

## STANDARD TERMS AND CONDITIONS

### 1. Definitions

- 1.1. 'Additional Items of Work' shall bear the meaning set out in paragraph 4.3.
- 1.2. 'Cobsen-Davies' means Cobsen-Davies Roofing (Southern) Limited, registered number 02672830, whose registered office is located at The Courtyard, Green Lane, Heywood, Lancashire, OL10 2EX and which trades as Cobsen-Davies Roofing. References to Cobsen-Davies include its officers, employees or agents.
- 1.3. 'Building' means the building or buildings, fixtures or fittings situated on Site and forming the subject of the Work.
- 1.4. 'Contract Sum' shall bear the meaning set out in paragraph 13.
- 1.5. 'Customer' means the party with whom Cobsen-Davies contracts to supply goods or materials and/or provide services in accordance with these terms and conditions.
- 1.6. 'Date of Commencement' shall bear the meaning set out in paragraph 2.3.1.
- 1.7. 'Date of Completion' shall bear the meaning set out in paragraph 2.3.2.
- 1.8. 'Defects Liability Period' shall bear the meaning set out in paragraph 19.2.
- 1.9. 'Fixed Price Period' shall mean the period from the date of this agreement to the date specified in the Quotation Specific Conditions.
- 1.10. 'Order' shall bear the meaning set out in paragraph 3.
- 1.11. 'Relevant Period' means the period between the Date of Commencement and the Date of Completion.
- 1.12. 'Requisite Consent' means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorisations required by the law and all necessary consents and agreements from third parties to carry out the Work in accordance with this Contract.
- 1.13. 'Retention' shall bear the meaning set out in paragraph 16.
- 1.14. 'Site' means the land or any part thereof in which the Building is situated.
- 1.15. 'Quotation Specific Conditions' shall mean terms and conditions expressly stated in the Quotation and additional to the terms and conditions set out herein.
- 1.16. 'Quotation' shall bear the meaning set out in paragraph 2.
- 1.17. 'Work' shall mean the supply of goods and/or materials and the provision of services provided by Cobsen-Davies to the Customer and more particularly defined by Quotation Specific Conditions

### 2. Quotations

- 2.1. Any written quotations provided by Cobsen-Davies to the Customer ('the Quotation') shall incorporate these standard terms and conditions and Quotation Specific Conditions.
- 2.2. Quotation Specific Conditions shall specify, amongst other things:
  - 2.2.1. Whether Cobsen-Davies or the Customer unloads deliveries at Site;
  - 2.2.2. Whether Cobsen-Davies or the Customer shall dispose of materials from the Building and or the site;
  - 2.2.3. The Contract Sum;
  - 2.2.4. Whether the Customer is entitled to withhold a Retention and, if so, the amount of such Retention; and
  - 2.2.5. The Defects Liability Period.
- 2.3. Quotation Specific Conditions shall request:

- 2.3.1. The date when the Work is to commence ('the Date of Commencement');
  - 2.3.2. The date when the Work is to be completed ('the Date of Completion'); and
  - 2.3.3. Whether Cobsen-Davies is to receive payment by instalments based on either a site measure or on the basis of stage applications and, if by stage applications, the amount of each stage application.
- 2.4. Quotation Specific Conditions may request the Customer to provide trade references and/or a payment on account and, if so, the Customer shall comply with such request with 14 days of the date of the Quotation.
- 2.5. Cobsen-Davies may alter or amend the Quotations including the Quotation Specific Conditions and if it does so, Cobsen-Davies shall give the Customer written notice of such alteration or amendment.

### 3. Orders

- 3.1. Any order provided by the Customer to Cobsen-Davies shall constitute an offer from the Customer to Cobsen-Davies incorporating these standard terms and conditions and any Quotation Specific Conditions expressly set out in the Quotation ('the Order').
- 3.2. To the extent that any term or condition proposed by the Customer in the Order or otherwise at any time is inconsistent or in conflict with these terms and conditions or the Quotation Specific Conditions that terms or condition shall not form part of any contract between Cobsen-Davies and the customer.
- 3.3. The Order shall:
  - 3.3.1. Give proper and reasonable notice to Cobsen-Davies specifying the Date of Commencement which shall not be less than 14 days from the date of the Customer's Order
  - 3.3.2. Specify the Date of Completion;
  - 3.3.3. Be accompanied with all preparatory work including schedules of materials, drawings, specifications, a programme of works and details of work to be undertaken by third parties on Site.
  - 3.3.4. Specify whether Cobsen-Davies is to receive payment by instalments based on either a site measure or on the basis of stage applications and, if by stage applications, the amount of each stage application.
- 3.4. If the Customer varies its Order prior to Cobsen-Davies's acceptance:
  - 3.4.1. The Customer shall notify Cobsen-Davies in writing immediately and shall provide Cobsen-Davies with all amended schedule of materials, drawings, specifications, programme of works and details of work to be undertaken by third parties on Site and on the Building; and
  - 3.4.2. Cobsen-Davies may alter or amend the Quotation Specific Conditions and, if it does so, Cobsen-Davies shall give the Customer written notice of the alterations or amendment.

### 4. Acceptance

- 4.1. Cobsen-Davies is under no obligation to accept an Order.
- 4.2. Without prejudice to paragraph 14, where Cobsen-Davies's Quotation does not include or expressly excludes an item of work which is included in the Customer's Order ('Additional Items of Work'), those Additional Items of Work are not to be treated as included in the Quotation and the Customer shall pay Cobsen-Davies a reasonable sum for undertaking the Additional Items of Work in addition to the Contract Sum.
- 4.3. If the Customer varies the Work after Cobsen-Davies's acceptance but before the Date of Commencement:

- 4.3.1. The Customer shall notify Cobsen-Davies in writing immediately and shall provide Cobsen-Davies with all amended schedule of materials, drawings, specifications, programme of works and details of work to be undertaken by third parties on Site and on the Building; and
- 4.3.2. Cobsen-Davies may alter or amend the Contract Sum and, if it does so, Cobsen-Davies shall give the Customer written notice of such alteration or amendment.

## 5. Cancellation

- 5.1. The Customer shall not be permitted to cancel any Order which has been accepted by Cobsen-Davies without legal justification.

## 6. Deliveries

- 6.1. Where it is a Quotation Specific Condition that the Customer unloads deliveries at Site, the Customer shall:
  - 6.1.1. Unload all materials without delay and at its own expense;
  - 6.1.2. Place the material unloaded:
    - 6.1.2.1. In a convenient position on Site which allows easy access to the Building;
    - or
    - 6.1.2.2. In any other location but, in such circumstances, the materials shall be transferred from such location to a convenient position on Site which allows easy access to the Building by the Customer at Cobsen-Davies's request.
  - 6.1.3. Be liable for any damage its officers, employees or agents cause to the materials when unloaded at Site.
- 6.2. Where it is a Quotation Specific Condition that Cobsen-Davies unloads deliveries at Site:
  - 6.2.1. Cobsen-Davies shall unload all materials without delay and at its own expense; and
    - 6.2.1.1. The Customer shall make and provide a convenient position for unloading which allows easy access to the Building or permit Cobsen-Davies to unload deliveries in any other location but where deliveries are unloaded in another location, the materials shall be transferred from such location to a convenient position on Site which allows easy access to the Building by the Customer within one hour at Cobsen-Davies's request.
- 6.3. Cobsen-Davies shall use reasonable endeavours to deliver goods and materials and shall promptly unload deliveries in accordance with paragraph 6.2.
- 6.4. Cobsen-Davies shall not be liable to the Customer for any loss or damage including consequential loss or damage caused by any delay in delivering goods and/or materials or delay in unloading deliveries of good and/or materials.
- 6.5. The Customer shall not be entitled to rescind the contract by reason of any delay in delivering goods and/or delay in unloading deliveries of goods and/or materials.
- 6.6. If the materials delivered by Cobsen-Davies are damaged or defective, Cobsen-Davies's liability to the Customer arising out of damaged or defective goods and/or materials shall be limited to supplying replacement goods and/or materials free charge to the Customer within a reasonable period of time and, for the avoidance of doubt, Cobsen-Davies shall not be liable to the Customer for any consequential loss or damage whatsoever nor for loss or damage caused by delay in supplying the replacement goods and/or materials.

## 7. Access

- 7.1. The Customer shall grant Cobsen-Davies access to the Site and Building at reasonable times for the purposes of taking measurements or of carrying out the Work or of inspecting the performance of the Work or of inspecting the completed work.
- 7.2. Cobsen-Davies shall not be liable to the Customer for any loss or damage including consequential loss or damage caused by the Customer's failure or delay to grant Cobsen-Davies access to the Site or the Building.

## 8. Duties of Customer

- 8.1. The Customer shall pay Cobsen-Davies all reasonable charges for any journeys made, time spent and/or work undertaken which would not have been made, spent and/or undertaken but for the Customer's failure to comply with paragraph 9.1.
- 8.2. Where the scaffolding is erected alongside the Building, the Customer shall ensure the scaffolding is not removed until Cobsen-Davies has completed the Works and the Customer has inspected the Works and, where necessary, given Cobsen-Davies a reasonable opportunity to inspect the Works.
- 8.3. Where the Customer removes scaffolding before it has inspected the Works or given Cobsen-Davies a reasonable opportunity to inspect the Works, the Customer shall re-enact the scaffolding at its cost.
- 8.4. Without prejudice to paragraph 10.2 and 10.3, the Customer shall use its best endeavours to ensure the need to work of ladders by Cobsen-Davies is not required.
- 8.5. The Customer shall ensure all work to be undertaken by third parties on Site and on the Building is carried out in a proper and workmanlike manner and Cobsen-Davies shall not be liable to the Customer for any delay or interruption caused to the Work by third parties undertaking or failing to undertake work on Site or on the Building.
- 8.6. The Customer shall be responsible for the safe custody of all goods and/or materials delivered, stacked or stored on Site or in the Building.
- 8.7. The Customer shall obtain any necessary Requisite Consent for the Work and shall ensure that the use to which Cobsen-Davies's goods and materials are put, does not and will not contravene any local or national laws, by-laws, regulations or Planning Consents for the time being in force and will indemnify Cobsen-Davies against such contravention.
- 8.8. The Customer shall be responsible for the proper protection of the Work from the weather and shall ensure the conditions for the Work comply with all statutory or other obligations from the time being force and shall indemnify Cobsen-Davies against any liability arising out of any breach thereof.
- 8.9. The Customer shall supply at the Customer's expense:
  - 8.9.1. A safe connection to a suitable electricity supply;
  - 8.9.2. Supply water when required adjacent to the Building;
  - 8.9.3. A dry store container protected from weather and capable of being secured for the purposes of storing, removing and disposing of materials; and
  - 8.9.4. All necessary welfare facilities.

- 8.10. The disposal of materials will be carried by the Customer unless otherwise stated in the Quotation Specific Conditions.

## 9. Health & Safety

- 9.1. Cobsen-Davies shall supply a copy of its Health and Safety Policy Document and Method Statement on request.
- 9.2. The Customer shall notify Cobsen-Davies in writing of any health and safety issue which it knows or ought to know may affect Cobsen-Davies performing the Work prior to the Date of Commencement or, where such issue arises after the date of Commencement, within 48 hours of such issue arising.

## 10. Contract Sum

- 10.1. The Contract Sum is made up of:
- 10.1.1. The cost of materials supplied by Cobsen-Davies calculated in accordance with paragraph 14.1.2;
  - 10.1.2. The cost of labour provided by Cobsen-Davies in fixing materials whether supplied by Cobsen-Davies or otherwise calculated in accordance with paragraph 14.1.1; and
  - 10.1.3. The cost of attendances provided by Cobsen-Davies in relation to the Work all as set out in the Quotation or as amended to take into account Additional Items of Work.
- 10.2. The Contract Sum is the price expressly set out in the Quotation and reflects prices ruling at the date of the Quotation.
- 10.3. The Contract Sum shall be increased:
- 10.3.1. To reflect prices ruling at either the date of deliver of goods and/or materials to Site or at the Date of Commencement;
  - 10.3.2. If the Customer varies its Order prior to Cobsen-Davies's acceptance;
  - 10.3.3. If the Customer varies its Order after Cobsen-Davies's acceptance and Cobsen-Davies has agreed to the additional or different work; or
  - 10.3.4. If Cobsen-Davies has had to delay or suspend the Work due to the Customer's instructions or preparatory work or lack of instructions or preparatory work.
  - 10.3.5. If the Fixed Price Period expires.
- 10.4. The Contract Sum and any increase to the Contract Sum shall be exclusive of VAT at the rate prevailing at the date of invoice.

## 11. Daywork

- 11.1. Where Cobsen-Davies provides labour and materials, Cobsen-Davies shall charge the Customer:
- 11.1.1. A reasonable hourly charge for each individual operative; and/or
  - 11.1.2. A reasonable charge calculated as a percentage of the cost of materials in addition to the cost of materials.
- 11.2. Cobsen-Davies reserves the right to increase the hourly charge for each individual operative and/or increase the percentage charge of the cost of materials on giving the Customer 7 days written notice.

## 12. Payments

- 12.1. Where the Relevant Period is less than 45 days, Cobsen-Davies shall receive the Contract Sum within 30 days of its invoice.
- 12.2. Where the Relevant Period is greater than 45 days, Cobsen-Davies shall receive payment by instalments.
- 12.3. Each instalment payment shall become due and owing from the Customer to Cobsen-Davies on the completion of each part OF EACH Building forming the Works.
- 12.4. Where Cobsen-Davies receives payment by instalments the amount of any instalment payment shall be either:
  - 12.4.1. On the basis of a site measure such site measure to be agreed between Cobsen-Davies and the Customer's surveyors; or
  - 12.4.2. On the basis of stage applications specified in the Customer's Order.
- 12.5. The Customer shall have no right to set-off, retain or abate any sum from any amount due from the Customer to Cobsen-Davies by reference to any sum claimed by the Customer to be due to the Customer from Cobsen-Davies under this Contract or any other contract between the Customer and Cobsen-Davies .
- 12.6. The Customer may not withhold payment after the date on which payment or any instalment payment becomes due from him unless the Customer has given Cobsen-Davies written notice of an intention to withhold payment not later than 7 days before the date on which payment or any instalment payment becomes due specifying:
  - 12.6.1. The amount proposed to be withheld and the ground for withholding payment; or
  - 12.6.2. If there is more than one ground, each ground and the amount attributable to it.
- 12.7. For the avoidance of doubt, the Customer is not entitled to withhold payment on the grounds that the Customer has not received payment from a third party.
- 12.8. Where notice of intention to withhold has been given by the Customer in accordance with paragraph 15.7 above and which subsequently forms the subject of a dispute referred to adjudication and the adjudicator decides that the whole or part of the amount withheld should be paid, the adjudicator's decision shall be construed as requiring payment by the Customer to Cobsen-Davies by whichever is later:
  - 12.8.1. 7 days from the date of the adjudicator's decision; or
  - 12.8.2. The date on which, apart from the notice of intention to withhold, payment or any instalment payment becomes due from the Customer to Cobsen-Davies.
- 12.9. Where an amount is due from the Customer to Cobsen-Davies is not paid in full by the date on which payment or any instalment payment becomes due from him and the Customer has not given notice of intention to withhold in accordance with paragraph 15.9 above, Cobsen-Davies may (without prejudice to any other right or remedy) suspend performance of the Work subject to Cobsen-Davies giving the Customer not less than 7 days written notice of intention to suspend performance of the Work stating the ground or grounds on which it is intended to suspend performance.
- 12.10. Cobsen-Davies's right to suspend performance of the Work in accordance with paragraph 15.10 above ceases if the Customer makes payment in full of the amount due.
- 12.11. The Date of Completion shall be deemed to have been extended by a period equivalent to the period Cobsen-Davies suspends performance of the Work in accordance with paragraph 15.10.
- 12.12. Interest shall accrue any amount due and owing to Cobsen-Davies by the Customer from the date on which payment or any instalment payment becomes due.
- 12.13. Cobsen-Davies reserves the right to charge interest and collection charges pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 at a rate of interest of 8% above the Bank of England's base rate.

### 13. Retention

- 13.1. Where the Customer is entitled to retain a sum from any payment due from the Customer to Cobsen-Davies pursuant to paragraph 15, the amount of such retention shall be that specified in the quotation.
- 13.2. The total amount of the Retention shall be released by the Customer to Cobsen-Davies in the following manner:
  - 13.2.1. 50% of the total amount of the Retention shall be released within 30 days of practical completion of:
    - 13.2.1.1. The sub-Contract Works
    - 13.2.1.2. Where there is more than one Building on the Site, the Site; or
    - 13.2.1.3. Where the Site is divided into 'phases', each phase.
  - 13.2.2. The remaining 50% of the Retention shall be paid by the Customer to Cobsen-Davies within 30 days of the expiration of the 12 months defects liability period or in accordance with paragraph 19.4.

### 14. Adjudication

- 14.1. Any dispute or difference arising under or in connection with the contract may be referred to adjudication in accordance with Section 108, sub-sections 1 to 4 of the Housing Grants Construction and Regeneration Act 1996 and the Scheme for Construction Contracts subject to the following provisions:
- 14.2. A party referring a dispute to adjudication must give notice to the other requiring a dispute or difference to be referred to an adjudicator. Such notice shall give a full description of the matters in dispute, and include all the evidence the Referring party wishes to rely on and state the nature of redress sought. Failure to comply with these requirements will deny the adjudicator jurisdiction.
- 14.3. The Adjudicator shall be approved by Cobsen-Davies or, if not approved within 5 days, shall be an adjudicator appointed by the President or Vice-President for the time being of the Royal Institution of Chartered Surveyors.
- 14.4. The fees of the Adjudicator shall be paid by the Party calling for the Adjudication

### 15. Retention of Title

- 15.1. Until payment has been made in full by the Customer, Cobsen-Davies reserves the legal and beneficial ownership in the goods and/or materials delivered.
- 15.2. The Customer shall not create any charge, mortgage, lien or the like encumbrance adverse to Cobsen-Davies's title.
- 15.3. Pending ownership of the goods and/or materials passing to the Customer, the Customer shall keep the goods and materials in good condition and separately marked so that they can be readily identified as the property of Cobsen-Davies.
- 15.4. In the event of non-payment by the Customer in accordance with 15, the Customer hereby authorises Cobsen-Davies to enter upon the Site or the Building or the Customer's premises to remove the goods and/or materials.

## 16. Exclusion of Liability

- 16.1. Cobsen-Davies shall not be liable to the Customer for any defect in design of the Building including the design of roof ventilation.
- 16.2. The Customer warrants that any information or document provided by it to Cobsen-Davies including preparatory work, drawings and specifications, programme of works and details of work to be undertaken by third parties on Site and on the Building is accurate.
- 16.3. The extent of Cobsen-Davies's liability arising out of defective installation is limited to that arising directly from its own workmanship.
- 16.4. Cobsen-Davies shall not be liable for loss or damage to the Customer including consequential loss or damage arising out of the hidden defects on Site or in the Building.
- 16.5. Cobsen-Davies shall have no liability in relation to the state or condition of the Site or the Building and shall not be responsible for any loss or delay suffered or incurred by the reason of the state or condition of the Site or the Building save where any matter was brought to Cobsen-Davies 's attention in writing prior to that date of the Customer's Order.

## 17. Force Majeure

- 17.1. Neither party shall be liable for breach of the Contract if performance thereof has been prevented, hindered or delayed by strikers, lock-outs or any event or circumstances beyond the immediate control of Cobsen-Davies including, without prejudice to the generality of the foregoing, riots, civil commotion, war, national or international, emergency, destruction or damage due to natural forces fires explosions and compliance with orders or requests of any national or local authority.

## 18. Insolvency

- 18.1. Notwithstanding paragraphs 15, Cobsen-Davies shall, on receipt of any information indicating that the Customer may be unable to pay his debts, be entitled to demand security prior to delivery either by payment in cash or by a bank guarantee or otherwise.
- 18.2. If the Customer is unable to provide such security, Cobsen-Davies shall be entitled to withdraw from the Contract without liability to the Customer.
- 18.3. If (a) the Customer fails to observe these terms and conditions or (b) if any distress or execution shall be levied upon the Customer's property or assets or (c) if the Customer shall make or offer any arrangement or composition with creditors or commit any act of bankruptcy or (d) if any receiving order in bankruptcy shall be presented or made against it or (e) if the Customer is a private limited company and any resolution or petition to wind up the Customer's business shall be passed or presented or (f) if a receiver of the undertaking property or asset or any part thereof the customer is appointed, the Cobsen-Davies may without notice:
  - 18.3.1. Suspend or determine the Contract or any unfulfilled part thereof;
  - 18.3.2. Stop any goods and /or materials in transit; and/or
  - 18.3.3. Recover any goods or materials from the Site or the Building from which payment has not been made in full whether or not such payment is due.



## **19. Severance**

- 19.1. These terms and conditions shall apply so far as they shall be held to be lawful and enforceable.
- 19.2. If any term or condition shall be held to be unlawful or unenforceable, then these terms and conditions shall be read and construed as if such term or condition or part thereof, as the case may be, were omitted.

## **20. Third Parties**

- 20.1. Nothing in these terms and conditions is intended to confer on any person any right to enforce any term and condition of this Contract which that person would not have but for the Contracts (Rights of Third Parties) Act 1999.

## **21. Entire Agreement**

- 21.1. These terms and conditions and the Special Conditions constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

## **22. Jurisdiction Clause/Choice of Law Clause**

- 22.1. This Contract shall be construed in accordance with the Laws of England and the parties submit to the non-exclusive jurisdiction of the English Courts.