

Terms & Conditions

YOUR ATTENTION IS PARTICULARLY DRAWN TO CLAUSE 8 (LIMITATION OF LIABILITY).

1. Who we are and how to contact us

- 1.1. We are J Warren Consulting Limited (referred to as “we” or “us”, in these conditions), a company registered and incorporated in England and Wales with company number 10848197. Our registered office is at 14 Shellbrook Grove, Wilmslow, Cheshire SK9 2HX and our registered VAT number is GB 274531989.
- 1.2. Our contact telephone number is 07738077024 and our email address is jacob.kilroy@jwarrenconsulting.co.uk.
- 1.3. If we need to contact you we will either write to you using the email or postal address you gave us or we will call you.

2. Interpretation

The following definitions and rules of interpretation apply in these conditions.

2.1. Definitions:

Charges: the charges payable by you for the supply of the Services in accordance with these conditions.

Consumer: a natural (individual) person acting for purposes outside their trade, business or profession.

Contract: the contract between you and us for the supply of Services in accordance with these conditions.

Construction Act: The Housing Grants, Construction and Regeneration Act 1996, as amended from time to time.

Deliverables: the deliverables set out in the Specification.

Indemnity Limit: £1,000,000 or as agreed in writing between us and you.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: your order for the Services as set out in your written acceptance of our quotation or estimate.

Services: the services, including the Deliverables, supplied by us to you as set out in the Specification together with such additional services we may agree to supply in accordance with these conditions.

Specification: the description or specification (including any relevant plans, drawings and/or designs) provided in writing by us to you or, if none have been provided by us, then as provided in writing by you to us.

- 2.2. A reference to **writing** or **written** includes fax, email and text messages.

3. Basis of contract

- 3.1. The Order constitutes an offer by you to purchase Services in accordance with these conditions, which shall only be deemed to be accepted when we issue a written acceptance of the Order or we begin to supply the Services (whichever is the earlier).

- 3.2. Any samples, drawings, descriptive matter or advertising issued by us, and any descriptions or illustrations contained in our catalogues, brochures or on our website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

- 3.3. Any quotation or estimate given by us to you shall not constitute an offer, and is only valid for a period of 28 days from its date of issue.

- 3.4. These conditions are subject to anything stated expressly in your Order.

4. Supply of Services

- 4.1. We will supply the Services to you in accordance with the Specification in all material respects.

- 4.2. Whilst we aim to carry out the Services by the dates and times we either agree with you or notify to you, we do not warrant, represent or guarantee that:
 - (a) we will start performing any or all of the Services by a specified date or time; or
 - (b) we will complete the performance of any or all of the Services by any specified date or time; or
 - (c) the performance of any individual part of the Services will be completed by a specified date or time.

- 4.3. Unless agreed in writing by us, time shall not be of the essence of the Contract for the provision of the Services.
- 4.4. We are entitled to amend the Specification if necessary to comply with any applicable laws, or if the amendment will not materially affect the nature or quality of the Services, and we shall notify you in any such event.

- 4.5. We will take reasonable care and skill when providing the Services.
- 4.6. You acknowledge that we are providing the Services as an independent contractor, not as an employee. The Contract further does not create a contract of service, a partnership or a joint venture agreement; this contract is a contract for services only.

CDM Regulations / Health & Safety

The Construction (Design & Management) Regulations 2015 (“**CDM Regulations**”) impose obligations relating to health & safety during a construction project. They impose important obligations on all parties involved, including you. If you are in any doubt as to your obligations, you should speak to us or seek your own independent professional advice.

- 4.7. If the Services include construction work you must appoint a Principal Designer under a written agreement pursuant to the CDM Regulations, whether you are a Domestic Client or a Commercial Client. You must provide us with a copy of such a written agreement on demand.

- 4.8. Unless we are required to do so by law, we will not act as Principal Designer pursuant to the CDM Regulations unless expressly stated in the Specification.

- 4.9. Unless we are acting as the Principal Designer, you will ensure that the Principal Designer carries out their duties pursuant to the CDM Regulations. You will notify us if you replace the Principal Designer.

- 4.10. If you are a Commercial Client pursuant to the CDM Regulations, you will comply with your obligations under the CDM Regulations.

- 4.11. You will indemnify us for all and any claims, fines, penalties or other losses that are caused by your breach

of the CDM Regulations or for any action by you that causes us to be in breach of the CDM Regulations.

5. Your obligations

- 5.1. You will:
- (a) ensure that the terms of the Order and any information you provide that is included in the Specification are complete, accurate and not misleading;
 - (b) co-operate with us in all matters relating to the Services;
 - (c) provide us, our employees, agents, consultants and subcontractors, with unobstructed access to the premises and other facilities as we may reasonably require;
 - (d) provide us with such information as we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (e) prepare any relevant premises prior to and during the supply of the Services to ensure that we can properly perform our obligations under these conditions;
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (g) ensure that any relevant premises are in a safe and secure condition at all times during the provision of the Services;
 - (h) comply with all applicable laws, including those relating to health and safety;
 - (i) comply with any additional obligations as set out in the Specification.
- 5.2. Unless agreed between us and you in writing in advance of the Services being performed, it is your responsibility to obtain all relevant and necessary approvals and consents from the relevant third parties. We will not be responsible for any delay in the provision of the Services (or any part of them) arising from your failure or delay in obtaining the relevant approvals and/or consents.

Basis of charging

- 5.3. The Charges for the Services shall be calculated on a time basis in accordance with our hourly and/or day rates.
- 5.4. We are entitled to charge you for any expenses reasonably incurred by us in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by us for the performance of the Services, and for the cost of any materials.
- 5.5. We are entitled to increase our hourly rates by a reasonable amount each year. We will give you notice of any such increase, but giving such notice is not a condition precedent to payment.

VAT

- 5.6. Unless otherwise specified in the Order, anything payable by you under the Contract is exclusive of value added tax chargeable from time to time ("**VAT**"). You shall pay the appropriate rate of VAT on the Charges at the same time as payment is due for the Charges.

Dates for payment

- 5.7. We are entitled to seek payment of our Charges at reasonable intervals before, during or after the provision of our Services.
- 5.8. Any stages of work or lists of work set out in the Specification, or elsewhere, will not determine the reasonableness of the dates of the reasonable intervals for payment. You agree that it is reasonable for us to charge by monthly instalments.
- 5.9. Our invoices are due for payment on receipt. You must pay our invoices before the final date for payment, which shall be 30 days after the due date unless otherwise specified in the relevant invoice. Save as otherwise provided in these conditions, time for payment shall be of the essence.

Payment notices under the Construction Act

The Construction Act is likely to apply to you unless you are a residential occupier (if in doubt, seek legal advice).

- 5.10. If the Construction Act applies, the following provisions will be applicable.
- (a) Within 5 days of receiving an invoice, you must give us a notice setting out how much you intend to pay in respect of our invoice ("**Payer's Notice**").
 - (b) If you intend to pay less than the sum stated to be due in our invoice or in the Payer's Notice, then you must give a written notice ("**a Pay Less Notice**") to us not later than one (1) day before the final date for payment of that sum.
 - (c) The sum that you must pay on or before the final date for payment shall be:
 - (i) where a Pay Less Notice has been served in accordance with clause 5.10(b) the sum stated in the Pay Less Notice; or
 - (ii) if no Pay Less Notice has been served, then the sum stated in the relevant Payer's Notice (if served); or
 - (iii) otherwise, it shall be the sum stated in our invoice.

Late payment

- 5.11. If you fail to make a payment due to us under the Contract by the final date for payment, then, without limiting our remedies under the Contract:

If you are a Consumer: you will pay simple interest, calculated on a daily basis, at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. You will also pay an administration fee of £50 + VAT.

If you are not a Consumer: you will pay interest and compensation pursuant to the Late Payment of Commercial Debts (Interest) Act 1998; interest shall accrue each day (entitling us to compound interest).

- 5.12. Save as otherwise provided in these conditions, all amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Intellectual property rights

- 6.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by you) shall be owned by us. We will own the Intellectual Property Rights in any of the Specification produced by us including, without limitation, any drawings, plans or designs provided by us.
- 6.2. We grant to you, or will procure the grant to you of, a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy any materials provided by us to you for the term of the Contract for the purpose of providing the Services to you. Such licence does not allow you or any third party to modify any drawings provided by us.
- 6.3. You grant to us, or will procure the grant to us of, a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by you to us for the term of the Contract for the purpose of providing the Services to you.
- 6.4. You warrant that you are the sole owner of all Intellectual Property Rights in all documentation and other material that is provided by you to us in connection with the performance of the Services.
- 6.5. You shall keep us fully indemnified against all actions, claims, proceedings, costs and damages (including any damages or compensation paid by us on the advice of our advisors to compromise or settle any claim) arising out of any breaches by you of the warranty given at clause 6.4.

- 6.6. We shall have no liability for use of Intellectual Property by you or any third party for any purpose other than that for which it was prepared and/or provided.
- 7. Data protection and data processing**
- 7.1. We will process the personal information you provide to us (including but not limited to, your name, contact details, bank details) only in accordance with your instructions and shall not process the personal information for any purposes other than those expressly authorised by you and/or those necessary for us to provide the Services.
- 7.2. The personal information provided by you will be used to provide the Services to you and to process your payment for the Services.
- 7.3. We may disclose your personal information to our employees, officers, representatives, subcontractors, suppliers, manufacturers, advisors or any other persons who need to know such information for the purposes of carrying out our obligations under the Contract.
- 7.4. We will only give your personal information to third parties where the law requires or permits us to do so.
- 8. Limitation of liability:**
YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.
- 8.1. Nothing in the Contract shall limit or exclude our liability for:
- death or personal injury caused by our negligence, or the negligence of our employees, subcontractors or agents;
 - fraud or fraudulent misrepresentation; or
 - any other liability which cannot be limited or excluded by English law.
- 8.2. In addition to the limits otherwise stated in this section 8, whether or not you are a Consumer, the overall maximum limit to our liability for any losses of any kind will be the Indemnity Limit. This limit applies to any liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3. This section 8 shall survive termination or cancellation of the Contract.
- Limitation of liability – Consumers**
- 8.4. If you are a Consumer, we are responsible to you for foreseeable loss and damage caused by us. If we fail to comply with these conditions, we are responsible for loss or damage you suffer that is a foreseeable result of our breach or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, on accepting these terms, both we and you knew it might happen, for example, if you discussed it with us during the sales process.
- 8.5. If you are a Consumer, we are not liable for business losses. If you use the products for any commercial, business or re-sale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- Limitation of liability – non-Consumers**
- 8.6. If you are not a Consumer, subject to clause 8.1, we shall not be liable to you, whether in contract, in tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- loss of profits;
 - loss of sales or business;
 - loss of agreements or contracts;
 - loss of anticipated savings;
 - loss of use or corruption of software, data or information;
 - loss of or damage to goodwill; or
 - any indirect or consequential loss.
- 8.7. Notwithstanding clauses 8.1 and 8.6, our total liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to three times the Charges for the relevant Services.
- 9. Cancellation (Consumers only)**
- 9.1. This section 9 will only apply if you are dealing as a Consumer in circumstances where the Contract has been concluded away from our premises (for example, online or by telephone).
- 9.2. If you have entered into the Contract over the telephone, by e-mail or online, you have the right to change your mind within 14 days of entering into the Contract (“the **Cancellation Period**”). We will not commence provision of the Services during the Cancellation Period unless you have requested that you want the Services to commence during such. We may ask you to complete a form attaching these terms and conditions to this effect.
- 9.3. Once we have started providing the Services, you may still cancel the Contract during the Cancellation Period. In these circumstances, you will be required to pay for any Services and/or preparatory steps (for example, reasonable travel expenses) that we have performed up to the date of cancellation. All charges for labour will be calculated on a pro-rata basis by reference to the labour costs incurred up to the time of cancellation.
- 9.4. You agree and acknowledge that if the Services are completed during the Cancellation Period, you shall lose the right to cancel the Contract.
- 9.5. You can cancel the Contract by filling out and returning the cancellation form at the back of these terms and conditions or by contacting us by the details at clause 1.
- 10. Suspension**
- 10.1. If you fail to pay a sum due to us under the Contract by the final date for payment and the failure continues for 7 days after we have given you notice of our intention to suspend performance of our obligations under the Contract and the grounds for such suspension, we (without affecting our other rights and remedies) may suspend performance of any or all of those obligations under payment is made in full.
- 10.2. If our performance of any of our obligations under the Contract is prevented or delayed by any act or omission by you or any failure by you to perform any relevant obligation (other than non-payment) (“**Customer Default**”):
- without limiting or affecting any other right or remedy available to us, we will have the right to immediately suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations in each case to the extent that the Customer Default prevents or delays our performance of any of our obligations;
 - we will not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 10.2; and
 - you will reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.
- 10.3. Without affecting any other right or remedy available to us, we may suspend performance of our obligations under the Contract or any other contract between you and us if you become subject to any of the events listed in clause 11.1, or we reasonably believe that you are about to become subject to any of them.
- 10.4. Where we exercise our right of suspension under the Contract, we shall be entitled to payment from you of a reasonable amount in respect of costs and expenses reasonably incurred by us as a result of exercising the right.
- 10.5. Where we exercise our right of suspension, any licence granted to you to use our Intellectual Property will be immediately suspended and we will be entitled to withhold

any Deliverables due to you under this Contract. If the suspension relates to non-payment, we will additionally be entitled to withdraw any Deliverables provided which relate to the outstanding invoice(s).

11. Termination

- 11.1. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - (b) the other party (not being a Consumer) takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.2. Without affecting any other right or remedy available to us, we may terminate the Contract with immediate effect by giving written notice to you if:
- (a) you fail to pay any amount due under the Contract on or before the final date for payment;
 - (b) you fail to provide safe and secure access to any relevant premises to enable us to properly perform the Services; or
 - (c) you (being an individual) are subject to any bankruptcy petition, application or order, or, if the step is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

12. Consequences of termination

- 12.1. On termination of the Contract:
- (a) you will immediately pay to us all sums under all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be due and payable by you immediately on receipt;
 - (b) any licence(s) that we have granted in relation to our Intellectual Property will immediately be terminated; and
 - (c) you shall return all of the Deliverables and any copies of such Deliverables which have not been fully paid for. If you fail to do so, then unless you are a Consumer we shall be entitled to enter your premises to take possession of the Deliverables.
- 12.2. Termination of the Contract shall not affect any of your or our rights, remedies, obligations or liabilities that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 12.3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall continue in full force and effect.

13. General

- 13.1. **Unexpected events.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract (other than a payment obligation) if such delay or failure result from events, circumstances or causes beyond its reasonable control.

13.2. Assignment and other dealings

- (a) We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under the Contract. If you are a Consumer, we will provide you with written notice of our intention to exercise our rights under this clause, and we will ensure that your rights under the Contract will remain unaffected.
- (b) Unless you are a Consumer and we have provided our written consent, you will not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of your rights and obligations under the Contract unless we agree in writing.

13.3. Entire agreement (applicable only to non-Consumers)

- (a) The Contract (including the Order and the documents referred to therein) constitutes the entire agreement between us and you and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

- 13.4. **Variation.** Except as set out in these conditions, no variation of the Contract shall be effective unless it is in writing and signed by both us and you (or our and/or your authorised representatives).

13.5. Third party rights

This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 13.6. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

- 13.7. **Jurisdiction.** Subject to clause 13.8, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

- 13.8. **Adjudication.** Either party has the right to refer a dispute or difference arising under the Contract for adjudication at any time. If either party wishes to refer a dispute or difference to adjudication, Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 shall apply.

Cancellation Form

Please complete, detach and return this form to us **only if you wish us to cease acting on the instructions you have provided.**

If you are a Consumer, you have the right to cancel the Contract within 14 (fourteen) days without giving any reason. Please use this form only if you wish to **cancel** the Contract with us.

On receipt of this signed form we will cease our performance of all of the Services pursuant to the Contract.

If you requested to begin the performance of the Services during the Cancellation Period, you shall pay us an amount which is in proportion to what has been performed until you have communicated us your cancellation from the Contract, in comparison with the full coverage of the Contract.

To J Warren Consulting Limited of 14 Shellbrook Grove, Wilmslow, Cheshire SK9 2HX (Telephone: 07738077024 / Email: Jacob.Kilroy@jwarrenconsulting.co.uk):

I/We hereby give notice that I/We **cancel** my/our contract for the supply of the following service:

Ordered on:

_____ (insert date)

Your name:

_____ (insert name(s))

Signed:

Date of signature:
