

# Terms & Conditions

## for the provision of third-party inspection

### 1. Definition and basis of these Terms & Conditions

**1.1** In these conditions the following words have the following meanings:

"Company" means the The British Institute of Kitchen, Bedroom & Bathroom Installation Limited, a company incorporated in England & Wales having Company Number 06533488 and registered office address at Riverside Business Centre, Fort Road, Essex RM18 7ND who will provide the Services.

"Customer" means the company, business or individual for whom the Company will provide the Services.

"Services" means the third-party provision of an inspection service carried out by a person or persons nominated by the Company. This is to include the provision of a Section 35 (Civil Proceedings) compliant report, which will be delivered to the Customer following the inspection.

"Contract" means a contract for the provision of the Services or Sale of Goods, which will incorporate these Terms and Conditions and any written agreement between the parties or other document issued by the Company or, failing any such document, any other agreement between the parties.

"Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs (including but without limitation all legal costs and disbursements) and any other losses and/or liabilities;

"Normal Working Hours" means 8am to 5pm Monday to Friday inclusive (local, national and Bank Holidays observed by the relevant depot of the Company excepted).

"Premises" means the location of the inspection as defined within the Quotation.

"Quotation" means the quotation provided by the Company detailing the specification of Services to be completed.

**1.2** These conditions shall be incorporated in all Contracts and shall be the sole conditions under which the provision of the Services takes place. All other terms, conditions and other representations are excluded from the Contracts between the Company and the Customer including any terms and conditions which the Customer may purport to apply under any Contract and these terms and conditions shall prevail.

**1.3** The Company's employees or agents are not authorised to make any representations concerning the Services unless confirmed in writing.

## **2. Term**

- 2.1** If the Contract has a fixed duration, subject to earlier termination in accordance with these terms, neither party shall be entitled to terminate the Contract before the expiry of that fixed period unless by agreement.
- 2.2** If the Contract does not have a fixed duration, subject to earlier termination in accordance with these terms, the Contract shall continue in force until the parties agree otherwise or until one month's written notice of termination is given by one party to the other.

## **3. Provision of Services**

- 3.1** The Company agrees, to provide the Services as set out in the Quotation, either on a "one off" basis or on an ongoing basis, as the parties shall agree.
- 3.2** For the avoidance of doubt, unless specified in the Quotation, the Services do not include:
- 3.2.1** Repairs to defects discovered during the Service
  - 3.2.2** Liaison with any other party, other than the Customer
  - 3.2.3** Attendance at any subsequent tribunal or legal proceeding
- 3.3** The Services shall be carried out subject to any exclusions or qualifications contained in the Quotation.
- 3.4** The Services will be provided by the Company during Normal Working Hours and subject to reasonable prior notice by the Company to the Customer.
- 3.5** The Company shall be under no obligation to provide any part of the Services outside Normal Working Hours but, if the Company agrees with the Customer to do this, the Customer shall pay to the Company, as an additional element of the Charges, the Company's then current standard extra "outside hours" charges as notified by or available from the Company from time to time.
- 3.6** The Company shall only be obliged to perform the Services in relation to the application made by the Customer.
- 3.7** In providing the Services, the Company shall not be required or asked by the Customer to do anything that may put it in breach of any relevant law.
- 3.8** All effort will be made to provide Services within the following timeline:
- 3.8.1** Upon Customer payment for the inspection, which will be taken in advance of the Service, the Company will endeavour to conduct the inspection within 10 working days, subject to availability;
  - 3.8.2** The Company will digitally deliver the report, within 5 working days post inspection. Delivery of this document will signify the end of the Company's obligations regarding the delivery of the Service.

- 3.9** The Service shall provide a digital report that includes the following subject headers:
- 3.9.1** An overview of the inspection instruction;
  - 3.9.2** Credentials relating to the inspector's experience;
  - 3.9.3** Details of the precise points that the inspector has been instructed to report upon;
  - 3.9.4** Findings from the points that the inspector has been instructed to report upon, together with a photographic appendix of points addressed;
  - 3.9.5** An overview of the remedial action required (if applicable), together with a time estimate to complete such work;
  - 3.9.6** An expert witness declaration of truth signed and dated.
- 3.10** The Company's appointed inspector is not permitted to make comment at the time of the inspection, nor is permitted to provide any indication as to their findings. Disclosure at this stage could negatively impact future proceedings. It is therefore in the best interests of all parties to avoid item specific dialogue during the inspection, unless the inspector feels that further information is required at that point.
- 3.11** All contact following the inspection must be made with the Company and not the inspector. The Inspector is not obliged to return any contact with the Customer if this clause is breached.

## **4. Customer obligations**

- 4.1** Unless otherwise specified in the Quotation, the Customer shall provide the Company with safe access to the property and provide any help or information that the Company may require in providing the Services.
- 4.2** The Customer shall provide such assistance or comply with such obligations as may be set out in the Quotation.
- 4.3** The Customer shall be responsible for cleaning, providing free and unrestricted access and preparing the property prior to the Company providing the Services. The Company reserves the right to levy additional charges in the event of failure by the Customer to comply with this obligation.
- 4.4** Should the Company's representative consider the site where the Services are to be provided, the Equipment or any related or adjacent equipment to be worked on to be in an unsafe condition or position then the Company reserves the right to request the Customer or user to render every possible assistance to make the site, the Equipment and/or equipment safe to work on in accordance with all applicable health and safety legislation and guidance. Failure to render the said assistance will entitle the Company to terminate the Contract or suspend provision of the Services without any Liability to the Company. In such circumstances the Company shall be entitled to recover any costs and charges.
- 4.5** The Customer specifically acknowledges and agrees that where an examination or Testing Inspection and Certification is to be carried out in accordance with any statutory regulations it is the Customers legal obligation to ensure that any examination is carried out with the prescribed inspection interval. Should our Inspection reveal defects affecting the safety of the

Equipment it will be the Customer's responsibility to take appropriate action in relation to such item, notwithstanding that, in the event of a defect in the lifting Equipment involving an existing or imminent risk of serious personal injury, the Company will take steps to report it as soon as is practicable to the relevant enforcing authority.

## **5. Warranty**

- 5.1** The Company warrants that the Services shall be provided with reasonable skill and care. For the avoidance of doubt no warranty is provided in relation to the property that is being inspected, or the subsequent report that is provided.

## **6. Charges**

- 6.1** The Customer shall pay to the Company the charges specified in the Quotation ("the Charges") which shall be invoiced at the point of quotation acceptance by the Customer.
- 6.2** The Company reserves the right to vary the Charges by giving the Customer not less than thirty (30) days prior written notice.
- 6.3** The Company shall be entitled to charge waiting time where the Customer fails to provide sufficient access to the site or where the Company is delayed from performing the Services due to other contractors of the Customer requiring access to the site prior to the Company.
- 6.4** The Company shall be entitled to charge additional Charges in circumstances specified in the Quotation.
- 6.5** The Company shall issue to the Customer invoices in respect of sums payable by the Customer to the Company hereunder, on or in advance of the date upon which the relevant sum becomes due. Each such invoice shall be paid for in GBP Sterling on the date as stated on the invoice (this shall be the final date for payment).
- 6.6** The Customer must notify the Company in writing within 5 days of the date of any invoice of any issues with the invoice.
- 6.7** If any amount due to the Company hereunder remains unpaid after the date on which it is payable, the Company shall be entitled to charge interest on such sum at a rate of 5% per annum above the base rate of the Bank of England from that date until the date of actual payment, and to withhold any or all of the services to be provided by the Company hereunder until such time as payment of the said sum and of the interest thereon is received by the Company (and the Company shall have no Liability to the Customer in relation to such suspension (including any Equipment passing its date on which a statutory inspection is required)).
- 6.8** All Charges exclude Value Added Tax. The Customer shall pay to the Company (subject to the issue of the relevant Value Added Tax Invoice) the amount of Value Added Tax for which the Company will be accountable to HM Customs & Excise in respect of the Charges.
- 6.9** Prompt payment under a Contract shall be of the essence. Payment shall not be deemed to be made until the Company has received cleared funds in respect of the full amount outstanding.
- 6.10** The Customer shall pay all sums due to the Company under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

- 6.11** Cancellation charges shall be levied based on the following timescales:
- (a) orders cancelled within 7 working days of the scheduled commencement of the Service – 25% of the quoted charge plus any additional costs incurred;
  - (b) orders cancelled within 48 hours of the scheduled commencement of the Service – 50% of the quoted charge plus additional costs incurred.
  - (c) orders cancelled within 24 hours of the scheduled commencement of the Service – No refund is given.
- 6.12** No refund shall be applicable post inspection, under any circumstances.

## **7. Force Majeure**

- 7.1** Neither party to the Contract shall be under any Liability for any failure to perform any of their respective obligations as a result of Force Majeure, other than any obligation of the Customer to make any payment hereunder. Following notification by the one party to the other of Force Majeure, the affected party shall be allowed a reasonable extension of time for the performance of its obligations.
- 7.2** For the purposes of this Clause, "Force Majeure" means fire, explosion, flood, adverse weather conditions, lightning, act of God, act of terrorism, war, rebellion, riot, sabotage, strike or similar labour dispute, traffic delays or other events or circumstances outside the reasonable control of the affected party.

## **8. Limitations of Liability**

- 8.1** The Company will not be liable for any delays caused by any circumstances beyond our reasonable control.
- 8.2** The Company will not be liable for any indirect consequential or special loss, loss of business, profits, goodwill, contracts, revenues, savings you expected to make, wasted money, wages, fees or expenses, due to late delivery, non-delivery, unsuitability of Service, even if the Customer has advised us of the possibility of such loss or damage.
- 8.3** Nothing in these terms and conditions shall exclude The Company from Liability for death or personal injury caused by Company negligence, fraudulent misrepresentation or any other type of Liability which cannot be excluded or limited by operation of law.
- 8.4** The Company's total Liability to its Customer under and/or arising in relation to any Contract shall not exceed 5 times the amount of the Charges or the sum of £1,000, whichever is the higher, under that Contract. To the extent that any of our Liability to you would be met by our insurance then our Liability shall be extended to the extent that such Liability is met by such insurance.
- 8.5** The Customer will indemnify the Company against any and every expense, Liability, financial loss, claim or proceedings whatsoever, and in respect of any death or personal injury whatsoever or damage to or loss of property whatsoever incidental to the Contract.
- 8.6** This clause will survive termination or expiry of these terms and conditions.

## 9. Termination

### 9.1 If the Customer:

- 9.1.1 fails to make any payment to the Company when due; or
- 9.1.2 breaches the terms of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
- 9.1.3 persistently breaches the terms of the Contract; provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;
- 9.1.4 ceases or threatens to cease to carry on business;
- 9.1.5 being an individual or partnership, has a bankruptcy petition presented against it or compounds with or comes to an arrangement with its creditors, enters into an individual voluntary arrangement or suffers any similar action in any jurisdiction;
- 9.1.6 being a company, enters into voluntary or compulsory liquidation, has an administrator or administrative receiver appointed over all or any of its assets, or compounds with or comes to an arrangement with its creditors or enters into a company voluntary arrangement, any attachment order is made against it, any distress, execution or other legal process is levied on any of its property or it suffers any similar action in any jurisdiction;
- 9.1.7 has circumstances in which the Company reasonably believes that any of the events mentioned above is about to occur and the Company notifies it of this belief;
- 9.1.8 appears reasonably to the Company due to its credit rating, to be financially inadequate to meet its obligations under the Contract;
- 9.1.9 appear reasonably to the Company to be about to suffer any of the above events; then the Company shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out below.

### 9.2 If any of the events set above occurs in relation to the Customer then:

- 9.2.1 the Company may withhold the performance of any Services and cease any Services in progress under this and/or any other Contract between the Customer (or any of its Associated Companies) and the Company(or any of its Associated Companies);
- 9.2.2 the Company may immediately cancel, terminate and/or suspend without Liability to the Customer, the Contract and/or any other contract between the Customer (or any of its Associated Companies) and the Company(or any of its Associated Companies);
- 9.2.3 any credit period in relation to payment of the Charges shall be accelerated and all sums, all monies owed by the Customer (or any of its Associated Companies) to the Company (or any of its Associated Companies) under this Contract or any other Contract between the Customer (or any of its Associated Companies) and the Company (or any of its Associated Companies) shall immediately become due and payable.

### 9.3 Upon termination of the Contract the Customer shall immediately:

- 9.3.1** at its expense, return any equipment belonging to the Company to the Company or make such equipment available for the Company to collect; and
- 9.3.2** pay to the Company (or any of its Associated Companies), in full and cleared funds, all outstanding Charges and/or any other sums payable under the Contract or any other contract the Customer (or any of its Associated Companies) and the Company (or any of its Associated Companies).
- 9.4** In the event that the Contract is terminated pursuant to Clause 9.2, the Company shall be entitled to retain the whole of the Charges paid by the Customer in respect of any period for which the Service has been provided, whether or not that period is at an end.

## **10. Notices**

- 10.1** Any notices to be given by either party hereunder may be given:
  - 10.1.1** by address; or
  - 10.1.2** by sending the same by recorded delivery post addressed to the other party's last known address; or 12. 1. 3 by facsimile transmission to the other party's last known facsimile number.
- 10.2** A notice shall be deemed to have been received (1) in the case of delivery, at the time of delivery, (2) in the case of recorded delivery post upon the expiry of 48 hours from the time the same was properly addressed, stamped and posted and (3) in the case of facsimile transmission, upon transmission.

## **11. Miscellaneous**

- 11.1** The headings to these Terms and Conditions shall not affect their interpretation.
- 11.2** Throughout these Terms and Conditions, wherever the context so requires, the use of the singular number shall be construed to include the delivery to the other party's last known plural, and the use of the plural the singular, and the use of any gender shall include all genders.
- 11.3** Reference in these Terms and Conditions to a "Clause" is to a Clause of these Terms and Conditions.
- 11.4** If any provision of the Contract is rendered by legislation void or declared void by court decree or order that provision shall be severed and the remaining provisions shall not thereby be altered and shall remain in full force and effect.
- 11.5** No waiver by the Company of any breach of these Terms and Conditions shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 11.6** It is hereby agreed and declared that the Company may at its absolute discretion assign any sums owed to it by the Customer (or any of the Customer's related or associated persons, firms or companies or any of their successors in title) to any of the Company's associated or related companies or by way of security.

- 11.7** If any sum of money shall be recoverable from or payable by the Customer to the Company, the same may be deducted from any sum then due, or which at any time thereafter may become due from the Customer to the Company, whether under the Contract or otherwise.
- 11.8** The Customer shall not be entitled to withhold payment of any sums after they have become due by reason of any right or set off or counterclaim which the Customer may have or allege to have or for any other reason whatsoever.
- 11.9** The Company shall be entitled to sub-contract its performance of its obligations under a Contract to a third party of its choosing (provided that the Company shall remain liable for the acts and/or omissions of its sub-contractors as though they were its own acts and/or omissions).
- 11.10** The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or sub- contractors as though they were its own acts and/or omissions under this Contract.
- 11.11** The Company shall not be obliged to employ any of the Customer's employees (or any employees of a third party contractor appointed by the Customer) as a result of or in connection with the Contract or the Company providing the Services, and the Customer agrees to indemnify the Company against any costs, liabilities and expenses incurred by it as a result of any claim (including for dismissal) or demand of any nature by any such employee against the Company.

## **12. Entire agreement and applicable law**

- 12.1** The Contract constitutes the entire agreement between the Company and the Customer in respect of the Services and supersedes all other agreements, statements, representations or warranties made by or between the parties or either of them concerning the same. These Terms and Conditions shall supersede any terms and conditions appearing on or referred to in any purchase order, acknowledgement or other document issued by the Customer in respect of the subject matter of these Terms and Conditions.
- 12.2** No variations of the Contract shall be effective unless specifically agreed in writing by an authorised representative of the Company.
- 12.3** The Contract shall in all respects be subject to, governed by and construed in accordance with English law and the parties hereby agree to submit to the exclusive jurisdiction of the English courts in relation to any matter or dispute arising out of or in connection with the Contract (whether of a contractual or tortious nature or otherwise).