



## Resi Estates Management – Terms and Conditions

### STANDARD CONDITIONS

#### 1 Interpretation

##### 1.1 Definitions:

**Affiliate:** any entity that directly or indirectly Controls, is Controlled by, or is under Common control with, another entity.

**Business Day:** a day other than a Saturday, Sunday, or public holiday in England.

**Confidential Information:** all information (however recorded or preserved) disclosed by a party or its employees, officers, or advisers (or a party's Affiliate or its employees, officers, or advisers) to the other party in connection with the Contract which is identified by the disclosing party as being confidential or would be regarded as confidential by a reasonable business person.

**Contract:** the agreement between the Supplier and the Customer for the supply of Goods and/or Services incorporating the Standard Conditions, the Order, and any Special Conditions.

**Control:** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **Controls, Controlled** and the expression **change of Control** shall be construed accordingly.

**Customer:** means Resi Property Management Ltd t/a Resi Estates Management (company number 13074164).

**Customer Materials:** all materials, equipment, tools, drawings, specifications and data supplied by the Customer to the Supplier.

**Data Protection Legislation:** any data protection and privacy legislation in force from time to time in the UK (including the Data Protection Act 2018 and the General Data Protection Regulation 2016/679) and any other European Union regulation relating to data protection and/or privacy directly applicable in the UK.

**Data Subject:** an individual who is the subject of Personal Data.

**Delivery Location:** the address for delivery of the Goods, as set out in the Order, or such other location as instructed by the Customer before delivery.

**Due Date:** as defined in clause 12.7.

**Force Majeure Event:** any circumstance not within a party's reasonable control, which could not have been reasonably foreseen and which that party has taken all reasonable steps to mitigate or prevent.

**Goods:** any goods to be supplied by the Supplier to the Customer as required by the Contract and detailed in the Order

**Goods Price:** the price for the Goods, as set out in the Order.

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

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks,

service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Laws:** all legislation, statutes, statutory instruments, orders, resolutions, regulations, notices, judgments, determinations, rules of court, bye laws, directives, codes of conduct or other instrument in each case as issued by UK Parliament, the legislative making institutions of the European Union (to the extent that such laws apply in England and Wales), any court, tribunal or other person or body exercising judicial functions or Commission of Inquiry, local authority, relevant authority or any other body or person having such powers and any exercise of the Royal Prerogative and having the force of law from time to time in England and Wales and any other laws or regulations, regulatory policies or codes which apply to the provision of the Goods or Services or to the Supplier.

**Order:** the Customer's purchase order for the Goods and/or Services submitted to the Supplier.

**Order Number:** the order number quoted on the Order.

**Service Charges:** the charges payable by the Customer for the supply of the Services by the Supplier, as set out in the Order.

**Services:** the services to be provided by the Supplier under the Contract, as set out in the Service Specification.

**Service Specification:** the description or specification for Services agreed in writing by the Customer and the Supplier.

**Services Start Date:** the date on which the Supplier is to start provision of the Services, as set out in the Order.

**Site:** means the location at which the Services will be performed, as set out in the Order.

**Special Conditions:** any additional terms and conditions specified in the Order by the Customer.

**Standard Conditions:** these terms and conditions.

**Supplier:** the person from whom the Customer purchases the Goods and/or Services and whose details are set out in the Order.

**Supplier IPRs:** all Intellectual Property Rights either arising, obtained or developed by the Supplier independently of the Order, whether before or after the applicable Services Start Date and/or the Delivery Date.

##### 1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or 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;
- (b) a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns;
- (c) a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

- (d) a reference to a 'company' shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- (e) a reference to writing or written includes email.

## **2 Basis of Purchase**

- 2.1 The Order shall be an offer to purchase the Goods and/or Services from the Supplier in accordance with these Standard Conditions.
- 2.2 These Standard Conditions shall apply to any Order except that in the event of any conflict between the Standard Conditions and the Special Conditions the Special Conditions shall prevail.
- 2.3 Subject to clause 2.2, these Standard Conditions apply to and form part of the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 The Contract shall constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## **3 Acceptance and Cancellation of Orders**

- 3.1 Any Order shall be deemed to be accepted by the Supplier on the earlier of the Supplier:
  - (a) issuing a written acceptance of the Order; or
  - (b) doing any act consistent with fulfilling the Order; at which point the Contract shall come in existence.
- 3.2 The Customer may amend or cancel the Order in whole or in part at any time before delivery of the Goods to the Customer or before the Services Start Date by giving the Supplier written notice. The Customer shall not be responsible for reimbursing any costs incurred by the Supplier as a result of the Customer amending or cancelling the Order.

## **4 Supply of Goods**

- 4.1 The Supplier shall supply the Goods in accordance with the Order and time shall be of the essence where a Delivery Date is specified in the Order. Where the Delivery Date is estimated only, the Supplier shall use its best endeavours to deliver the Goods by the Delivery Date. The Supplier shall confirm its appointment on the Customer's Fixflo platform upon receipt of its instruction.
- 4.2 The Supplier shall ensure that the Goods:
  - (a) correspond with their description and any applicable Goods Specification;
  - (b) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment; and
  - (c) where they are manufactured products, are free from defects in design, material and workmanship and remain so for 12 months after delivery (without prejudice to any applicable manufacturer's warranty), subject to any applicable extended warranty set out in the Order.

## **5 Delivery of Goods**

- 5.1 The Supplier shall not deliver any Order of Goods in instalments without the Customer's prior written consent. Where it is agreed that the Order of Goods may be delivered by instalments, such instalments shall be invoiced separately. Any failure by the Supplier to deliver one instalment on time or at all, or any defect in an instalment,

shall entitle the Customer to the remedies set out in clause 8.2.

- 5.2 The Supplier will provide copies of the waste transfer note for all waste/rubbish removed from the delivery location where the origin of the waste is the Customer.

## **6 Supply of Services**

- 6.1 The Supplier shall provide the Services to the Customer from and including the Services Start Date in accordance with the Contract.
- 6.2 In supplying the Services, the Supplier shall:
  - (a) complete the Services by the Completion Date
  - (b) comply with any performance dates specified in the Order and time shall be of the essence unless the dates are expressed to be estimated dates;
  - (c) perform the Services with the care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade and in a good and workmanlike manner;
  - (d) co-operate with the Customer and comply with all reasonable instructions;
  - (e) only use personnel who are suitably skilled and trained to perform the tasks assigned to them and in sufficient number to ensure that the Supplier's obligations are fulfilled;
  - (f) comply with all applicable Laws and ensure that it obtains and maintains all consents, licences and permissions which are necessary to comply with its obligations in the Contract;
  - (g) ensure that the Services conform with all descriptions, standards and specifications set out in the Service Specification;
  - (h) provide all equipment (including adequate personal protective equipment), tools, vehicles and other items required to provide the Services unless otherwise set out in the Order;
  - (i) hold all Customer Materials in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not use the Customer Materials other than in accordance with the Customer's written instructions;
  - (j) comply with any additional obligations as set out in the Service Specification; and
  - (k) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission.
- (l) On completion of the Services the Supplier shall provide the Customer with photographs demonstrating (to the Customer's reasonable satisfaction) the completed works

## **7 Customer's Obligations**

- 7.1 The Customer shall provide:
  - (a) access to such of the Customer's premises and other facilities as agreed in writing with the Customer for the purposes of the Services; and
  - (b) such information as the Supplier may reasonably request and the Customer considers necessary in order to carry out the Services in a timely manner, provided that the Customer gives no warranty as to the accuracy or completeness of any information unless expressly stated in writing.

## **8 Customer Remedies**

- 8.1 If the Supplier breaches any of the terms in clause 6, the Customer may exercise any one or more of the following remedies:
  - (a) terminate the Contract in whole or in part on written notice to the Supplier in accordance with clause 3.2;

- (b) refuse to accept any subsequent performance of the Services; and
  - (c) purchase substitute services from elsewhere and hold the Supplier accountable for any loss and additional costs incurred.
- 8.2 If the Supplier fails to deliver the Goods by the applicable date or has delivered Goods (or any repaired or replacement Goods) that do not comply with the undertakings set out in clause 4.2, the Customer may exercise any one or more of the following remedies whether or not it has accepted the Goods:
- (a) reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense and the Supplier shall provide to the Customer a refund of the Goods Price of the rejected Goods (if paid by the Customer);
  - (b) terminate the Contract in whole or in part on written notice to the Supplier in accordance with clause 3.2
  - (c) require the Supplier to repair or replace the rejected Goods;
  - (d) refuse to accept any subsequent delivery of the Goods; and
  - (e) recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party.
- 8.3 The Customer's rights and remedies under this clause 8 are in addition to its rights and remedies implied by statute and common law and exercise of any remedy under clause 8.1 and/or clause 8.2 shall not limit any of its other rights or remedies.

## 9 Defect Rectification

9.1 The Supplier shall rectify all defects in the Goods installed on site within the following timescales following an instruction from the Customer.

- (a) Critical repairs – 24 hours
- (b) Urgent repairs 1-3 days
- (c) High priority repairs 7 days
- (d) General Repairs 30 days

## 10 Title and Risk

- 10.1 Risk in the Goods shall pass to the Customer on completion of delivery, title shall pass to the customer on payment to the Supplier for the delivered goods.
- 10.2 All Customer Materials are and shall remain the exclusive property of the Customer.

## 11 Health and Safety, Security and Environmental Protection

- 11.1 In carrying out its obligations under the Contract, the Supplier shall be responsible for the observance by itself, its employees and sub-contractors of all laws relating to health and safety including the CDM Regulations 2015 and the Supplier shall have in place robust health and safety policies and procedures to eliminate or minimise so far as is reasonably practicable all health and safety risks. The Supplier shall:
  - (a) provide risk assessments and method statements for the services it is to undertake
  - (b) provide reasonable assistance to the Customer in any internal investigation or investigation by a competent authority in relation to health and safety, security or environmental protection which involves the Supplier, its employees or sub-contractors.

## 12 Charges and Payment

- 12.1 The Customer shall pay for the Goods and Services in accordance with this clause 12.
- 12.2 The Goods Price includes the costs of packaging, insurance and carriage of the Goods and any applicable duties and imposts and the Service Charges shall be the full and

exclusive remuneration of the Supplier in respect of the Services.

- 12.3 No extra charges shall be effective and no increase in the Goods Price or Service Charges may be made (whether on account of increased material, labour or transport costs, fluctuations in rates of exchange or otherwise) unless agreed in writing by the Customer.
  - 12.4 The Goods Price and Service Charges exclude any amounts in respect of value added tax chargeable from time to time (VAT) and the Customer shall be liable to pay VAT at the prevailing rate for any taxable supply made under the Contract, subject to the receipt of a valid VAT invoice.
  - 12.5 The Supplier shall submit invoices to the Customer:
    - (a) for the Goods Price, on or at any time after delivery of the Goods in accordance with the terms of the Contract; and
    - (b) for the Service Charges, within 14 days of completion of the services.
  - 12.6 The Supplier shall send each invoice to the Customer at the contact details specified in the Order (or such other details as confirmed in writing by the Customer) and shall ensure that each invoice includes the Order Number, the invoice number, the Supplier's VAT registration number, and any supporting documentation that the Customer may reasonably require. It will be a condition precedent of payment that the Supplier shall send the Customer photos of completed work and shall upload all invoices onto the Customer's Fixflo platform.
  - 12.7 Subject to clauses 8.1 and 8.2, the Customer shall pay each invoice which is properly due and submitted to it within 30 days after the end of the month of receipt by the Customer of a valid undisputed invoice, (the "Due Date"), unless the Customer has agreed alternative payment terms in writing to the Supplier. Payment shall be made to the bank account nominated in writing by the Supplier.
  - 12.8 If a party fails to make any payment due to the other by the Due Date, the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time.
  - 12.9 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether or not either liability arises under the Contract. If the liabilities are expressed in different currencies, the Customer may convert either liability at a market rate of exchange. Any exercise by the Customer of its rights under this clause 12.9 shall not limit or affect any other rights or remedies.
- ## 13 Intellectual Property
- 13.1 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of a fully paid-up, worldwide, non-exclusive, royalty-free, licence to use, copy and modify the Supplier IPRs for the purpose of receiving and using the Services and the Customer may sub-licence the rights granted to its Affiliates.
- ## 14 Insurance
- 14.1 During the period in which the Goods and/or Services are being provided under the Contract and for a period of 6 years after the termination or expiry of the Contract, the Supplier shall effect and maintain with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance of a minimum cover of £5,000,000 each to cover the liabilities which may arise through performing the Contract or on default.

14.2 The Supplier shall on the Customer's request produce for inspection the policies and receipts for the current year's premium in respect of each insurance.

## **15 Compliance with Relevant Laws and Policy**

15.1 In performing its obligations under the Contract, the Supplier shall comply with all applicable Laws.

## **16 Termination**

16.1 In addition to the rights to cancel an Order set out in clause 3.2, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier:

- (a) if there is a change of Control of the Supplier;
- (b) if the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy, including if the Supplier 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), or being wound up;
- (c) if the Supplier commits a material breach of any term of the Contract which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so;
- (d) if the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business

16.2 If the Customer exercises its right to terminate the Contract under clause 16 it shall be liable only to pay for the Goods ordered and delivered and for the Services performed prior to the date of termination.

## **17 Exit Arrangements**

17.1 On termination of the Contract for whatever reason the Supplier shall:

- (a) deliver to the Customer all Goods whether or not then complete, and return all Customer Materials; and
- (b) provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it.

## **18 Force Majeure**

18.1 If a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (the "**Affected Party**"), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay. The time for performance shall be extended accordingly.

## **19 Assignment and Subcontracting**

19.1 The Supplier shall not, without the Customer's prior written consent, assign, transfer, mortgage, charge or sub-contract the Contract or any part thereof. If the Customer consents to any sub-contracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its sub-contractors as if they were its own.

19.2 The Customer may at any time assign, transfer, mortgage, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

## **20 Confidentiality**

20.1 Each party undertakes that it shall:

- (a) only use the other party's Confidential Information for the purposes of exercising its rights or carrying out its obligations under or in connection with the Contract; and

- (b) not at any time during the Contract, and for a period of 2 years after termination, disclose to any person any Confidential Information of the other party or its Affiliates.

## **21 Data Protection**

21.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This obligation is in addition to and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

## **22 Variation**

22.1 Except as set out in these Standard Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **23 Severance**

23.1 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 or, if not possible, the relevant provision or part-provision shall be deemed deleted. Any modification or deletion shall not affect the validity and enforceability of the rest of the Contract.

## **24 Notices**

24.1 Any notice or other communication given to a party in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) unless otherwise stated in the Order and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email (to the e-mail address contained in the Order or otherwise specified in writing by the parties).

24.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the registered office address; if sent by pre-paid first class post or other next working day delivery service, on the second Business Day after posting; if delivered by courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

24.3 The provisions of this clause 24 shall not apply to the service of any proceedings or other documents in any legal action.

## **25 Third Party Rights**

25.1 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

## **26 Governing Law**

26.1 The Contract, 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 the law of England and Wales.

## **27 Authority to sign**

27.1 Any individual signing these Standard Conditions on behalf of a party warrants that the individual has been duly authorised to execute these Standard Conditions and to bind that party on whose behalf the individual is signing.

Supplier Signature:

Date:

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Name:

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