

Terms and Conditions – RBL01

Special Conditions:

1. An advance payment of 30% of the Contract Price will be paid to the Contractor on entering this Contract.
2. A further advance payment of 30% of the Contract Price will be paid to the Contractor 1 week before the Commencement Date.
3. The Client may deduct, by way of retention, from any interim payment due to the Contractor a sum equivalent to up to 5%.

1. Application

- 1.1 These terms and conditions shall be deemed to be incorporated in any contract, agreement or Order Form between the Contractor and the Client and shall be in substitution for any other terms and conditions introduced before or after the date of the Order Form (unless expressly identified and agreed to in writing by the Contractor). Furthermore, any action undertaken by the Client in pursuit of their obligations under the Contract will be deemed an explicit agreement to the terms of the Contract and cannot be rescinded, altered or amended in any way without mutual agreement by the Parties.

2. Definitions and Interpretation

- 2.1 The **Contract Price**, the **Works**, the **Site**, the **Commencement Date**, the **Completion Date**, the **Payment Dates**, the **Client** and the **Contractor** have the meanings shown in the Order Form. If no Order Form is part of the Contract between the parties, the following definitions apply:

- Contract Price -
- Works -
- Site -
- Commencement Date -
- Completion Date -
- Payment Dates -
- Client -
- Contractor –

- 2.2 In these terms and conditions, unless the context otherwise requires, the following expressions have the following meanings:

2.2.1	“Certificate of Practical Completion”	means a written notice from the Client confirming that the works are deemed to have reached Practical Completion;
2.2.2	“Contract”	means the Order Form, these terms and conditions and the documents contained within or referred to in the Order Form;
2.2.3	“Design Documents”	means the drawings, details and specifications of materials, goods and workmanship and other related documents and information prepared by or for the Contractor in relation to the design of the Works (including any that are contained in the Contractor’s Proposals);
2.2.4	“Drawings”	means any drawings supplied to the Contractor by the Client;

2.2.5	“Due Date”	has the meaning given in clause 6.2;
2.2.6	“Employer’s Requirements”	documents identified as such, showing or describing or otherwise stating the Client’s requirements for the design and construction of the Works;
2.2.7	“Equipment”	means materials, tools, machinery, devices, and any other instruments used for the Works;
2.2.8	“Insolvent”	has the meaning given in section 113(2) of the Housing Grants, Construction and Regeneration Act 1996 (as amended);
2.2.9	“Normal Working Hours”	Monday – Thursday – 8.00am – 4.30pm Friday – 8.00am-3.30pm
2.2.10	“Order Form”	means the completed order form to which these terms and conditions are attached;
2.2.11	“Parties”	means the parties to the Contract, namely the Contractor and the Client;
2.2.12	“Practical Completion”	means the date of completion of the Works determined in accordance with clause 13.2 and 13.3;
2.2.13	“Snagging List”	means the list of snagging items to be issued by the Client at the time of Practical Completion;
2.2.14	“Specification”	means the documents describing the scope of work, any materials that are to be used and the methods of installation as provided/accepted by the Contractor; and
2.2.15	“Statutory Requirements”	means the notices required by any statute, any statutory instrument, rule or order or any regulation or bylaw applicable to the Works.

- 2.3 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 2.3.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 2.3.2 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; and
 - 2.3.3 a clause or paragraph is a reference to a clause of these terms and conditions.
- 2.4 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.
- 2.5 Words imparting the singular number shall include the plural and vice versa.

- 2.6 References to any gender shall include the other gender.

3. The Works

- 3.1 The Contractor shall carry out the Works in a good and workmanlike manner and complete the Works in accordance with the Contract using materials and workmanship herein specified or otherwise of a good and suitable standard and which are not generally regarded as deleterious.
- 3.2 The Contractor may appoint sub-contractors to perform any or all of the Works.
- 3.3 The Contractor shall use all reasonable endeavours to complete its obligations under these terms and conditions at the times required by the Contract, but time will not be of the essence in the performance of these obligations.
- 3.4 The Contractor shall not be responsible or liable for any defect, deficiency, or otherwise, in or relating to anything outside of the Works and/or its effect on the Works. For the avoidance of doubt this exclusion of liability relates, but is not limited, to any existing systems, structures or substrates within which the Works or any part of the Works are to be executed, or to which the Works or any part of the Works form any extension or are otherwise incorporated into or adjoined to the Works.
- 3.5 Any designs prepared by the Contractor will be based on the Employer's Requirements and the Client is deemed to have accepted all designs by the Contractor and satisfied itself that they address the Employer's Requirements.
- 3.6 It is the Client's responsibility to identify any discrepancies/inconsistencies or inadequacies between the Employer's Requirements and the designs, and it is to notify the Contractor immediately upon identifying such discrepancies/inconsistencies or inadequacies, and in any event within a reasonable period of receiving the Contractor's designs with details of the discrepancy/inconsistency or inadequacy.
- 3.7 The Contractor 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.)
- 3.8 Any existing structures or materials on site replaced by new work will be taken away and will become the property of the Client unless agreed otherwise in writing.
- 3.9 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.

4. Site Facilities and Conditions

- 4.1 The Client shall ensure that the Site is safe and suitable for the Works to be carried out.
- 4.2 At all times the Client shall provide without cost to the Contractor sufficient access to the site to carry out the Works, such loading or unloading facilities that the Contractor may reasonably require, together with adequate dry and secure storage facilities for the Contractor's materials and plant.
- 4.3 The Client shall supply water, electricity and heating facilities as the Contractor reasonably requires.

5. Contract Price

- 5.1 The Client agrees to pay the Contract Price in consideration of the Contractor carrying out

the Works at the times and in the manner specified in the Contract.

- 5.2 In addition the Contractor may recover from the Client his reasonable incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Works.
- 5.3 All sums payable by either Party pursuant to these terms and conditions are exclusive of any value added or other tax (except corporation tax) or other taxes on profit, for which that Party shall be additionally liable.
- 5.4 The Contract Price is based on current prices of materials and products, current wage rates, employment conditions and statutory liabilities. The Client shall bear the risks of these items, and increases to the Contract Price will be made for the any increases in price that the Contractor incurs as a result of these items.
- 5.5 Unless specifically stated to the contrary in writing, the Contract Price is based on the assumption that the Works will be carried out during Normal Working Hours. Work may be performed by the Contractor outside Normal Working Hours subject to written agreement and for an additional charge.
- 5.6 The Contract Price is based on the Contractor completing the Works by the Completion Date. If the Client wishes to accelerate the Works to be completed before the Completion Date, this will be subject to extra charge.

6. **Payment**

- 6.1 The Contractor shall be entitled to submit a monthly application for payment. The application for payment should state the sum the Contractor considers to be due to it at the Due Date and the basis on which that sum is calculated.
- 6.2 The Due Date shall be 1 day after the application for payment is sent.
- 6.3 The final date for payment shall be 14 days after the Due Date.
- 6.4 The sum payable will be the sum as set out in the Contractor's application for payment unless the Client submits a valid notice in accordance with clause 6.5.
- 6.5 If the Client seeks to serve any notice in accordance with s111(2)(a) and (b) of the Act, it is a condition precedent that it must be sent to the Contractor by email at paymentnotices@rosebirch.co.uk marked as high priority with the subject heading marked as "S.111 Notice" by no later than 7 days before the final date for payment.
- 6.6 Only in the event that a valid notice is served in accordance with clause 6.5 will the sum due to the Contractor be that of the sum stated within the relevant notice.
- 6.7 If the Client fails to make payment of any sum applied for (unless a notice is issued in accordance with clause 6.5) to the Contractor by the final date for payment, without prejudice to the Contractor's other rights under the Contract, that sum shall incur interest at eight percent above base rate per annum (as set from time to time by the Bank of England's Monetary Policy Committee or any successor of it) from one day after the final date for payment until payment of the sum applied for plus any accrued interest is paid in full by the Client to the Contractor.
- 6.8 Should the Client fail to pay any invoice by the final date for payment the Contractor may following seven days' notice in writing suspend all or part of the Works. Upon the ending of a suspension the Client shall pay the Contractor's reasonable costs of the suspension and shall grant the Contractor an extension of time for the period of delay caused by the suspension.
- 6.9 The Contractor may, at its discretion, retain or remove any materials to offset any unpaid amounts.

7. Retention

- 7.1 If specified within the Order Form as a special condition the Client may deduct from any interim payment due to the Contractor a sum equivalent to that which is specified within the Order Form by way of retention.
- 7.2 If clause 7.1 applies the Client shall pay to the Contractor one half of the retention within 14 days of the Certificate of Practical Completion and the other half of the retention within three months of the Certificate of Practical Completion.
- 7.3 Subject to clause 7.1 and 7.2 the Client will not be entitled to deduct from any interim payment due to the Contractor any sums by way of retention.
- 7.4 The Defects Liability Period is 3 months commencing from the date of Practical Completion of the Works. During this period, the Contractor will return at nil cost to remedy any reasonable defects arising from the Contract Works. The Client is not entitled to make a claim for their use of a third-party to complete the Contract Works.

8. Passing of Property and Risk

- 8.1 As soon as any Equipment is delivered either to Site or into secure storage accommodation, the Client shall assume the sole risk for any loss or damage to such Equipment howsoever caused. If the Client is unable to accept delivery of all or any part of the Equipment within seven days after notification that they are ready for despatch, risk in relation to such Equipment shall pass to the Client at the expiry of such seven-day period. Once the risk has passed to the Client such risk shall in no circumstances whatsoever be passed back to the Contractor.
- 8.2 All Equipment supplied by the Contractor shall remain the Contractor's property until full payment of the Contract Sum and the Contractor shall be entitled and the Client hereby irrevocably authorises and licenses the Contractor, in the event of the Client failing to pay all or any part of the Contract Sum by the Final Date for Payment, without prejudice to any other remedy in equity or at common law, in accordance with the Contract to enter the Site or other premises where such Equipment may then be and disconnect, dismantle and remove the same in whole or in part. Any disposition by the Client of any such Equipment shall be made subject to the exercise by the Contractor of such rights.

9. Instructions and Discrepancies

- 9.1 The Client is prohibited from omitting any works under this Contract without first obtaining the Contractor's express written consent.
- 9.2 In the event the Clients wishes to vary the Contract, a notice shall be given in writing to the Contractor of the proposed Variation.
- 9.3 The Contractor is able to decide whether to carry out the works contained within the proposed Variation and the Contractor will determine the associated price and payment mechanism for the Variation. This clause is deemed as accepted by the Client upon their instruction and performance of this Contract.
- 9.4 Performance of this Contract is acceptance that the Client will be liable for any and all claims brought against them for any losses and liabilities incurred by the Contractor for the Client's non-compliance of this clause.
- 9.5 If the Client requires additional works to be carried out by the Contractor, the Contractor is entitled to opt for payment of the additional works to be on a day rate using the Contractor's schedule of rates. Details of the Contractor's rates are available upon request.
- 9.6 In the event of a discrepancy between the Drawings and Specification, the Specification shall

prevail.

10. Termination

- 10.1 The Contractor may terminate the agreement immediately if:
 - 10.1.1 the Client is in breach of any of his obligations hereunder and fails to remedy such breach within 7 days of receiving notice of the same from the Contractor;
 - 10.1.2 the Client has become Insolvent; or
 - 10.1.3 any circumstances whatsoever beyond the reasonable control of the Contractor that arise and require for any reason the termination of the Contract.
- 10.2 In the event of termination under clause 10.1 the Client shall pay to the Contractor the value of the Works executed, based upon the Contractor's rates and prices, materials on the Site and the cost of removal of its plant, tools and equipment by the Contractor and shall allow the Contractor its direct loss and expense and loss of profit. Such payment shall be made in accordance with clause 6 following the Contractor's rendering of an invoice.

11. Assignment

- 11.1 The Contractor may assign, transfer, charge or sub-contract any or all of its rights and obligations under the Contract without the consent of the Client.
- 11.2 The Client shall not assign, transfer, charge, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the Contractor.

12. Liability and Indemnity

- 12.1 The Contractor's liability under or in connection with the Contract shall be limited to an amount equivalent to the Contract Price. This limit shall apply however that liability arises, including, without limitation, a liability arising by breach of contract, arising by tort (including, without limitation, the tort of negligence) or arising by breach of statutory duty. Provided that this clause shall not exclude or limit the Contractor's liability for:
 - 12.1.1 death or personal injury caused by the Contractor's negligence; or
 - 12.1.2 fraud or fraudulent misrepresentation.
- 12.2 Subject to clause 12.1 the Contractor shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
 - 12.2.1 loss of profits;
 - 12.2.2 loss of sales or business;
 - 12.2.3 loss of agreements or contracts;
 - 12.2.4 loss of anticipated savings;
 - 12.2.5 loss of or damage to goodwill;
 - 12.2.6 any indirect, special or consequential losses.
- 12.3 The Client shall indemnify the Contractor against all damages, costs, claims and expenses suffered by the Contractor arising from loss or damage to any equipment (including that of third parties) caused by the Client, or his agents or employees.
- 12.4 The Contractor shall not be liable to the Client or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any of the

Contractor's obligations if the delay or failure was due to any cause beyond the Contractor's reasonable control.

- 12.5 The Client will indemnify the Contractor for any injury or losses suffered by employees of the Contractor which arise in whole.
- 12.6 The Client shall be liable for and shall indemnify the Contractor against and from any loss, expense, claim or proceedings whatsoever in respect of any failure on the part of the Client to maintain proper insurances.

13. Programme

- 13.1 The Contractor is to take possession of the Project on the Commencement Date and the Works are to be completed to the point where the Client can assume reasonable occupation or use of the Project and the Works by the Completion Date, as such date may be adjusted under the Contract.
- 13.2 Once the Contractor has deemed itself to have achieved practical completion of the Works, the Contractor will issue a Certificate of Practical Completion. Should the Client not respond to the Certificate of Practical Completion within seven days of its issue with valid, fair and reasonable explanations of non-acceptance, the Client will be deemed to have assumed reasonable occupation and accepted the Works, which will be deemed to be practically complete for the purpose of the Contract and which will consequentially start the Defect Liability Period. For the avoidance of doubt, the existence of defects which are minor in nature and/or snagging items will not constitute valid, fair or reasonable explanations for the Client not to accept that the works are practically complete.
- 13.3 Practical Completion shall be regarded as having been achieved on the date specified within the Certificate of Practical Completion.

14. Extension of Contract Period

- 14.1 If it becomes apparent that the Works will not be completed by the Completion Date (or any later date fixed under this clause from time to time) for reasons beyond the control of the Contractor, including (without limitation) compliance with any instruction of the Client that is not due to the default of the Contractor, then the Contractor shall notify the Client in writing confirming that the Completion Date has been amended. The Client shall also make an allowance for the Contractor's direct loss and expense occasioned by the extension of time and such sum shall be added to the Contract Price.
- 14.2 If the Client believes the Contractor is liable for a delay to the Works, it is a condition precedent that the Client must notify the Contractor in writing (by first class post to the address in the Order Form or otherwise agreed by the Parties and by email to delayclaim@rosebirch.co.uk with the subject heading "URGENT – DELAY CLAIM") within 7 days from the date of discovery of the delay. Failure to do so will result in the Client losing their entitlement to bring any claim arising from that delay against the Contractor and Client will lose their entitlement to any damages for delay including any liquidated damages set out either in the Order Form or elsewhere in the Contract.

15. **Risk and Insurance**

15.1 The Client shall be responsible for maintaining adequate insurance in respect of the Works and, where appropriate, the existing structures at the Site.

16. **Dispute Resolution**

16.1 If any dispute or difference concerning the Works shall arise between the Client and the Contractor, such dispute or difference may be referred to adjudication to be conducted in

accordance with the Scheme for Construction Contracts Regulations (England and Wales) 1998 (as amended) subject to the following amendments:

16.1.1 Where either Party refers a dispute to adjudication, the Contractor will have no less than 14 days from the date the Adjudicator notifies the Parties to confirm his or her appointment to serve any reply; and

16.1.2 The Client shall have no more than 48 hours to serve any reply.

16.2 When serving a Notice of Adjudication, the Client must also serve with it a clean, complete, and legible copy of the adjudication referral to the Contractor which shall be written in size 11 Calibri (Body) font, with no purposeful and superfluous obstructions or additions, attach all appendices referred to and be served by recorded delivery to the Contractor's address set out in the Order Form unless specified otherwise by the Contractor.

16.3 No adjudication proceedings shall be permitted until both the Notice of Adjudication and Referral are signed for by the Contractor via recorded delivery and are compliant with the clause 16.2.

16.4 Any notice served by the Contractor in respect of clause 16 may be served by email and is deemed as received immediately upon sending.

17. **Force Majeure**

Neither the Client nor the Contractor shall be liable for any failure or delay in performing their obligations under the Contract where such failure or delay results from any cause that are beyond the reasonable control of the relevant 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.

18. **Waiver**

No failure or delay by a party to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. **Severance**

If any provision or part-provision of these terms and conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these terms and conditions.

20. **Copyright**

20.1 The Contractor reserves all copyright (and any other rights) which subsists in any Design Documents prepared by the Contractor or in any products of said Design Documents in connection with the Works and any associated works. The Contractor will grant a royalty-free licence to the Client to reproduce and distribute the Design Documents subject to the Client paying all sums due under the Contract on time and in full.

20.2 The Client shall not use, reproduce, or distribute any material, belonging to the Contractor for any other purpose than is necessary to complete the Contract Works or the advertisement thereof. Any reproduction or distribution is restricted solely to work carried out on the Site.

20.3 The Contractor reserves the right to take such actions as may be appropriate to restrain or prevent infringement of such copyright.

21. Notices

21.1 Save where this Contract states otherwise, any notice made under this Contract shall be given in writing and shall be delivered by first-class registered post and email to the addresses specified in the Order Form.

21.2 The Client must notify the Contractor in writing should their address change. In the event the Client fails to notify the Contractor of this change, any notice served by the Contractor to the previous address will still remain valid.

21.3 Notices shall be deemed to have been received:

21.3.1 in the case of delivery by hand, when delivered;

21.3.2 in the case of pre-paid first class post, two days after the date of posting; and

21.3.3 in the case of email, the time it was sent.

22. Law and Jurisdiction

22.1 The governing law of the Contract shall be the laws of England and Wales.

22.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

23. Third Party Rights

23.1 Nothing in the Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. Consumer Rights

24.1 If the Client has entered the Contract for purposes which are wholly or mainly outside its trade, business, craft or profession, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 apply.

24.2 If those regulations apply, the Client will have the right to cancel the Contract within 14 days if:

24.2.1 The Parties have concluded the Contract under an organised distance sales or service-provision scheme without the simultaneous physical presence of both Parties, with the exclusive use of one or more means of distance communication up to and including the time at which the Contract is concluded;

24.2.2 The Parties have concluded the Contract in the simultaneous physical presence of both Parties, in a place which is not the Contractor's business premises;

24.2.3 The Contractor has made the Client an offer to enter into the Contract in the simultaneous physical presence of both Parties at a place which is not the Contractor's business premises;

- 24.2.4 The Parties have concluded the Contract either:
- 24.2.4.1 On the Contractor's business premises; or
 - 24.2.4.2 Through any means of distance communication,
immediately after the Client was personally and individually addressed in a place which is not the Contractor's business premises in the simultaneous physical presence of both Parties; or
- 24.2.5 The Parties have concluded this contract during an excursion organised by the Contractor with the aim or effect of promoting and selling of its services to the Client.
- 24.3 If the right to cancel applies, the Client may cancel by giving the Contractor written notice within the 14-day cancellation period. If the Client exercises that right, the Contractor will reimburse all payments received, unless the Client has asked the Contractor to commence work within the cancellation period.
- 24.4 The Contractor will not start work within the cancellation period unless the Client asks it to. The right to cancel within the cancellation period will not be lost but, if the Client cancels the Contract within that period the Contractor will be entitled to be paid such part of the Contract Price is proportionate to any part(s) of Works that have been carried out.