

Terms and Conditions for the Supply of Construction Services provided by JLES CENTRAL LTD ("JLES")

1. Definitions

1.1. In these terms and conditions

- a) "Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
- b) "Charges" means the charges payable by the Customer for the supply of the Services in accordance with Clause 5;
- c) "Commencement Date" has the meaning set out in Clause 2.2;
- d) "Conditions" means these terms and conditions as amended from time to time in accordance with Clause 14;
- e) "Contract" means the contract between JLES and the Customer for the supply of Services in accordance with these Conditions;
- f) "Control" shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly;
- g) "Customer" means the person or firm who purchases Services from JLES;
- h) "Customer Default" has the meaning set out in Clause 4.2;
- i) "Deliverables" mean the deliverables set out in the Order produced by JLES for the Customer.
- j) "Intellectual Property Rights" means 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;
- h) "Order" means the Customer's order for Services as set out in the Customer's purchase order form **OR** overleaf **OR** the Customer's written acceptance of JLES' quotation, as the case may be.
- i) "Services" means the services, including the Deliverables, supplied by JLES to the Customer as set out in the Specification;
- j) "Specification" means the description or specification of the Services provided in writing by JLES to the Customer;
- k) "Supplier" means JLES Central Limited registered office address: JLES House, Higher Green Lane, Astley, Manchester, M29 7HQ with company number 06318228;
- l) "Supplier Materials" has the meaning set out in Clause 4.1.g.

1.2. Interpretation:

- a) A reference to a statute or statutory provision is a reference to it 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.
- b) 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.
- c) A reference to writing or written includes fax and email.

2. Basis of Contract

- 2.1. The Order constitutes an offer by the Customer to purchase Construction Services in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted when JLES issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("Commencement Date").
- 2.3. Any samples, drawings, descriptive matter or advertising issued by JLES, and any descriptions or illustrations contained in JLES' catalogues or brochures, 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.
- 2.4. 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.
- 2.5. Any quotation given by the JLES shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Supply of Services

- 3.1. JLES shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2. JLES shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3. JLES 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 JLES shall notify the Customer in any such event.
- 3.4. JLES warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's Obligations

- 4.1. The Customer shall:
 - a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - b) co-operate with JLES in all matters relating to the Services;
 - c) provide JLES, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by JLES;
 - d) provide JLES with such information and materials as JLES may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - e) prepare the Customer's premises for the supply of the Services;

- f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- g) keep and maintain all materials, equipment, documents and other property of JLES ("Supplier Materials") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to JLES, and not dispose of or use the Supplier Materials other than in accordance with JLES' written instructions or authorisation;
- h) comply with any additional obligations as set out in the Specification and Order.

4.2. If JLES' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):

- a) JLES 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 JLES' performance of any of its obligations;
- b) JLES shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from JLES' failure or delay to perform any of its obligations as set out in this Clause 4.2; and
- c) the Customer shall reimburse JLES on written demand for any costs or losses sustained or incurred by JLES arising directly or indirectly from the Customer Default.

5. Charges and Payment

5.1. The Charges for the Services shall be on a time and materials basis:

- a) the Charges shall be calculated in accordance with JLES' standard daily fee rates as set out in the Order;
- b) JLES' standard daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- c) JLES shall be entitled to charge an overtime rate as detailed in the Order per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in Clause 5.1.b); and
- d) JLES shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom JLES engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by JLES for the performance of the Services, and for the cost of any materials.

5.2. JLES reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. JLES will give the Customer written notice of any such increase 1 month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify JLES in writing within 2 weeks of the date of JLES' notice and JLES shall have the right without limiting its other rights or remedies to terminate the Contract by giving 2 weeks' written notice to the Customer.

5.3. Invoices shall be submitted each month on the date specified in the Order (or the nearest Business Day thereto) and the following provisions in respect of payment of invoices shall apply to the parties:

- 5.4. The Customer shall pay each invoice submitted by JLES:
 - a) The final date for payment of the Invoice shall be 30 days from its due date;
 - b) The due date is date of receipt of the invoice by the Customer.
- c) Not later than 5 days after the due date the Customer shall give a notice (a 'Payment Notice') to JLES specifying the sum that the Customer considers to be due and the basis on which that sum has been calculated, and, subject to any Pay Less Notice given by the Customer in accordance with clause 5.4(d), the amount of payment to be made by the Customer on or before the final date for payment shall be the sum stated in the Payment Notice. If no Payment Notice is given in accordance with this clause 5.4(c), the amount of payment to be made by the Customer shall, subject to any Pay Less Notice, be the sum stated in the invoice.
- d) If the Customer intends to pay less than the sum stated in the Payment Notice or invoice, he shall, not later than 5 days before the final date for payment, give JLES a notice of that intention (a "Pay Less Notice"). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the Pay Less Notice.
- e) Sums due and owing to JLES shall be paid in full and in cleared funds to a bank account notified by JLES.

5.5. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by JLES to the Customer, the Customer shall, on receipt of a valid VAT invoice from JLES, pay to JLES such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.6. If the Customer fails to make any payment due to JLES under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 5% per cent per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

5.7. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). JLES may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by JLES to the Customer.

6. Intellectual Property Rights

- 6.1. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by JLES.
- 6.2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on JLES obtaining a written licence from the relevant licensor on such terms as will entitle JLES to license such rights to the Customer.
- 6.3. All Supplier Materials are the exclusive property of JLES.

7. Limitation of Liability: The Customer's attention is particularly drawn to this clause

- 7.1. Nothing in the Contract shall limit or exclude JLES' liability for:
 - a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - b) fraud or fraudulent misrepresentation; or
 - c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 7.2. Subject to Clause 7.1, JLES shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
 - a) loss of profits and consequential losses
- 7.3. Subject to clause 7.1, JLES' total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the value of the Contract.
- 7.4. 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.
- 7.5. This Clause 7 shall survive termination of the Contract.
- 7.6. Notwithstanding any other provision in this agreement, JLES' total liability under this agreement shall be limited to the value of the Services.

8. Termination

- 8.1. Without limiting its other rights or remedies, JLES may terminate the Contract by giving the Customer 7 days written notice and the Customer shall pay JLES fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of profits or any indirect or consequential loss.
- 8.2. Without limiting its other rights or remedies, JLES may terminate the Contract with immediate effect by giving written notice to the other party if:
 - a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing to do so;
 - b) the Customer 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 Customer 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 Customer'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.
- 8.3. For the avoidance of doubt, JLES may terminate, without limiting its other rights or remedies, the Contract with immediate effect by giving written notice to the Customer if:
 - a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 5 days after being notified in writing to make such payment; or
 - b) there is a change of Control of the Customer.
- 8.4. Without limiting its other rights or remedies, JLES may suspend provision of the Services under the Contract or any other contract between the Customer and JLES if the Customer becomes subject to any of the events listed in Clause 8.2.b) to Clause 8.2.d) or JLES reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

9. Consequences of Termination

- 9.1. On termination of the Contract for any reason:
 - a) the Customer shall immediately pay to JLES all of the JLES's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the JLES shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - b) the Customer shall return all of JLES Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then JLES 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;
 - c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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
 - d) clauses which expressly or by implication survive termination shall continue in full force and effect.

10. Force Majeure

- 10.1. Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11. General

- 11.1. JLES 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 or agent.

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

12. Confidentiality

- 12.1. Each party undertakes that it shall not at any time or at any time during the Contract, and for a period of 2 years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 12.1.a).
 - a) Each party may disclose the other party's confidential information:
 - b) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 12; and
 - c) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - d) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13. Entire Agreement

- 13.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

14. Variation

- 14.1. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. Waiver

- 15.1. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
 - a) waive that or any other right or remedy; or
 - b) prevent or restrict the further exercise of that or any other right or remedy.

16. Severance

- 16.1. 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.

17. Notices

- 17.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office 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 pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- 17.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 17.1; 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 fax or email, one Business Day after transmission.
- 17.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 17.4. **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- 17.5. **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.
- 17.6. **Jurisdiction.** 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 the Contract or its subject matter or formation.