

Terms and Conditions of Business

1. Definitions and Interpretations

- a. "The Company" means Rosebirch Ltd "the contract" means the Contract whereby the company agrees to supply goods and/or services subject to these conditions "the Customer" means the party contracting hereunder with the Company; "the goods" and "the services" means respectively the goods and services to be supplied hereunder "the Contract Documents" means any quotation or estimate provided by the Company together with the customer's order and the Company's acknowledgement of order and these Conditions provided always that if there be any conflict between any of the Contract Documents then the terms and conditions set out herein shall prevail.

2. Basis of Contract

- a. Any quotations shall remain open for a maximum period of thirty days from the date appearing thereon and may be withdrawn or altered by the Company at any time within such period without notice.
- b. Any quotation submitted by the Company amounts to an invitation to treat and not an offer. The placing by the customer of any order (whether or not any quotation may have been submitted) shall constitute an offer by the Customer, The Contract shall not be taken to have come into existence unless and until the Company shall have received and accepted the Customer's order. Acceptance by the Company shall be deemed to include acceptance of these conditions, which shall form the conditions of the Contract and shall apply the exclusion of any terms or conditions put forward by or on behalf of the Customer.
- c. The quotation (or Estimate where applicable) is net and does not allow for any discount, trade or cash, except such as may be expressly specified therein.
- d. Unless specifically stated be given on a "fixed price contract" basis, quotations are based on current prices of materials and products, current wage rates, employment conditions and statutory liabilities. Increase or decreases of the contract sum will be made for changes which occur to the foregoing current prices either before the commencement of the work or during its progress.
- e. The Company shall furnish evidence of the changes in the prices of the materials and products and/or labour if required by the customer.
- f. If the quotation is given on a "fixed price contract" basis then the contract sum will be increased or decreased to take account of changes in the Company's statutory liabilities notified and taking effect after the date of the contract and before practical completion of the work.

3. Drawings

- a. The plans, drawings, specifications and samples submitted by the Company (whether before or after the appointment of the Contract) may not be used by the Customer or reproduced, or communicated to a third party without the Company's written consent.

4. Variation and Cancellation

- a. The terms of the Contract may not be varied nor may it be suspended or cancelled without the prior written consent of the Company.
- b. In the case of discrepancy between drawings and specifications, the specification shall prevail.
- c. The specification and quotation detail the work allowed for and variation caused by the requirements of local Authorities, landlords or surveyors or by the physical conditions on site which were not known to the Company at the date of quotation or the changes in the Customers instruction will be charged or credited appropriately.
- d. The Company agrees to complete the work within the time stated in the quotation but overtime at the customer's request to complete the work before this date may be subject of extra charge.
- e. All additional works carried out as part of the contract, but not included within the specification will be calculated at labour (cost + 150%) and super time (cost + 25%), materials (cost + 25%). All additional expenses i.e. accommodation, travel etc. (cost + 25%).
- f. Any quotation is subject to a survey of the site before preparation, this inspection is a general surface examination of those parts of the property which are accessible: in other words, visible and readily available for examination from ground and floor levels, without risk of causing damage to the property or injury to the surveyor i.e. non-destructive. Due to the restrictions of such a survey, any items, which become apparent during the contract, will be charged as listed (e).
- g. In the event of the customer's premises being destroyed or substantially damaged by fire, the customer shall be at the liberty to terminate the contractor by written notice to the Company upon paying the Company the value of the work actually executed and materials and products supplied or appropriated to the contract and any loss and expense caused to the Company.

5. Materials and Descriptive Matter

- a. The Company gives no warranty of fitness for purpose in respect of products or materials that have been specified by the customer and which are referred to in the quotation.
- b. The Company will endeavour to match materials which vary in figure colour and/or texture but samples submitted must only be taken as fair example of the bulk (e.g. marble, granite, timber, anodised metal etc.)
- c. Any existing structures or materials on site replaced by new work will be taken away and will become the property of the Company unless agreed otherwise in writing.
- d. Descriptive matter contained in catalogues, brochures and any other publication is believed to be correct as at the date of publication but is not so warranted and the Customer is advised to make his own examination.
- e. Colour indications whether given by means of the provision of samples or derived from colour charts or descriptions, are necessarily approximate because of inevitable variations in the process of manufacture and reproduction.

6. Passing of Property and Risk

- a. The risk in goods supplied by the Company shall pass to the Customer on delivery of the goods.
- b. Notwithstanding delivery, property in and title to the goods shall remain in the Company (which reserves the right to dispose of them) until the Company has received payment of the full price of:
 - I. All goods the subject of the Contract and
 - II. All other goods supplied by the Company to the Customer under any other Contract whatsoever.
- c. Subject as herein provided the Customer shall nevertheless be entitled to deal with the goods in the ordinary course of business provided that if the goods are altered or any goods become attached to the goods or if any part of the goods is replaced, such alterations attachment or replacement shall not affect the Company's property in and title to the goods.
- d. Until property in and title to the goods passes to the Customer: -
 - I. The Customer shall hold the goods as bailee for the Company and shall keep the goods in such a way that they are readily identifiable as the property of the Company.
 - II. The Company shall be entitled at any time to revoke the Customer's power to deal with the goods.
 - III. The Customer's power to deal with the goods shall automatically cease if the Customer shall commit or be subject to any act of insolvency or have a receiver appointed or if any attempt is made to carry out a distraint upon the goods or any goods belonging to the Customer.
 - IV. The Customer shall not make any modification to the goods or their packaging or alter, remove or tamper with any marks, numbers or other means of identification used on or in relation to the goods.
- e. The Customer shall account to the Company for the proceeds of sale or otherwise of the goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property to the Customer and third parties.
- f. Upon determination of the Customer's power to deal with the goods, the Customer shall place them at the disposal of the Company which by its servants or agents are hereby irrevocably authorised using only such force as may be necessary to enter upon any premises of the Customer for the purpose of removing the goods.

7. Site Facilities and Approvals

- a. The Customer shall ensure that the site is safe and suitable for the works and services to be carried out.
- b. At all times (to include times outside normal working hours the Customer shall provide without cost to the Company sufficient access to the site, such loading and/or unloading facilities as the Company may reasonably require, together with adequate dry and secure storage facilities for the Company's materials and plant and such supply of water and electricity and heating and telephone facilities as the Company may reasonably require.
- c. Any delays, extra work or costs or losses caused as a consequence of the failure for any reason of the customer to provide such access, supply or facilities or for any other reason within the control of the customer shall be charged to the customer as an addition to the contract sum.

8. Liabilities

- a. The Company shall be responsible for damage to existing glass or other materials, stock, merchandise, fixture, fittings or goods on the site not the property of the Company, provided always that the damage is due to the negligence of the Company.
- b. The Company shall not be responsible for loss or delay resulting from causes outside their control (including but without limitation, strikes, lock-outs, acts of terrorism or “working to rule”) and work may be partially or wholly suspended upon notice being given by the Company until the dislocation in working is ended. The time for completion of the work shall be extended by the time of any suspension and any loss or expense arising therefrom shall be borne by the customer and paid to the Company by way of an addition to the contract sum.
- c. For the avoidance of the doubt the Company will not be responsible for damage to work on site by fire, flood, excessive damp or heat or other causes operating before or after completion of the work which are beyond the Company’s control.
- d. Except where negligence on the part of the Company is shown to have resulted in the death of or bodily injury to any person, the Company shall not be liable for any consequential or indirect loss or damage suffered by the Customer.

9. Warranty

- a. For a period of 3 months from the date of delivery of the goods, the Company will at its option either repair or replace goods which are accepted by it to be defective by reason of faulty workmanship and/or materials, provided that the defect has been notified in writing to the Company within a period of 14 days after it has or should have become apparent.
- b. In the case of services provided by the Company, where a defect appears within a period of 3 months after completion of the services (by handing over the completed works to the Customer) and which defect is accepted by the Company to be due to faulty materials and/or workmanship, not in accordance with the Contract, then the Company will make good at its expense such defective services provided that the defect has been notified to the Company in writing within 14 days of it having become apparent or when it should have become apparent.
- c. Any goods replaced hereunder shall become the property of the Company and held by the Customer to the Company’s order.
- d. The Company’s warranty set out herein is given in lieu of and excludes all other warranties, guarantees and assurances, whether express or implied and whether statutory or otherwise.
- e. The warranty herein will be invalidated by any alteration or addition to the goods supplied, or the services performed by the Company which are not carried out by or with the written consent of the Company.

10. Payments

- a. Applications for payment will be rendered at intervals as work proceeds to an aggregate amount equal to the value of the work so far executed less 2.5% (“the

interim retention”). On practical completion of the work a further application for payment will be issued bringing the total sum included in applications at an aggregate amount equal to: -

- I. The total of the contract sum and any additional charges to which the Company is entitled hereunder less 2.5% (“the final retention”).
 - II. The final date for the payment shall be 14 days from delivery of the application for payment. The customer’s interest in the Interim Retention or the Final Retention is fiduciary as trustee for the Company (but without obligations to invest) and the customer shall if so, requested by the Company on payment of each application pay the relevant Interim Retention or the Final Retention (as the case may be) into a separate banking account.
 - III. The customer shall pay the Final Retention to the Company on the date, which is three months after the date of practical completion of the works.
- b. Except as otherwise expressly agreed in writing, no discount or allowance can be claimed by the Customer.
- c. When payment of any of the company’s invoices is overdue, the Company reserves the right to: -
- I. Suspend its performance of the Contract to which the invoice relates and/or of any other contracts then subsisting between the Company and the Customer and
 - II. Debit and recover from the Customer simple interest on the amount overdue at the rate of 5% over the base rate of The Bank of England as applies from time to time.
 - III. Require the Customer to make a deposit of such sum as the Company considers appropriate before recommencing performance of the contract or any other Contract.

11. Tax and Bonds

- a. All prices quoted are subject to the addition of value added tax and any other tax, levy, duty or surcharge applicable. Tax will be charged at the prevailing rate on the day of invoice.
- b. When a bond is requested in relation to the contract this is to be paid by the customer.

12. Adjudication

- a. Should any dispute or differences arise between the Parties under the Contract then either Party shall have the right to refer that disputes or difference for adjudication to an Adjudicator to be appointed by the Association of Independent Construction Adjudicators all in accordance with the Section 108 of the Housing Grants, Construction and Regeneration Act 1996 or any revision thereto. Following referral of a dispute for adjudication under this clause it shall be a condition precedent to the commencement of arbitration or litigation proceedings in respect of the same

dispute or difference, that the adjudication be fully carried out as an obligatory first stage dispute resolution procedure.

13. Arbitration

- a. Subject to (12) above, any dispute arising out of or relevant to the contract shall be referred to an Arbitrator mutually agreed by their parties or failing agreement within one week after notice in writing requiring concurrence in the appointment of an Arbitrator by either party to the other, to an Arbitrator to be appointed by the President for the time being of the Royal Institute of Chartered surveyors.

14. English Law

- a. The validity construction and performance of the Contract and these conditions shall be governed by the Laws of England and each of the parties hereby agrees to submit to the jurisdiction of the English Courts.

15. Brexit

“Brexit” means the United Kingdom’s withdrawal from membership of the European Union, including any period following 31st October 2019 during which that withdrawal is completed.

- a. If, as a result of Brexit, any laws and/or regulations relating to the movement of goods, capital, services or labour between the United Kingdom and the European Union (or between any of the countries of the United Kingdom and any of the member states of the European Economic Area) are introduced that have or are likely to have an adverse impact on the Company’s interests in this Agreement, the parties shall meet at the request of the company to negotiate in good faith and, if possible, agree changes to the Agreement to avoid or mitigate that impact. [However, if agreement cannot be reached within 14 days of the meeting or such longer period as is agreed between them, the Company will be entitled to give notice to terminate the Agreement.]
- b. If the United Kingdom ceases to be a member of the European Union and new tariffs and/or duties are imposed on the import/export of any of the goods or services to be supplied under this Agreement, the Parties agree that these shall be borne by the Customer.

16. COVID-19 statement

Rosebirsch are fully committed to abiding by all Government legislation and Guidelines to maintain the safety and wellbeing of our clients, suppliers and all of our staff during these extra-ordinary times.

- a. We will continue to price all tenders using first principles to obtain a competitive price for your project, however due to social distancing requirements we may not be allowed to have the required number of operatives or subcontractors on site at one time, so we may not be able to comply with your proposed program of work, the above also applies to our suppliers who will have their own restrictions to deal with making predicting contract durations with any accuracy difficult. So whilst this pandemic continues we cannot accept any Liquidated damages claims for over runs on any project.
- b. If the Governments predictions are correct and many companies do not survive the impending recession prices for Labour, Plant & Materials may rise. This is beyond Rosebirsch's control so if we face increased costs in the coming months then we will reluctantly have to pass increased costs and charges on to our Clients.
- c. As the lockdown conditions are lifted, should a second or third wave of contagion be encountered and new restrictions are brought in and work needs to be suspended, Rosebirsch may need to postpone your works for the duration of any restrictions. If this occurs, we reserve the right to invoice you for works completed and materials purchased by Rosebirsch up to the date of any further suspension of commerce.

We appreciate your cooperation and understanding during these uncertain times