

A H Denny Building Services Limited – Terms and Conditions

This agreement ("Agreement") is made between A H Denny Building Services ("Contractor"), registered in England and Wales under 06093123 with a principal place of business at Partnership House, 84 Lodge Road, Portswood, Southampton, Hampshire, SO14 6RG, and **YOU** ("Client") for the construction services described in this contract.

Definitions:

Change Order	has the meaning set out in Clause 5.
Completion Date	Means the estimated completion date set out in the Works Order
Construction Services	means the services which the Contractor provides to its customers from time to time; including building, renovation, demolition, or other construction-related tasks.
Payment Schedule	Means the schedule of payments set out in the Project Order.
Plans	means the plans, architectural drawings and other related documentation setting out the design and layout for the Project.
Price	Means the price for the Works as set out in the Project Order
Project	means the performance of the Works in accordance with this Agreement.
Project Documentation	means any and all of the Project Order, the Plans and any agreed Change Orders.
Project Manager	means the individual identified by the Contractor as the Project Manager from time to time.
Project Order	means the proposal or order in Appendix 1 to this Agreement which defines the scope of the Works that will be undertaken by the Contractor.
Start Date	Means the start date set out in the Project Order
Works	means the specific Construction Services, materials provision and other activities to be provided and performed by the Contractor under this Agreement.
Works Site	means the location where the Works will be performed.
You	Means the person of legal entity named in the Project Order

1. Scope of Work

- 1.1 The Contractor agrees to perform the Works and deliver the Project in accordance with the terms set out in this Agreement.
- 1.2 The Contractor will at all times perform the Works using due skill and care and in accordance with the Project Documentation, including the provision of all necessary materials to complete the Works unless stated otherwise in the Project Order.
- 1.3 The Contractor will, unless stated otherwise in the Project Order, arrange for all necessary building compliance inspections and approvals relating to the Project.
- 1.4 Where the Client specifies and/or supplies the use of any particular materials then the Contractor will not be responsible for the suitability of such materials for the Project.

- 1.5 Where the Client elects to undertake any activities itself or via the use of an alternative third party in support of the Project then it shall remain fully responsible for the proper performance of such activities and the Contractor shall be held harmless from any delays, losses, costs, claims or fines arising as a result of the improper or late performance of these activities.
- 1.6 Any changes made to the scope of the Works following commencement of the Project (including but not limited to any specific materials being required by the Client) shall be subject to Clause 6 (Change Control).
- 1.7 The Contractor shall maintain and have in place all insurances, permits (including, where included as part of the Works, skip hire) and licences (excluding planning permissions which are the responsibility of the Client) which are required to perform the Services.
- 1.8 The Contractor shall use reasonable efforts to comply with any specific instructions of the Client provided that responsibility for organising the Works shall remain with the Contractor. If any instructions given by the Client are, in the reasonable opinion of the Contractor contrary to any legislative, regulatory or industry best practices requirements then it shall not be required to comply.
- 1.9 The Contractor shall endeavour to respond to requests of the Client in a timely fashion, provided that Contractor will not be available to take calls or respond to queries outside normal working hours (9am-5pm Monday to Friday excluding public holidays). Where repeated attempts to contact the Contractor outside of these hours the Contractor reserves the right to charge its time for responding to such requests at its then normal hourly rates.
- 1.10 The Contractor shall comply at all times with all relevant legislation in the performance of the Works, including but not limited to health and safety legislation.

2. Client Obligations

2.1 The Client shall:

- 2.1.1 provide suitable access to all areas of the property or place where the Works are being carried out (the Works Site”);
- 2.1.2 ensure that no pets or unauthorised persons (including but not limited to children) or shall enter the Works Site for any reason. The Contractor shall not be liable for any accidents or damage occurring as a result of pets or unauthorised persons accessing the Works Site;
- 2.1.3 ensure that the Contractor has access to electrical power and running water as reasonably required;
- 2.1.4 make available suitable space for the erection of portable toilets where reasonably required by the Contractor;
- 2.1.5 provide at its cost and on the reasonable request of the Contractor up to five (5) parking permits to allow the Contractor’s vehicles access to the Works Site;
- 2.1.6 ensure that the Contractor has been provided with the latest Plans and that all necessary legal planning permissions are properly in place prior to the commencement of the Project;

- 2.1.7 have in place and maintain adequate property protection insurances to cover any damage caused to the Works Site during the course of the Project.
- 2.1.8 at all times behave courteously to the Contractor and any Contractor employees or subcontractors. If the Contractor or any of its employees or subcontractors are subject to behaviour that they, in their reasonable opinion, consider to be abusive or threatening the Contractor reserves the right to immediately suspend or terminate all Works and to recover its costs from the Client.

3. Project Timeline

The Contractor will begin work on the start date set out in Project Order and Works will be completed on the Completion Date, subject to delays which are outside the control of the Contractor (including without limitation adverse weather, material supply issues or failure of the Client to meet any of its obligations under this Agreement).

4. Price and Payment Terms

- 4.1 The Client will pay the Price for the Works in full when due any without any deductions or set off. All payments will be invoiced in accordance with the Payment Schedule and are due [fourteen (14)] days from the invoice date.
- 4.2 Where any payment is not made in accordance with Clause 4.1 above then the Contractor is entitled to charge late payment interest at a rate of 5% above the then current Bank of England base rate. This right is in addition to any other remedies for late payment set out in this Agreement or allowed at law.
- 4.3 Where any payment remains unpaid for fourteen(14) days after its due date in accordance with Clause 4.1 then the Contractor shall be entitled to suspend all Works until full payment (including interest payable in accordance with Clause 4.2) is made. On receipt of such payment the Contractor shall then advise the Client of the date on which the Works will be resumed (which may result in a significant delay (and commensurate price adjustment) to the completion of the Project).

5. Change Orders

- 5.1 Where the Client requests any changes to be made to the scope of Works following Project commencement the Contractor shall assess the scope of the requested changes and when in its reasonable option the changes are able to be made without material adverse impact to the Project shall provide a quotation for the changes, which will include any impacts to pricing, schedule and other affected aspects of the Works.
- 5.2 Where the Client(i) makes repeated requests for changes to the Works, (ii) requests material changes to the original Works or (ii) requests changes that would in the reasonable opinion of the Contractor drive excessive cost impacts to respond to the Contractor shall additionally be entitled to charge its reasonable administrative costs for responding to such requests, and for any rework or wasted efforts arising as a result of the change.

- 5.3 In the event that any unforeseen issues are identified during the performance of the Works which require additional or alternative activities to be performed, the Contractor shall advise the Client of the resultant cost and/or schedule impacts related to these unforeseen issues via issuing a Change Order. Assuming the Client agrees with the Change Order then the Contractor shall proceed accordingly. Where the Client does not agree with the Change Order within a reasonable timeframe then the Contractor shall be entitled to at its discretion either continue with the performance of the Works without making the changes (where this is reasonably possible) or where in its opinion the Works cannot be successfully completed, shall be entitled to terminate this Agreement in accordance with Clause 9 (Termination).
- 5.4 No changes to this Agreement shall be valid until both parties have agreed in writing, which can include via exchange of emails.

6. Subcontractors

- 6.1 The Contractor may hire subcontractors to complete certain portions of the work. These subcontractors will remain under the direction and management of the Contractor at all times.
- 6.2 In no event should the Client discuss matters relating to the Works with any subcontractors (including but not limited to issuing any instructions or identifying any potential changes to the Works). Any queries, concerns or instructions regarding the Works and the Project should be addressed to the Contractor's Project Manager. Repeated failure by the Client to adhere to this Clause 6.2 shall be considered a material breach entitling the Contractor to terminate the Agreement under Clause 9.
- 6.3 The Contractor shall not be responsible (and shall be entitled to recover any resultant additional costs it incurs) for any issues arising as a result of the improper or late performance of any third party contractor that the Client hires directly to undertake any activities in support of the Project.

7. Acceptance and Completion

- 7.1 Once the Contractor considers the Works to be completed it shall agree a suitable time for a meeting with the Client to jointly review and inspect the Works. This will usually be via a site visit attended by the Contractor and the Client to jointly inspect the Works. Where the Works materially fail to comply with the Project Documentation the Client will be entitled not to accept the Works and the Contractor and the Client will agree a way forward to rectify the issues and complete the Works. Provided the Works have been completed materially in accordance with the Project Documentation the Works will be deemed completed and verbally accepted at the inspection meeting and all payments will immediately become due for invoicing.
- 7.2 The Client or an authorised representative must make themselves available to review the Works at the meeting, if no representation is available to review the Works at this time, then the Works shall be deemed accepted and the final payments will become due.

8. Liability

- 8.1 The Contractor will as the Client's sole remedy rectify at its own cost any defects or faults which appear in the Works Site and are notified by the Client in writing within 12 (twelve) months of completion of the Works and are demonstrably due to defective workmanship by the Contractor or by defects in materials chosen and supplied by the Contractor.

- 8.2 Where the Contractor is responsible for designing the Works or any part of them, they will not be liable for defects, faults or inadequacy of the design caused by the Client's failure to give timely adequate or accurate information about the site and/or the clients requirements.
- 8.3 The Contractor will not be liable for any defects arising due to the unsuitability of or defects in materials provided or mandated for use by the Client, nor for any issues arising in relation to Clause 1.5, nor failure of the Client to fulfil its obligations set out in Clause 2.1.6. Additionally, the Contractor will not be responsible for repairing or replacing any structures, materials or other elements which did not form part of the original Works and which become damaged as a result of (i) the defective workmanship or materials or (ii) any remedial activities undertaken to rectify the defective workmanship or materials.
- 8.4 The Contractor will not be liable for any costs, claims, fines or actions taken as a result of failure to have in place all required planning consents relating to the Works.
- 8.5 The Contractor does not seek to limit its liability for death or personal injury caused by its negligence nor for fraud or fraudulent misrepresentation. The Contractor shall not otherwise be liable for any indirect or consequential loss or damage including but not limited to damage caused by exposure to adverse weather conditions (provided that the Contractor shall take reasonable steps to secure and protect the Works Site from such exposure) nor for the reasonable damage that may be incurred to the Works Site and access points, roads, verges and other areas adjacent to the Works Site as a result of performing the Works.
- 8.6 Without prejudice to the above, the Contractors' total liability for all costs, expenses, claims, damages, fines and losses howsoever arising under or in relation to this Agreement shall be limited to the value of sums then paid.

9. Termination

- 9.1 The Agreement shall remain in full force and effect until the completion of the Project unless earlier terminated as set out below:
- 9.1.1 The parties may at any time agree to mutually terminate this Agreement.
- 9.1.2 The Client may terminate this Agreement at any time on immediate notice if the Contractor advises that it is unable to complete the Works for reasons outside its control.
- 9.1.3 The Client may terminate this Agreement at any time on fourteen (14) days written notice if the Contractor has materially breached clause 1.1 and has failed to cure the breach within a reasonable time of the Client notifying in writing of that breach.
- 9.1.3 The Contractor may terminate the Agreement at any time on immediate notice:
- (i) if the Client fails to make any payment when due; or
 - (ii) if the Client fails to agree a Change Order raised pursuant to Clause 5 (Change Orders); or
 - (ii) in accordance with Clause 2.18 or Clause 6.2.

- 9.2 In case of termination, the Client will pay for all work completed up until the termination date.

10. Dispute Resolution

If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it which is not capable of timely resolution between the parties then either party may instigate formal mediation proceedings and the parties will seek to resolve within 30 days of notice of the proceedings.

11. Governing Law

This contract is governed by the laws of England and Wales and the parties agree to submit to the jurisdiction of the English courts.

12. Entire Agreement

This document represents the entire agreement between the parties. Any modifications must be made in writing and signed by both parties.