

BUILDER TERMS AND CONDITIONS

BACKGROUND:

These Terms and Conditions shall apply to the provision of building services by T Menell trading as Broadoaks ("the Builder") to customers that require his services.

1. Definitions and Interpretation

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

"Agreement"

"Agreed Date" "Agreed Times"

"Business Day"

"Customer" "Final Fee"

"Job"

"Model Cancellation Form"

"Order" "Property" "Quotation" "Quoted Fee"

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];

means the date on which the provision of the Services will commence as agreed by the Parties [as evidenced in Schedule 1];

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];

means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in the United Kingdom

means the individual that requires the Services subject to these Terms and Conditions and the Agreement;

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.

means the complete rendering of the building Services;

means the model cancellation form attached as Schedule 2;

means the Customer's initial request to acquire the Services from the Builder as set out in Clause 2 of these Terms and Conditions;

means the Customer's home, as detailed in the Order and the Agreement, at which the Services are to be rendered;

means a quotation detailing proposed fees and services supplied to the Customer in accordance with Clause 2 of these Terms and Conditions;

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" "Visit"

"Work Area"

means the building services provided by the Builder as detailed in Clause 5 of these Terms and Conditions;

means any occasion, scheduled or otherwise, on which the Builder shall visit the Property to render the Services; and

means the part of the Property within which the Services are to be rendered.

2. Unless the context otherwise requires, each reference in these Terms and Conditions to:

1. "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

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;

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;

4. a Schedule is a schedule to these Terms and Conditions;

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

6. a "Party" or the "Parties" refer to the parties to the Agreement.

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.

4. Words imparting the singular number shall include the plural and vice versa.

5. References to any gender shall include the other gender.

6. References to persons shall include corporations.

2. Orders

1. The Builder accepts orders for his Services through telephone, internet and site meetings.

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.]

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.

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

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 in the region 25% of the Quoted Fee. Orders shall not be deemed confirmed until the Deposit is paid in full.

2. Subject to the provisions of Clause 9 the Deposit shall be non-refundable.

4. Fees and Payment

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].

2. The Builder shall use all reasonable endeavours to use only the sundry parts and other products (and quantities thereof) set out in the Quotation and the Agreement; however if additional sundry parts and other products are required the Final Fee shall be adjusted to reflect this. Any such increases shall be kept to a minimum.
3. In the event that the prices of sundry parts and other products 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. The builder reserves the right to send a payment schedule to the customer for sums of money to be paid for building materials as the job progresses.
5. The Builder shall invoice the Customer when the provision of the Services is complete.
6. All invoices must be paid within 24 hours of receipt by the Customer.
7. 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 5% above the base rate of Bank OF England obtaining at the time.

5. Services

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.
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).
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.
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. 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.
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.
7. The Builder shall ensure that he complies with any and all relevant codes of practice.
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.
9. The Builder shall properly dispose of all waste that results from his rendering of the Services.
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.
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.
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

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.
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.

7. Customer's Obligations

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.
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.
3. The Customer shall ensure that the Builder can access the Property at the Agreed Times to render the Services.
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.
5. The Customer shall ensure that the Builder has access to electrical outlets and a supply of hot and cold running water.
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. 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.
8. The Customer must give the Builder at least 48 hours 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 48 hours notice is given the Builder shall invoice the Customer at his normal rate.

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 of Contract During the Cooling Off Period

1. The Customer has a statutory right to a "cooling off" period. This period begins once the contract between the Builder and the Customer is formed and ends at the end of 14 calendar days after that date.
2. If the Customer wishes to cancel the contract within the cooling off period the Customer should inform the Builder immediately by a clear statement (e.g. a letter sent by first class post, fax or email to the postal address, fax number or email address specified on the Quotation or otherwise notified to the Customer). The Customer may use the Model Cancellation Form, but it is not obligatory.
3. To meet the cancellation deadline, it is sufficient for the Customer to send his or her communication concerning the exercise of the right to cancel before the cancellation period has expired.

4. If the Customer exercises the right to cancel he/she will receive a full refund of any amount paid to the Builder in respect of the contract.

5. The Builder will refund money using the same method used to make the payment, unless the Customer has expressly agreed otherwise. In any case, the Customer will not incur any fees as a result of the refund.

6. The Builder will process the refund due to the Customer as a result of a cancellation without undue delay and, in any case, within the period of 14 days after the day on which the Builder is informed of the cancellation.

7. If the Agreed Date falls within the cooling off period the Customer must make an express request for provision of the Services to begin within the 14 calendar day cooling off period. [This request forms a normal part of the ordering process.] By making such a request the Customer acknowledges and agrees to the following:

1. If the Services are fully performed within the 14 calendar day cooling off period, the Customer will lose the right to cancel after the Services are complete.

2. If the Customer cancels the Services after provision has begun but before it is complete the Customer will still be required to pay for the Services supplied up until the point at which the Customer informs the Builder of his/her wish to cancel. The amount due shall be calculated in proportion to the full price of the Services and the actual Services already provided. Any sums that have already been paid for the Services shall be refunded subject to deductions calculated in accordance with the foregoing. Refunds, where applicable, will be issued within <<insert normal refund period>> and in any event no later than 14 calendar days after the Customer informs the Builder of his/her wish to cancel.

8. Clause 9 applies to cancellation of the Services after the 14 calendar day cooling off period has elapsed.

9. Cancellation after the Cooling Off Period

1. The Customer may cancel or reschedule the Job at any time before the Agreed Date. Subject to the provisions of clause 8, the following shall apply to

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cancellation or rescheduling:

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.

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.

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.

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.

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.

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.

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

10. Liability, Indemnity and Insurance

1. The Builder shall ensure that he has in place at all times suitable and valid insurance which shall include public liability insurance.

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 of the contract by the builder and customer.

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.

4. Nothing in these Terms and Conditions shall limit or exclude the Builder's liability for death or personal injury.

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.

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.

11. Guarantee

1. The Builder guarantees that the product of all Services provided shall be free from any and all defects for a period of 12 months unless specified differently in writing by the builder following completion of the Job.

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.

12. Data Protection

The Builder will not share the Customer's personal data with any third parties for any reasons without the prior consent of the Customer. Such data will only be collected, processed and held in accordance with the Builder's rights and obligations arising under the provisions and principles of the Data Protection Act 1998.

13. Force Majeure

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.

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 24 hour 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

1. Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
 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 3 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 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;
 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);
 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 reconstruction 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);
 6. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 7. that other Party ceases, or threatens to cease, to carry on business;
- or
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.

2. For the purposes of sub-Clause 14.1.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

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:

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

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

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.

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

1. [The Parties agree that all times and dates referred to in the Agreement shall be of the essence of the Agreement.] unless both parties have agreed otherwise in writing.

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

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.

2. Notices shall be deemed to have been duly given:

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

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

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

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
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

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.
2. [If negotiations under sub-Clause 28.1 do not resolve the matter within 48 hours 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.]
3. [If the ADR procedure under sub-Clause 28.2 does not resolve the matter within 48 hours 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.
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.]
5. Nothing in this Clause 28 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
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

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.

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) T Mennell @ Broadoaks [a company registered in United Kingdom
- (2) (“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. 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.
- 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

3. Fees and Payment

Relevant Dates / Times

4. Waiver of Cooling Off Period

- 1. The Customer requests the Builder to commence provision of the Services immediately and not to wait for the 14 day cooling off period referred to in Clause 8 of the Terms and Conditions to expire.
- 2. The Customer acknowledges that if he/she exercises the right to cancel he/ she will be liable to pay the Builder for the Services supplied up until the point at which the Customer informs the Builder of his/her wish to cancel, as set out in Clause 8 of the Terms and Conditions.

3. The Customer acknowledges that he/she will lose the right to cancel if the Services are fully performed within the 14 day cooling off period.

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>>

SCHEDULE 2

MODEL CANCELLATION FORM

To: Mr T Mennell Phone: 01983 840 299

I We hereby give notice that I/we cancel my/our contract for the building services dated << >>.

Name of consumer(s): << >> Address of consumer(s): << >> Signature of consumer(s): << >>

Date: