

BREWAY LIMITED
TERMS & CONDITIONS
For Building and Construction Works

1. DEFINITIONS

In these Terms and Conditions:

- “Client”** means the person(s) or company or organisation named as such in the Quotation;
- “Contractor”** means Breyway Limited;
- “Contract period”** means the time for completion of the Works as stated in the Quotation;
- “Contract Price”** means the price payable by the Client to the Contractor for the Works, as varied in accordance with these conditions;
- “Quotation”** means the Contractor's Quotation which is subject to these Terms and Conditions;
- “Terms and Conditions”** means the terms and conditions stated in this document;
- “Works”** means the services agreed to be performed as described in the Quotation.

2. CONTRACT FORMATION

Acceptance of the Contractor's Quotation by the Client constitutes a Contract for the Contractor to carry out the Works in accordance with these Terms and Conditions and constitutes an entire agreement, any terms and conditions inconsistent with these Terms and Conditions are excluded.

3. GENERAL OBLIGATIONS

- 3.1 The Contractor will exercise reasonable skill and care in the performance of the Works.
- 3.2 The Contractor will take every reasonable precaution to minimise damage to the ground whilst working with vehicles and plant machinery. The Client accepts that if there is any minor damage done under these circumstances it is not the responsibility of the Contractor to finance the repairs.

4. ACCEPTANCE

- 4.1 The Quotation is subject to these Terms and Conditions, an acceptance of the Quotation shall amount to an automatic acceptance of these Terms and Conditions.
- 4.2 Unless withdrawn in writing the Quotation is available for acceptance for 30 days from the date stated in the Quotation, and thereafter is subject to Contractor's written confirmation, see Clause 7.3. The Client must confirm acceptance either verbally or in writing prior to

commencement of Works. In the absence of either a verbal or written acceptance by the Client, the Contractor's commencement of Works will be taken as Client's acceptance by conduct.

4.3 The Quotation is based on costs and charges at the date of Quotation. Unless the Quotation states that it sets a fixed price any changes in costs arising from sources beyond the Contractor's control, including but not limited to any fluctuations in labour costs, prices of materials and services, or government charges, regulations or exchange rate fluctuations, shall be a variation.

4.4 By acceptance of the Quotation Client represents that they will have sufficient funds to pay for the Works as they are performed, and undertake to provide reasonable proof of capability to make such payment if so requested by the Contractor. The Client authorises the Contractor to use information disclosed by them and to collect information that the Contractor may reasonably require from third parties for credit references or otherwise relating to the performance of this contract. The Contractor reserves the right to decline acceptance if credit checks are unsatisfactory.

4.5 A verbal or written order or letter of acceptance that contains any terms or conditions in conflict with the Quotation or these Terms and Conditions will not establish a binding contract except at the Contractor's sole discretion, which must be confirmed in writing by the Contractor to be valid.

4.6 An acceptance by the Client will not remove the Contractor's right to cancel the contract before the commencement of services. In such an event the Client by accepting the Quotation is bound by these Terms and Conditions and consequently gives up any right to claim for compensation, loss of profit or any other financial claim due to repudiation of the contract.

5. DESIGN AND PERFORMANCE

5.1 Unless expressly agreed otherwise and in writing the Contractor will not perform any design, design checks, engineering calculations or engineer's inspections, certifications or tests that may be required under the Building Act, Building Regulations or otherwise. Where the Contractor is required to design part or all of the work the design will be based on information provided to the Contractor by the Client, which shall include the construction sequence and temporary works, and special requirements related to building use, occupancy or performance.

5.2 Materials, equipment or systems nominated or specified by manufacturer, brand or model will be supplied and installed in accordance with the manufacturer's published literature or performance standards and will comply with the specified manufacturers' product literature. The Contractor will only be liable for the services rendered during the Works. The Contractor does not assume responsibility or liability for the quality of the materials, equipment or systems installed during the performance of the Works. The supply of nominated or specified materials, equipment or systems does not imply a warranty as to suitability. The Contractor may at their option supply equivalent alternative brands or models.

5.3 All new fixtures and fittings, unless otherwise stated in the Quotation, shall be provided and paid for by the Client.

5.4 Materials, suites and appliances which have been selected by the Client cannot be changed after being purchased by the Contractor. If requested by the Client, the Contractor can purchase specific materials selected by the Client but in that event there is 5% administration and handling fee payable by the Client in respect of items purchased in this way, over and above their retail price.

5.5 The Client will give the Contractor unimpeded access to the site to carry out the Works in an efficient and safe manner, and unless otherwise agreed in writing the Client will provide without limitation the following (where relevant):

- 5.5.1 Proper facilities for carrying out the Works including use of goods or passenger lifts, cranes, hoists and builder's scaffolding, scaffolding for any work to be carried out at a height of 3.5 metres or greater, rubbish removal facilities, temporary power and water supply, storage space, ablutions and safety lighting to allow the Works to be installed safely and efficiently;
- 5.5.2 All builders' work including penetrations and structural supports or any alteration as may be required to any part of the building to allow work to proceed;
- 5.5.3 Any required consent or other authority necessary for the Works, including approvals from owners, occupiers and others.

5.6 The Client will ensure that all personal items are removed from the area in which the Works are being carried out. The Contractor cannot accept responsibility for damage to property left in the area which Works are being carried out.

5.7 The Client will ensure that any items of value will be removed from the Works area before its commencement. If the Contractor is required to move furniture during the works, the Client will ensure that cupboards and drawers are empty before being moved and those remaining are adequately protected by dust sheets or as may be appropriate. The Contractor does not accept responsibility for any damage to items not adequately protected by the client.

6. VARIATION

6.1 If the Client wishes to vary any of the Works it will inform the Contractor verbally or in writing who will, as soon as practicable, notify verbally or in writing the Client of the estimated cost of the variation and the effect on the Contract period.

6.2 Unless the Client withdraws his request in writing for a variation when he receives the Contractor's updated Quotation, the Contract Price will be adjusted in accordance with the updated Quotation and an appropriate extension of the Contract period shall be made by the Contractor.

6.3 Timescales for Works are estimated and dependent on material and labour availability. Time is not of the essence. Timescales are estimated in working days rather than calendar days, and assume that weekends and public holidays will not be worked and that unimpeded access is provided by the client.

6.4 The Contractor will notify the Client if it encounters any difficulties which it could not have reasonably foreseen when submitting the Quotation and in those circumstances, a fair and reasonable adjustment to the Contract Price and/or Contract period will be made.

6.4.1 Unforeseen encounters include the following:

- a. Changing weather conditions preventing or restricting working hours.
- b. Damage to undetectable underground services if not shown on service maps provided by the Client
- c. Delays caused by other contractors on the clients premises.
- d. Delays caused by theft or damage to plant machinery or materials by a third party.

6.5 The Contractor reserves the right not to comply with any requests for a variation which would increase the value of the Works by more than 25% of the original Contract Price.

7. CONTRACT PRICE & PAYMENT

7.1 The Contract Price is stated in the Quotation and it may be varied in accordance with these Conditions only.

7.2 Prices may be subject to the addition of VAT at the prevailing rate at the time of the Quotation.

7.3 After expiry of 30 days from the date stated on the the Quotation the Contractor may at its discretion change the price and reissue in writing a new Quotation.

7.4 The Quotation is based on the drawings and detail therein, as provided by the Client and the Contractor does accept any responsibility for errors contained in these.

7.5 Any variation of the Contract Price has to be confirmed verbally or in writing by the Contractor to be valid.

7.6 The Client shall pay the Contractor a non-refundable deposit of 30% of the Contract Price in advance before the Works can commence. The Client has an option to pay via instalments whilst the work is being carried out and pay the remaining amount due or to pay in full within 7 calendar days of the handover date.

7.7 If the Client causes delays to the works, either before or during the performance of the Works, or cancels all or part of the works, the Contractor has the right to the full Contract Price, including the non-refundable deposit.

7.8 The price estimated by the Contractor is based on the assumption that any items supplied by the Client are designed for standard UK building, plumbing and electrical fitting, sizes and ratings. If they do not meet these standards the Contractor may increase the Contract Price to cover the cost of any extra labour and materials used to adapt or change the client supplied items in order to complete the works so far as is reasonably practicable, this will be a variation.

7.9 Late payment entitles the Contractor to interest at 4% above the Base Rate of Barclays Bank Plc from the due date until the date of actual payment.

7.10 Items not specifically mentioned in the Quotation are a variation and are subject to Contractor's verbal or written approval.

7.11 For pricing purposes it is assumed that there is no asbestos or other hazardous material in or at the property. It is the Client's sole responsibility to ensure a safe removal of any such hazardous material from the Works area. The Client's assumes full responsibility for any consequences that may arise from Client's failure to perform such removals and any failure in general to provide a safe working environment to the Contractor's employees

8. INSURANCE

8.1 Where the Works are to be carried out in an existing building, the Client will be responsible for obtaining and paying for insurance cover of the Works with the Contractor named as co-insured.

9. HANDOVER & DEFECTS LIABILITY

9.1 The Contractor will give the Client notice of its intention to hand over the Works and give the Client the opportunity to inspect the Works prior to handover. The Contractor will confirm the date of handover to the Client verbally or in writing.

9.2 The Contractor will be responsible for remedying defects in the Works which appear within 12 months from the date of handover but only if notified of defects by the Client in writing. The Client will give the Contractor full access to carry out any remedial works.

9.3 The Contractor will have no liability to the Client, in contract or in tort, for any indirect or consequential loss incurred by the Client, including but not limited to loss of use or loss of profit. The sole responsibility of the Contractor will be to remedy defects for which it is responsible and of which it is notified in writing within 52 weeks from the date of handover.

10. TERMINATION

10.1 The Contractor may give notice to terminate the Contract if the Client fails to make any payment becoming due within 7 calendar days of the due date or commits any other material breach of the Contract.

10.2 The Client may give notice to terminate the Contract if the Contractor commits a material breach and in the case of a breach capable of remedy fails to take steps to remedy the breach within 28 calendar days of being requested to do so in writing.

10.3 Either party may terminate the Contract if the other party becomes insolvent or has a receiver, manager or administrative receiver or liquidator appointed. The Client is under an obligation to inform the Contractor, either in writing or verbally, as soon as it becomes foreseeable that the Client may be subject to such proceedings. If the Client fails to do so and goes into such proceedings, the Client grants the Contractor a floating charge over all his personal and real property. The Client intends the Contractor to be the first creditor in line.

10.4 Termination will not affect the accrued rights and liabilities of the parties at the termination date.

11. GENERAL

11.1 Notices

All notices must be in writing and effective when delivered to the address for service of the recipient as shown on the Quotation, or to another address of which notice has been given under this clause. Notices sent by post shall be treated as delivered 2 working days after posting.

11.2 Access

The Client thereby confirms (having taken appropriate advice from a surveyor or structural engineer as may be appropriate) their full responsibility for ensuring that all walls to be moved or all walls through which new doorways are to be made, are non load bearing, and are responsible for obtaining the appropriate planning permission, listed building consent, building control approval and party wall approvals, and the Contractor does not accept any responsibility for costs or delays directly or indirectly caused by the failure of the Client or their professional advisers to obtain the same.

11.3 Assignment

The Contractor may assign third parties to carry out a part of or all the Works. Any such assignment does not give any rights or claim against this contract to those third parties, only the Contractor and the Client are sole parties to this contract.

11.4 Disputes

In case of any dispute arising between the parties, the Contractor and the Client will use mediation, or a different form of alternative dispute resolution if agreed otherwise, as a first resort to try and settle the dispute. If there is any settlement agreement signed by the parties during the alternative dispute resolution process it will be deemed as binding on both parties. If agreement cannot be reached by alternative dispute resolution, parties may agree to let the dispute be determined by the courts of England and Wales.

11.5 Third Party Rights

It is not the intention of the parties that any third party shall acquire any rights under this contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

11.6 Governing Law

The Contract shall be governed by the laws of England and Wales.

11.7 Entire Agreement

The Quotation and these Conditions constitute the only agreement between the parties and supersede any previous arrangements, agreements or understandings relating to the Works.