder>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR [of]** <<insert Address>> (“the Builder”) and
- (2) <<Name of Customer>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR [of]** <<insert Address>> (“the Customer”)

WHEREAS:

- (1) The Builder provides building services and hereby agrees to provide those services, as specified herein (“the Services”) in accordance with, and subject to, the Terms and Conditions and this Agreement.
- (2) The Customer wishes to procure the Builder’s services in accordance with, and subject to, the Terms and Conditions and this Agreement.

IT IS AGREED as follows:

1. The Agreement

- 1.1 Any and all references to “this Agreement”, “the Agreement”, “the Terms and Conditions” or “these Terms and Conditions” shall be deemed to refer to this Agreement or the attached Terms and Conditions, all of which shall constitute a contract for the provision of the Services between the Builder and the Customer.
- 1.2 By executing this Agreement on <<insert date>>, the Parties hereby agree to be bound by, and subject to, the Terms and Conditions and the provisions of this Agreement.

2. The Services

The Services shall commence on the Agreed Date of <<insert date>> and shall be provided during the Agreed Times of <<insert times>> at the Property located at <<insert address>>.

Specification / Description of Services	Relevant Dates / Times

3. **Fees and Payment**

<<Insert full details of fees and other sums due as detailed in the Quotation>>

IN WITNESS WHEREOF this Agreement has been duly executed the day and year first before written

SIGNED by

<<Name and Title of person signing for the Builder>>

for and on behalf of <<Builder's Name>>

In the presence of

<<Name & Address of Witness>>

SIGNED by

<<Name and Title of person signing for the Customer>>

for and on behalf of <<Customer's Name>>

In the presence of

<<Name & Address of Witness>>