



**This document contains important information and context regarding your quotation**

**General**

- Your quotation has been prepared on the basis of the information and drawings supplied with your enquiry.
- If it transpires that specialist or additional features are required they will be charged for in accordance with table 1.1.

Table 1.1 – Additional Features / Items	Extra Over Cost
Mild Steel Trimmers – Max Length 1000mm	£130 - £170 each
Rebates / Shelf Ends – By Floorspan Design	£2 per end
Cantilevered Ends	TBA

- Upon receipt of a formal, written order, preparation of full design drawings will take 5 - 7 days. Prior to commencement of the design all relevant information must be in our possession to include **architectural and structural plans** preferably in .dwg format.
- Our quotation figures includes for one set of revisions / amendments.
- Subsequent minor changes that do not alter the length, quantity of the elements or details of any features can be incorporated.
- Significant changes / amendments are chargeable in line with the rates offered in Table 2.1.

Table 2.1 – Design time charges	Hourly Rate
Structural Engineer	£50
Design Team Leader / Principle Designer	£40
Senior Designer	£35
Designer / Estimator	£25

- After approval of the layout plan your job is passed to production. From this point it is not possible to amend the design without incurring additional charges and potential delays to delivery.

**Payment Terms**

- For existing account holders our standard payment terms are 30 days from date of invoice.
- If you would like to apply for an account Floorspan Contracts will issue application forms which must be completed in full for consideration.





- Customers without a trading account must pay on a 'pro forma' basis and cleared funds must be received prior to manufacture.
- Established trading frameworks and regional / national agreements will be honoured – Merchants.
- Floorspan Contracts do not subscribe to retention and will not accept retention from any payments. We are able to offer a letter of indemnity.

### Lead Time

- Upon receipt of a formal, written order, preparation of full design drawings will take 5 - 7 days. Prior to commencement of the design all relevant information must be in our possession to include **architectural and structural plans** preferably in .dwg format.
- From full written approval of the proposed layouts our current lead time for manufacture and installation is 2-4 weeks subject to seasonal fluctuations. Depending on the size and location of your project it is likely we can improve in this lead time. Do please liaise with the estimating team.

### Delivery

- Unless specified elsewhere on this quotation the delivery of all beams will be made using a crane off-load vehicle.
- Unless specified on this quotation your beam delivery will be made on one of our bespoke delivery vehicles. **Either:** Rigid lorry, urban articulated vehicle with a 30ft trailer or a 'wagon and drag' vehicle.
- **Requests for a specific vehicle type can normally be accommodated but should be made well in advance and may incur a surcharge. It may also be necessary for us to propose an alternative delivery date to comply with your request.**
- Deliveries requiring the trailer to be detached from the 'wagon and drag' vehicle can be made but should be agreed in advance and may incur a surcharge.
- Unless specified in the quotation, all infill block deliveries are made on an articulated vehicle.
- To enable us to price infill blocks competitively we have allowed to deliver full loads on articulated vehicles the day before your beams are delivered. Any surplus blocks will be collected when the beams are offloaded.
- Blocks will be delivered without pallets. Non-refundable pallets can be provided if required at a cost of £9.25 each.
- Customers are allowed 45 minutes for unloading of beams and blocks delivered on rigid vehicles. For articulated vehicles 1.5 hours is allowed. If we are detained on site for longer than this period placing beams on support walls or for reasons beyond our control a charge of £30.00 per half hour or part thereof will be applied to the customer.





- Floorspan Contracts will endeavour to load the delivery vehicle(s) in sequential order but we must take in to account safe stacking procedures, irregular sized units and load sizes.
- A Banksman must be supplied who will take full responsibility whilst Floorspan access and egress your site we will not be liable for damage to driveways, kerbs, verges, fences or walls and the like whilst attempting to access your site, unless caused by our negligence. The driver's discretion prevails at all times.

### Installation

- We have allowed for a **single** visit to site by our surveyor to check beam lengths, means of access for vehicles and plant and all other criteria relevant to the installation process. As we are unable to determine below ground conditions the site visit does not remove this responsibility from you the customer. Floorspan Contracts cannot accept any responsibility for site conditions after periods of inclement weather.
- Additional site visits are possible but will incur a charge.
- If installation has been assumed to be undertaken by our lorry (as shown on our quotation) a requirement for full vehicular access for direct off-loading of the beams from the delivery vehicle on to the foundation will be required. No provision has been made for a crane. If site conditions necessitate a crane an additional cost will be levied to the customer.
- If Installation has been assumed to be undertaken by a crane (as shown on our quotation) we have not assumed direct off-loading from the delivery vehicle which may prove to be impractical.
- Unless otherwise stated for the installation of beam and block floors by mobile crane we allow for a 35t mobile crane with a maximum working radius of 20m.
- If site constraints are such that a larger crane, or a smaller, specialist city crane is necessary, Floorspan Contracts Ltd reserves the right to levy any additional costs to the customer. Upon receipt of a crane location plan in .dwg format a more detailed proposal can be offered.
- It is the customer's responsibility to ensure that full and proper access and hardstanding is available to the works for labour and plant. If for any reason beyond our control access to the footing or building is not possible, the customer will be liable for all losses incurred. This specifically includes but is not limited to: crane hire, haulage and labour charges for the day, and may amount to the full cost of the installation detailed above including the profit element.





- Circumstances preventing full and proper access may include soft or uneven ground, obstructions in the form of materials, the presence of overhead cables and elements of the structure itself such as steel frame structures.

**The following are excluded:-**

- Sand, cement and running water for bedding of the edge blocks and grouting on completion.
- Concreting around the steel posts / columns and other insitu works and infill.
- The installation of air bricks and vents. This is deemed to be the bricklayers' responsibility, but their supply to site, is itemised in the quotation figure.
- The provision of a hand rail and or scaffolding for upper floors and around stairwells.





(a) **Parties**

- (1) Floorspan Contracts Limited incorporated and registered in England and Wales.
  - (2) The Customer.
- 1.2 Background
- (A) The Supplier has been employed by the Customer to carry out and complete the works under the Contract.
  - (B) The Customer wishes to appoint the Supplier on the terms of this agreement.

**2. INTERPRETATION**

2.1 Definitions. In these Conditions, the following definitions apply:

**Business Day:** a day other than a Sunday or public holiday in England when banks in London are open for business. The hours of business on a Business Day are 7am-6pm Monday to Friday, 7am-1pm Saturday.

**Commencement Date:** a date to which the Supplier is instructed to carry out the services in accordance with the Agreement and the Conditions.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 21.7.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Deliverables:** the scope of services as particularised under Schedule 2 and as contained within this Agreement.

**Delivery Location:** has the meaning set out in clause 7.2.

**Force Majeure Event:** has the meaning given to it in clause 20.1.

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings that is agreed in writing by the Customer and the Supplier.

**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 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:** the Customer's order for the supply of Goods and/or Services, as set out as per the Customer's written acceptance of the Supplier's quotation.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification below.

**Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer and as set out within the appended Schedules annexed to this document.

**Supplier Materials:** has the meaning set out in clause 11.1.7.

**Required Standard of Design:** has the meaning whereby any design is to be undertaken with the reasonable skill and care to be expected of a qualified and experienced member of the Suppliers profession undertaking the Services on works similar in scope and character to the Project;

2.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;



- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes [and e-mails].

### 3. BASIS OF CONTRACT

- 3.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions and as particularised under the agreement.
- 3.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**). The Order shall take effect under the operating terms and conditions under this agreement or varied terms as provided for under this agreement.
- 3.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force. Any discrepancy or divergence from prior samples or previous reference to the Supplier's literature including but not limited to the resulting colour, quality, finish or size of product notwithstanding the Supplier's obligations to the agreed specification. Where openings are required in the member products to allow facility for the Supplier to lift or handle

the unit, no liability will be incurred for its subsequent appearance.

- 3.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Where the Customer has sought to rely on its previous representations, it is acknowledged that this agreement represents the entire agreement between the Parties and furthermore, the Customer agrees that the terms incorporated within this agreement are superior to any other representations.

- 3.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 90 Business Days from its date of issue.

- 3.6 All of these Conditions shall apply to the supply of both Goods and Services and Design of those elements except where application to one or the other is specified.

### 4. GOODS

- 4.1 The Goods are as described in the Specification appended to this agreement and as identified in the Scope of Services.
- 4.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, and shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 4.2 shall survive termination of the Contract.
- 4.3 The Supplier reserves the right to amend the specification of the Goods **OR** Goods Specification if required by any applicable statutory or regulatory requirements. Any variance to the Goods



shall constitute an Additional Service and shall be determined by way of an Additional Fee.

## **5. DESIGN**

5.1 Where the Design of the Goods is specified under the Scope of Services and the Specification, the Supplier shall exercise reasonable care and skill in the design of those elements as contained within this agreement. In doing so the Supplier will exercise reasonable skill and care in all aspects of its design and when but not limited to ;

5.1.1 performing the Services;

5.1.2 not specifying for use any products or materials in the Project, which are Deleterious at the time of specification or use;

5.1.3 performing the Services and prepare all Material for those elements of the Project for which the Supplier is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project as agreed by an Officer of the Supplier

5.1.4 to ensure that the Structural Design complies with the directions of the Lead Designer of the Customer, that any subsequent designs by the Supplier shall be undertaken with the parameters and loading criteria obtained from the Customers Engineer and those loading criteria being the sole responsibility of the Customer;

5.2 The Supplier under this agreement shall not be responsible for:

5.2.1 the Customers designs for the structures or integration of Supplies into the Designs into the overall requirements of the Design, regardless of whether it has actual or apparent notice of the Customers design intent; or

5.2.2 any designs or specifications for the Property or the Project; or

5.2.3 overall stability or analysis of the structure; or

5.2.4 non-conformance of element sizes as a result of permissible tolerances occurring from the manufacture of the Supplies; or

5.2.5 setting out of the Supplies in respect of positioning; or

5.2.6 design of connections from the Supplies to the main structure or any element to which is not connected to the Scope of Services but to which the Supplies will rely upon.

## **6. COOPERATION AND COORDINATION**

6.1 The Supplier shall not be liable for the coordination in respect of the operation of the Works save for its responsibilities that arise under this agreement and shall not be responsible for the;

6.1.1 co-ordination of the Site Activities, it is the responsibility of the Customer that it will provide sufficient possession of the site to allow the Supplier to undertake its works in a workmanlike manner in line with the contract program and intent. Such prevention will amount to a breach of this agreement; or

6.1.2 Qualification or verification of member sizes of plans specifications or the like. The Customer shall take full responsibility for the specification of the sizes required of the products; or

6.1.3 Setting out or verification of bearing elements or any treatment or preparation of those bearing elements. They shall be of the responsibility of the Customer. The Customer warrants that the elements to be supplied by the Supplier shall be capable of being placed with no further works or attendances. In the absence of the Supplier making any prior visits to the Site, to which no obligation exists, it shall be the responsibility of the Customer that the Customer may



undertake its works in a proper and workmanlike manner as set out in the agreement; or

6.1.4 Costs incurred as a result of third parties be they instructed or retained by the Supplier in the execution of its works.

6.1.5 The Customer shall notwithstanding its obligations under this agreement make formal notification to the Supplier that it is to commence production, this instruction shall be deemed to infer that the Supplier's design is accepted under the terms of this agreement.

(C)

6.2 It is understood and accepted through this agreement that:

6.2.1 The price quoted is exclusive of VAT and the price quoted is a lump sum subject to variations that may arise which are to be valued in accordance with these Conditions;

6.2.2 The lead time as directed by the Supplier is subject to change and the Supplier shall bear no liability for the change of its required lead in time. Any subsequent changes or variations will have the effect of changing the lead in time. The lead in time is that as defined by the receipt of adequate and suitable information and drawings as confirmed in writing by the Supplier, until the time of production and/or delivery in accordance with the agreed program. The Supplier will accept no responsibility as to its delivery timeframe in the event of non approval of final drawings by the Supplier.

(D)

6.2.3 The Supplier reserves its position to change the lead in period subject to production capability and shall advise the Customer of any change. No liability is imposed on the Supplier in such an event.

6.2.4 Lifting equipment be it cranes or hoists are to be the sole responsibility of the Customer unless otherwise agreed. It is acknowledged that the Supplier shall have sole use of the lifting equipment as agreed to

undertake its works in line with its contract intent. Where the lifting equipment is denied it will amount to a breach of this agreement recoverable under the general heads of damages.

6.2.5 Where weather prevents the operations as described, it will be constituted as a matter giving rise to the entitlement of additional time and cost recovery.

(E)

6.2.6 Any changes from when the Supplier receives the drawings and is instructed to commence shall be deemed as a variation and the Supplier reserves its position as to costs and/or delivery timescale.

## 7. DELIVERY OF GOODS

7.1 The Supplier shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods,
- (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Where Goods are delivered on pallets or similar, those pallets will be considered to be a sale item and the Customer shall pay and take responsibility of same.

7.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.



- 7.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. Responsibility of loading and/or unloading of the Goods shall be at the risk of the Customer.
- 7.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 7.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 7.6 If the Customer fails to accept or take delivery of the Goods within 14 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 7.7 If 21 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, or disposal costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods. Such sums shall be recoverable as a debt.

- 7.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including any percentage more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered. Furthermore, where the Customer orders a part load, the Supplier shall be entitled to recover those sums for extra transport.
- 7.9 The Supplier may deliver the Goods by instalments, any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **8. INSTALLATION**

- 8.1 Notwithstanding any other duties of the Supplier under this agreement, the following will apply to the installation of the elements:
- 8.1.1 No responsibility shall be imposed upon the Supplier for compliance with Statutory Requirements under the Building Regulations
- 8.1.2 The Customer shall undertake that it will operate and provide those area(s) as required so as to allow for the Supplier to undertake its work in workmanlike manner and acknowledges that any prevention impediment or default is a matter that will give rise to additional time and additional recovery of damages for the Supplier. An impediment is any consequence or breach by the Customer that prevents the Supplier from carrying out its works unless it was brought to the attention of the Supplier and is contained within this Agreement.
- 8.1.3 All ground conditions and laydown areas are the sole responsibility of the Customer.
- 8.1.4 All crane operations including the validation of crane duties and capacities are the sole responsibility of the Customer. The Customer



warrants that it shall make exclusive use of any cranes required so as to effect the Supplier's works.

8.1.5 Where the Supplier is to supply the crane, all hardstandings and aerial obstructions will be the sole responsibility of the Customer.

8.1.6 All beddings, mortars, and bearing positions are to be in accordance with the reasonable satisfaction of the Supplier. It will be that where the Supplier's products are to load another element, the Customer shall ensure that the adequate checks and procedural arrangements are in place to allow such placement. Where a Structural Engineer is required, it will be at the cost and ultimate responsibility of the Customer. For the avoidance of doubt, all setting out including levels and positions shall be the responsibility of the Customer and will include any bedding be it mortar or shim packings.

8.1.7 The Supplier accepts no responsibility for the damage of other works or elements

8.1.8 No account has been made for additional access to be provided for all accesses are to be sufficient and maintained by the Customer.

which case title to the Goods shall pass at the time of payment of all such sums; and

9.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 9.4.

9.3 Until title to the Goods has passed to the Customer, the Customer shall:

9.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

9.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

9.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

9.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 19.2.2 to clause 19.2.13; and

9.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.

9.4 Subject to this agreement, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

9.4.1 it does so as principal and not as the Supplier's agent; and

9.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

9.4.3 it is acknowledged by all parties that the risk of the Goods vests in the Customer.

## **9 TITLE AND RISK**

9.1 The risk in the Goods shall pass to the Customer on completion of delivery.

9.2 Title to the Goods shall not pass to the Customer until the earlier of:

9.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in



9.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed above, then, without limiting any other right or remedy the Supplier may have:

9.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

9.5.2 the Supplier may at any time:

9.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

9.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 10 SUPPLY OF SERVICES

10.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.

10.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the schedules, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

10.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

10.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## 11 CUSTOMER'S OBLIGATIONS

11.1 The Customer shall:

11.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;

11.1.2 co-operate with the Supplier in all matters relating to the Services;

11.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

11.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

11.1.5 prepare the Customer's premises for the supply of the Services;

11.1.6 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;

11.1.7 keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

11.1.8 provide all welfare facilities to the Supplier at no cost.

11.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or



omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- 11.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 11.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 11.2; and
- 11.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 12 CHARGES AND PAYMENT

- 12.1 The Fee shall be calculated and paid in instalments in accordance with the fee agreement. If not set out the Fee shall be paid at intervals of not less than one month, beginning one month after the Supplier begins performing the Services or upon invoice.
- 12.1 The Supplier shall submit to the Customer an invoice for each instalment of Fee, together with any supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) shall specify the sum that the Supplier considers will become due on the payment due date in respect of the instalment of the Fee, and the basis on which that sum is calculated.
- 12.2 Payment shall be due on the date the Customer receives each invoice.
- 12.3 No later than five days after payment becomes due, the Customer shall notify the Supplier of the sum that the Customer considers

to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated.

- 12.4 The final date for payment shall be 28 days after the date on which payment becomes due.
- 12.5 Subject to this agreement and unless the Customer has served a notice under this Agreement, it shall pay the Supplier the sum referred to in the Customer's notice under this clause (or, if the Customer has not served notice under clause 12.3, the sum referred to in the invoice referred to in clause 12.1) (in this clause 12, the **notified sum**) on or before the final date for payment of each invoice.
- 12.6 Not less than two days before the final date for payment (in this clause 12, the **prescribed period**), the Customer may give the Supplier notice that it intends to pay less than the notified sum (in this clause 12, a **pay less notice**). Any pay less notice shall specify:
  - 12.7 the sum that the payer considers to be due on the date the notice is served; and
  - 12.8 the basis on which that sum is calculated.
- 12.9 If the Customer fails to pay an amount due to the Supplier by the final date for payment and fails to give a pay less notice, simple interest shall be added to the unpaid amount from the final date for payment until the actual date of payment. This shall be calculated on a daily basis at the annual rate of 8% above the Base Rate. The parties acknowledge that the Customer's liability under this clause does not provide for expenses incurred in recovering a debt under the Late Payment of Commercial Debts (Interest) Act 1998.

## 13 Adjusting the Fee

- 13.1 The Fee shall be adjusted if the performance of the Services is materially delayed or disrupted due to a change in the scope, size, complexity or duration of the Project, or the default or negligence of the Customer's third party agreements or other persons or entities under the control of the Customer.
- 13.2 The Supplier shall notify the Customer of its intention to claim an adjustment to the Fee as soon as reasonably practicable after it becomes aware of any material delay or disruption to the Services. The Supplier's notice shall include a written estimate of:
  - 13.3 the proposed adjustment to the Fee; and



13.4 the likely effect of the delay or disruption on the Services and the Programme.

13.5 Unless the parties agree otherwise, the Fee shall be adjusted by a reasonable amount by reference to the time charges and additional effort or time exerted.

#### 14 Additional Time

14.1 Where it has become reasonably apparent that the progress of the Services as described under this Agreement and its incorporated schedules and documents that the progress of the Services is being or is likely to be delayed, the Supplier shall give notice to the Customer of the material circumstances, including the causes of the delay.

14.2 A delay is one that is caused by any impediment, default or breach, whether by act or omission by the Customer or its agents howsoever caused.

14.3 Upon notice being provided by the Supplier, the completion date shall be adjusted to an appropriate new date taking in the material circumstances that caused the delay and its effect is to relieve the Supplier of any liability. The Customer shall indemnify the Supplier of any losses caused as a result of the delay.

#### 15 Additional Services

15.1 The Supplier shall notify the Customer as soon as reasonably practicable if it becomes apparent that Additional Services are likely to be required, identifying the required services.

15.2 The Supplier shall perform an Additional Service on receipt of a written instruction to do so by the Customer.

15.3 As soon as reasonably practicable after receiving an instruction to perform an Additional Service, the Supplier shall provide the Customer with a written estimate of cost of the Additional Service and its effect on the Programme.

15.4 Any Additional Fee payable by the Customer shall be included in the next invoice following performance of the Additional Service to which it relates.

#### 16 INTELLECTUAL PROPERTY RIGHTS

16.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

16.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

16.3 All Supplier Materials are the exclusive property of the Supplier.

#### 17 CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 17 shall survive termination of the Contract.

#### 18 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

18.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:



- 18.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 18.1.2 fraud or fraudulent misrepresentation;
- 18.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 18.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 18.1.5 defective products under the Consumer Protection Act 1987.

18.2 Subject to clause 18.1:

- 18.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
- 18.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £10,000.

18.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

18.4 This clause shall survive termination of the Contract.

18.5 For the avoidance of doubt, where there is a conflict or ambiguity as to the terms of any purported agreement between the parties, it is acknowledged that the terms and conditions contained within this Agreement shall prevail over any other representation or purported agreement and it is acknowledged that this Agreement represents the entire agreement between the parties and shall include only those documents as incorporated.

## **19 TERMINATION**

19.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than 2 months' written notice.

19.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 19.2.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- 19.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Supplier or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 19.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 19.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a Supplier) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 19.2.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 19.2.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole



- or any part of its assets and such attachment or process is not discharged within 14 days;
- 19.2.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a Supplier);
- 19.2.8 the holder of a qualifying charge over the assets of the other party (being a Supplier) has become entitled to appoint or has appointed an administrative receiver;
- 19.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 19.2.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 19.2.2 to clause 19.2.9 (inclusive);
- 19.2.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 19.2.12 the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 19.2.13 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 19.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 19.4 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the

events listed in clause 19.2.2 to clause 19.2.13, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

19.5 On termination of the Contract for any reason:

- 19.5.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 19.5.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 19.5.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 19.5.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 20 FORCE MAJEURE

- 20.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 20.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.



20.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than [NUMBER] weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

## 21 GENERAL

### 21.1 Assignment and other dealings.

21.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

21.1.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

### 21.2 Notices.

21.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a Supplier) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax [or e-mail].

21.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax [or e-mail], one Business Day after transmission.

21.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

### 21.3 Severance.

21.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

21.3.2 If [one party gives notice to the other of the possibility that] any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

21.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

21.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.



# FLOORSPAN

## CONTRACTS

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

**Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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

21.10 Entire Agreement This Agreement represents the entire agreement between the parties.

I have read and understood the above and agree to the conditions therein.

Signed .....

Name (print) .....

Date .....

A full copy of our "Technical specification and Terms and conditions" is available on request or via our website by clicking on "downloads" and then "Technical specification and Terms and conditions".