

TERMS & CONDITIONS OF CONTRACT OF WINTech LIMITED

1. DEFINITIONS

In these conditions the following expressions shall have the following meanings:
 "Company" is WINTech LIMITED, Quartz House, Pendeford Business Park, Wobaston Road, Wolverhampton WV9 5HA.
 "Services" is the supply of services referred to in the corresponding Wintech Fee Proposal, email or verbal offer.
 "Client" is the person, company, firm or other body for whom the Company is performing the Services.
 "Insurance Amount" is the amount of insurance to be maintained as set out at clause 19, including any aggregate limitations.
 "Parties"/ "Party" refers to the Company and/or the Client.
 "Price" Means any fixed price, or any aggregate of the hours spent at the hourly rate/rates quoted for performing the Services or any part of them and further sums becoming payable to the Company by virtue of variation to the scope of the Services.
 "Quotation" is to include the Wintech Fee Proposal or any quotation for the provision of Services produced by the Company and communicated to the Client in writing, by email or verbally.

2. FORMATION

- (a) The following terms and conditions "the Contract Terms" are incorporated by the Company into and form part of any contract for Services entered into with the Client including the Price set out in the Company's Quotation. Any other term or condition is expressly excluded except where agreed to by the Parties in writing. The Contract Terms shall override and supersede all previous oral and written representations concerning the Services or any other terms and conditions (including those sought to be submitted alongside any instructions to proceed by the Client) by whatever means they may be sought to be imposed by the Client.
- (b) Headings to these conditions are for convenience of reference only and shall not affect their construction.
- (c) Quotations shall, unless otherwise stated or withdrawn remain valid for 30 days from issue. No contract will come into existence until the Company despatches to the Client an order acknowledgement letter.
- (d) The Client shall be responsible to the Company for ensuring the accuracy of any instructions to proceed with any Services (including any ancillary documents in particular but without prejudice to the generality of the foregoing, specifications, instructions, terms of reference) to the Company and for giving the Company all necessary information relating to the Services within a sufficient time to enable the Company to perform the contract in accordance with its terms.

3. FEES

Unless otherwise expressly stated in writing by the Company, instructions by the Client to proceed with any Services are accepted on the basis that: -

- (a) Any price quoted is the net price for the Services after deduction of any discounts.
- (b) Prices quoted are exclusive of Value Added Tax and any other tax or levy which shall be charged by the Company at the rate and in the manner prescribed by law from time to time and shall be paid by the Client in addition to the Price.
- (c) The Company may by seven (7) days prior notice to the Client adjust any Price stated to take account of any change in the costs of (inter alia) materials, labour, sub-contracts, transport, taxes, duties and currency exchange rates ruling at the date of the Quotation; any specification by the Client agreed by the Company, any delay caused by the Client or failure of the Client to give the Company adequate information or instructions.
- (d) Any typographical or other error or omission in any quotation, acceptance of offer, invoices or other document issued by the Company shall be subject to correction without any liability on behalf of the Company.
- (e) Time is charged for staff who are available for work even though they may be unable to work due to the Client's holidays or other stoppages not under the control of the Company.
- (f) Unless otherwise quoted in the Quotation, fee rates exclude the travelling expenses of the Company's personnel to and from the main location agreed with the Client and any international travel expenses.
- (g) Company personnel are assigned to the Client on the mutual understanding that neither the Client nor any of the Client's associated companies will offer employment, nor employ Company personnel for a period of six months after the termination of the assignment except with the written agreement of the Company. In the case of such agreement, a fee equal to 20% of the contract Price or the loss chargeable on 40 weeks of the Contract Price, whichever is the greater, will be payable by the Client upon release by the Company of personnel to the Client.
- (h) Neither the Client nor any of its associated businesses shall for a period of eight months after an employee of the Company has ceased to be so employed for whatever reason enter into a contract
- (i) of employment with the former employee as a designer, engineer, draughtsman or in a like capacity or substantially the same as previously undertaken by the former employee during the period of his or her assignment to the Client.
- (ii) otherwise engaging the services of the former employee in the course of which he or she provides design, draughting or engineering services of a substantially like kind to those carried out by the former employee during the period of their assignment to the Client.
- (iii) with any new employer of the former employee or other person acting for the former employee in an agency or any other representative capacity in the course of which the former employee carries out design, draughting or engineering services of a substantially like kind to those undertaken by the former employee during the period of their assignment to the Client.
- (i) During the course of the Contract, the Company will supply a draughtsman, engineer or designer. The Company does not contract to supply and or continue to supply any particular individual or team of draughtsmen, engineers or designers for the duration of the Contract.

4. PAYMENT

- (a) The Company shall be entitled to invoice the Client for the Price either on or at any time after performance of the Services or for instalments of the Price in accordance with the terms of the Quotation for performance of part of the Services or if the Client refuses performance of the Services at any time after the Company has notified the Client that it is ready to perform the Services.

- (b) Prices are due and payable to, and into such bank accounts designated by the Company, without set-off or counterclaim in the currency as stated within the quotation and within 30 days from the date of the Company's invoice. Payment by cheque or other negotiable instrument is ineffective until it is honoured, and the Company's bank account is credited with the amount due.
- (c) In the event of any default by the Client in payment in full when due of any of the Company's invoices and without prejudice to any other rights of the Company, interest shall be added to all amounts remaining unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) in addition to any legal costs incurred by the Company in the recovery of such overdue invoices.
- (d) Consequential expenses (for example travel and hotel expenses) necessary for the performance of the Services will be invoiced to the Client (where stated), and terms applying to payment of the Price shall also apply to the payment of such expenses.
- (e) In the event that paper invoices are not acceptable, and you instruct Wintech to use an electronic only system, we reserve the right to add any administration costs of this system on to the value of the invoice.

5. LOCATION

The Services will be undertaken at the place specified in the corresponding Wintech Fee Proposal, email or verbal offer.

6. PERFORMANCE

- (a) The Company shall exercise reasonable skill, care and diligence in the performance of the Services.
- (b) If any part of the Services is found by the Company to be defective in materials supplied or work performed under normal use and services and (if applicable) when properly installed the Company will free of charge re-perform the Services or any part thereof that is defective provided the Company is informed of the defect within seven (7) days of discovery thereof. If the Client is in breach of this contract (including without limitation any obligation to make payment to the Company) the provisions of this clause shall not apply.
- (c) The Company's obligations and liabilities to the Client in respect of the performance of the Services or the services supplied pursuant thereto shall be limited to those expressly set out in Clause 6(b).
 The Client acknowledges that this is reasonable and is reflected in the Price and shall accept risk and/or insure accordingly.
- (d) The Company shall not be liable to the Client for any consequential or indirect loss, damage, cost, charge or expense arising from the Company's breach of the Contract Terms including but without prejudice to the generality of the foregoing loss of profit, contribution or opportunity.
- (e) The Company will perform the Services using its own staff. However, the Company reserves its right to sub-let or sub-contract the whole or part of the work and will notify the Client accordingly.
- (f) In the event that any part of the Client's property is involved in or requires to be dismantled or moved or replaced in order to enable the Company to undertake the Services, unless otherwise agreed in writing by the Company the Client shall carry out the work required to dismantle, or move or replace the said property at the Client's sole cost and risk in their property shall remain with the Client.
- (g) In respect of all samples used in the Services, the Company reserves the right to dispose of these following completion of the Services. If samples are retained at the Client's request a storage charge will be made.

7. SPECIFICATIONS, DESCRIPTIONS, DRAWINGS AND INTELLECTUAL PROPERTY

- (a) The Company reserves the right to make any changes in the specification of the Services which are required to conform with any applicable safety or other statutory requirements.
- (b) Where the Services are performed in accordance with information or drawings supplied by the Client or to its design or specification or where the Services are altered in accordance with the Client's instructions:
- (i) no guarantee or warranty is given by the Company as to the practicability, efficiency, safety or otherwise of the Services (this being without prejudice to any other of the Contract Terms);
- (ii) the Client will indemnify and keep the Company indemnified against:
- (1) any claim, loss, damage, cost, expense or other liability arising therefrom including but not limited to the infringement of any third party's intellectual property rights or the provision of any statute, statutory instrument or regulation.
- (2) any impracticability, inefficiency, lack of safety or other defect in the Services where such defect is due (whether in whole or in part) to faults or omissions in such information, drawings, design, specification or instructions which the Client has supplied.
- Unless otherwise expressly agreed in writing the Company shall be under no obligation to perform the Services in accordance with any specification, information, drawing or sample provided by the Client.
- (c) All patents, designs, drawings, samples, models, reports and similar items prepared and know how used by the Company relating to the Services and the copyright and other intellectual property rights therein shall remain the property of the Company and shall be treated as confidential and shall not be copied, re-produced or disclosed to any third party without the Company's prior written consent. Such materials shall be returned by the Client on demand.
- (d) No right or licence is granted to the Client to use the intellectual property rights described in clause 7(c) except for the purpose for which the Services was performed. The granting of a licence is subject to the payment of all fees properly due to the Company by the Client under the Contract Terms.

8. DELAYS

- (a) The Company will endeavour to complete the Services within the time agreed (if any) and if no time is agreed, within a reasonable time, but it shall not be liable for any loss or damage whatsoever caused directly or indirectly by a delay in the completion of the Services.
- (b) If the Client cancels, extends or delays, refuses performance of any part of the Services at the time agreed (if any) or if no time is agreed within a reasonable time then the Client will be liable (without prejudice to any other rights of the Company) for an adjustment to the Price in accordance with the quoted rates for standing time and/or any resulting loss damage or expense incurred by the Company.

- (c) The Company may perform the Services in stages and shall be entitled to payment for all instalments of the Services. Without otherwise limiting the Contract Terms, no failure or defect in respect of any instalments shall enable the Client to repudiate or cancel the whole contract or any other instalment.
9. **USE OF THE SERVICES BY THE CLIENT**
The Services can only be relied upon by the Client to the extent that the purpose is expressly agreed in writing by the Company and any instructions given by the Company in respect thereof. The Client shall indemnify and hold harmless the Company for liabilities arising from any other use. In the case of the Services relating to samples, test or prototype goods or services the Client shall indemnify the Company against all liabilities incurred by the Company in relation to use of the Services other than for testing and evaluation by the Client.
10. **CAUSES BEYOND REASONABLE CONTROL**
Whilst the Company will use all reasonable endeavours to perform its obligations under the contract if by reason of any causes of any kind whatsoever beyond the Company's control or which it could not with reasonable diligence have avoided, the completion of the Services is in the Company's opinion rendered impracticable or delayed by more than three months either the Client or the Company may cancel or suspend the Services by notice in writing to that effect so far as the Services relates to services not then performed, and such cancellation or suspension shall not give rise to any claim by the Client or the Company and the Client shall remain liable to pay for those parts of the Services performed and/or all costs payable by the Company in connection with the provision of the Services prior to the date of such cancellation or suspension.
11. **ASSIGNMENT**
(a) The Client shall not assign, charge or sub-let or otherwise dispose of any contract or any rights thereunder in whole or in part without the Company's prior written consent. Any of the above purported to be affected without such consent shall be void.
(b) The Company shall be entitled to assign, sub-contract, or sub-let this contract or any part thereof with the Client's prior written consent which consent shall not be unreasonably withheld.
(c) The Company shall be entitled to perform any of its obligations and/or exercise any of its rights by itself or through or jointly with any company or companies controlled by or under the same control (direct or indirect) as the Company.
12. **EVENTS OF DEFAULT, TERMINATION, REPOSSESSION, SUSPENSION**
If:
(a) The Client fails to pay the Price when due or otherwise breaches any of the Contract Terms or any other terms agreed with the Company; or
(b) The Client is, or for statutory purposes is deemed to be or appears to be unable to pay its debts as they become due, or the value of its assets is less than the amount of its liabilities (including contingent and prospective liabilities) or the Client otherwise becomes insolvent or suspends payment or threatens to do so or ceases to trade; or
(c) Steps are taken to:
(i) propose any composition, scheme or arrangement, compromise or arrangement involving the Client and its creditors generally; or
(ii) obtain an administration order or appoint any administrative or other receiver or manager in relation to, or put in force any legal process against the Client or any of its property; or
(iii) enforce any charge or other security over the Client's property; or
(iv) re-possess any goods in the Client's possession under any agreement; or
(v) wind-up or dissolve the Client; or
(d) Where the Client is an individual or partnership, he or any partner dies or any steps are taken with a view to entering into a Voluntary Arrangement or the making of a bankruptcy order against him or any Partner; or
(e) Outside England and Wales anything corresponding to any of the above occurs; or
(f) The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client.
Then in the case of (a) to (e) set out above the Client shall notify the Company forthwith in writing of such event and in all cases the Company may (at its discretion, whether or not it has received notice from the Client as aforesaid, and without prejudice to its other rights hereunder or otherwise) at any time by notice to the Client do any one or (to the extent not inconsistent with one another) more of the following:
(i) terminate, cancel and/or rescind the contract and other contracts with the Client;
(ii) declare (whereupon there shall forthwith become) immediately due, payable and interest-bearing under clause 4(c) above any amounts owed by the Client to the Company under any contract;
(iii) suspend any deliveries or provision of services to be made under any contract with the Client.
(iv) proceed against the Client for recovery of the Price outstanding and/or damages.
13. **SITE SAFETY**
The Client shall inform the Company's representatives visiting or working on the Client's site of the safety requirements and practices relating thereto and the identity of the Safety Supervisor and/or Principal Contractor. The Company will not act as Principal Contractor under the **CONDAM** Regulations unless expressly agreed in writing.
14. **FOREBEARANCE**
The Company's rights shall not be prejudiced or restricted by any indulgence or forbearance extended to the Client and no waiver by the Company in respect of any breach shall operate as a waiver in respect of any subsequent breach.
15. **GENERAL**
(a) Any notice required or permitted to be given by either Party to the other under these conditions shall be in writing and addressed to that other Party at its registered office or principal place of business. Notice shall be deemed to have been received the next working day when posted Royal Mail First Class.
- (b) Each provision of the Contract Terms is severable and distinct from the others. The Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If any provision herein or part thereof is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from the Contract Terms and shall in no way affect the legality, validity or enforceability of the remaining terms.
- (c) Termination of any contract for any cause shall not release any Party from any liability which had already accrued at the time of termination or which may thereafter accrue in respect of any act or omission prior to such termination.
- (d) The remedies conferred by the Contract Terms are exclusive of any other remedies otherwise available at law in particular but without prejudice to the generality of the foregoing any remedy in tort or arising out of any warranty, condition or other term implied by statute and including any limitation periods applicable in respect of such remedies.
16. **LAW**
The Contract shall in all respects be subject to and construed in accordance with English Law and the Client submits to the exclusive jurisdiction of the English Courts.
17. **NET CONTRIBUTION**
Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs the liability of the Company for any claim or claims under the Contract Terms shall be further limited to such sum as it would be just and equitable for the Company to pay having regard to the extent of his responsibility for the loss or damage giving rise to such claim or claims ("the loss and damage") and on the assumptions that:
(i) all other consultants, contractors, sub-contractors, project managers or advisers engaged in connection with the project have provided contractual undertakings on terms no less onerous than those set out in Clause 6 to the Client in respect of the carrying out of their obligations; and
(ii) there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party referred to in this clause and any such other party who is responsible to any extent for the loss and damage is contractually liable to the Client for the loss and damage; and
(iii) all such other consultants, contractors, sub-contractors, project managers or advisers have paid to the Client such sum as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.
18. **LIMITATION OF LIABILITY**
(i) Notwithstanding anything to the contrary contained in these Contract Terms, the liability of the Company under or in connection with these Contract Terms whether in contract or in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed the total of ten times the agreed Price or the Insurance Amount, whichever is the lesser amount.
(ii) In respect of any other loss, damage, cost, charge and expense incurred by the Client arising from the Company's breach of the Contract Terms the amount of any liability shall be further limited to only those amounts of each individual head of claim in excess 1% of the total value of the works to the Client relating to these Contract Terms.
(iii) The Client shall indemnify and keep indemnified the Company from and against all claims, demands, proceedings, damages, costs, charges and expense arising out of or in connection with any breach of the Contract Terms in excess of the applicable liability limit then in force.
19. **INSURANCE**
The Company shall take out and maintain professional indemnity insurance with reputable underwriters or insurance companies licensed to operate in the UK with a limit of not less than £5,000,000 (five million pounds) in respect of each and every claim with separate aggregate limitations for claims relating to pollution, contamination, asbestos and fire safety of external cladding systems for a period of 6 years following completion of the Services or such earlier date that may be prescribed by law subject always to such insurance being available at commercially reasonable rates.
20. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
Nothing in this contract confers or purports to confer on any third party any benefit or right to enforce any term of this contract pursuant to the Contracts (Rights of Third Parties) Act 1999.
21. **LIMITATION PERIOD**
No actions or proceedings under or in respect of these Contract Terms whether in contract or in tort in negligence or for breach of statutory duty or otherwise shall be commenced against the Company after the expiry of 6 years following completion of the Services or such earlier date that may be prescribed by law.
22. **APPOINTMENT DOCUMENTATION**
Unless specifically stated otherwise, any offer relating to these terms and conditions is made strictly to the conditions set out therein and specifically excludes the costs associated with the negotiation and execution of any alteration to these terms or alternative terms. Should any alternative terms or appointment documents be required a surcharge at 1% days the effective consultancy rate applicable at the time will be due. A further surcharge at ½ day the effective consultancy rate applicable at the time for each further warranty document, novation agreement or assignment which may also be required will be due in addition to the initial surcharge. In the event that the Client suggests alternative terms to be relied upon in the performance of the Services these Contract Terms shall remain in full force until such alternative terms are agreed and signed by both Parties.