

FINBRA LTD STANDARD TERMS AND CONDITIONS

THESE CONDITIONS APPLY TO ALL ESTIMATE OR QUOTATIONS AND CONTRACTS FOR THE SUPPLY OF GOODS, MATERIALS & SERVICES BY FINBRA LTD

1. Interpretation

1.1 In these conditions:

'Conditions' means the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Supplier and/or set out in the Estimate or Quotation.

'Contract' means the contract for the Works, consisting of the Estimate or Quotation (and any documents referred to therein), the Project Acceptance, any Order Confirmation Form and these Conditions.

'Customer' means the person, firm or company to whom the Estimate or Quotation is addressed, or the person, firm or company for whom the Supplier carries out the Works, or where such person, firm or company acts as agent for another, that person, firm or company and its principal jointly and severally.

'Estimate or Quotation' means the Estimate or Quotation issued by the Supplier to the Customer, or (in the event of the Works comprising emergency service works) any relevant works, parts and associated pricing information which is available on the Supplier's website or discussed between the Supplier's representatives and the Customer.

'Goods' means any goods or materials which the Supplier is to supply in accordance with the Contract.

'Order Confirmation Form' means any written confirmation of the Customer's order issued by the Supplier.

'Project Acceptance' means any electronic, online or written confirmation issued by the Customer to the Supplier indicating the Customer's wish to proceed by accepting the Estimate or Quotation. In the event of the Works comprising emergency service works, such Project Acceptance may also be confirmed to the Supplier verbally.

'Price' has the meaning given in clause 5.

'Supplier' means Finbra Ltd (registered in England and Wales under number 7421983).

'Works' means the works to be carried out by the Supplier under the Contract.

2. Supplier's Obligations

2.1 These Conditions shall govern the Contract to the exclusion of any other terms and conditions.

2.2 The Supplier shall carry out the Works in accordance with the Estimate or Quotation, in a good and workmanlike manner and in accordance with all applicable statutory regulations. The Supplier shall also complete the Works in accordance with the Contract using materials (if any) specified in the Estimate or Quotation, or provided by the Customer, or otherwise of a good and suitable standard and which are not generally regarded as deleterious.

2.3 The Supplier may appoint sub-contractors to perform any or all of the Works, but shall be liable for the acts and defaults of all such sub-contractors as if they were its own acts and defaults, and shall not be relieved of any obligation hereunder by reason of the use or appointment of sub-contractors.

2.4 The Supplier's employees or agents are not authorised to make any representations concerning the Goods unless the relevant representation is confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

3. Customer's Obligations

3.1 The Customer will ensure clear, unimpeded and unrestricted access for delivery of the Goods and for the execution of the Works on the dates agreed between the parties. In the event unrestricted access is not given, the Supplier reserves the right to charge the Customer reasonable additional costs.

3.2 The Customer will ensure (at its own expense) that effective heating, ventilation, lighting and power is provided to the premises at all times to enable the Supplier to carry out the Works.

3.3 Save where agreed otherwise in writing, the Customer shall ensure that all legal and statutory permissions including but, not limited to, planning permission, building regulation approval, listed building consent and any other necessary licences or notices required, have been obtained prior to the Supplier commencing the Works. The Customer shall indemnify the Supplier against any claims arising as a result of the Customer failing to comply with this clause.

3.4 The Customer will perform the duties required under the Construction (Design and Management) Regulations 2015 including (but not limited to) acting as or securing the appointment of a Principal Designer. Where a Construction Phase Health and Safety plan is not covered in full by the Estimate or Quotation, the Customer shall also provide the Supplier with all pre-contract information as may be required to enable the Supplier to prepare the Construction Phase Health and Safety plan.

3.5 The Customer warrants that the premises where the Works are to be carried out (and/or any existing installations which the Customer wishes to retain and on which the Works will be carried out) are soundly constructed and capable of withstanding the Works. The Customer shall provide to the Supplier on request a full report on all and any hazardous materials within the premises and full record drawings of the premises, including its services and structure.

3.6 The Customer warrants that, where required, there is an appropriate asbestos management report in existence relating to all areas of the premises where the Works are to be carried out. The Customer shall provide any such report to the Supplier promptly on request. The costs of any further asbestos surveys as may be necessary, including any refurbishment and demolition surveys, will be a chargeable additional cost where the same is not expressly included within the Estimate or Quotation.

3.7 The Customer warrants that all incoming services to the premises are adequate for the proposed Works. This includes the incoming mains electricity supply and gas supply.

3.8 The Customer shall provide to the Supplier copies of current and/or most recent relevant condition certificates and servicing reports for all services as the Supplier may require, including, but not limited to, electrical installations, emergency lighting, gas installations, water installations, heating, ventilation and air conditioning including appropriate service records.

3.9 The Regulatory Reform (Fire Safety) Order 2005 confers a responsibility on the building occupier to carry out a risk assessment in relation to fire safety. The Customer shall provide the Supplier with that assessment as required. It will be assumed that the client accepts the opinion of the statutory Fire Officer and the requirements of Building Control in so far as this may affect any aspect of that assessment.

3.10 Unless otherwise agreed, the Customer will make adequate provision for the welfare requirements of the Supplier's staff and contractors, when on the Customer's premises.

3.11 The Customer may not assign the Contract without the Supplier's prior express written consent.

3.12 The Customer is responsible for security of the premises at all times. The Customer shall ensure that there is an adequate secure storage area at the premises for all materials which are to be used in conjunction with the Works.

4. Estimate or Quotations, Acceptance and Specifications

4.1 Upon receipt of the Estimate or Quotation, the Customer shall confirm Project Acceptance to the Supplier. No Project Acceptance submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in writing by the Supplier's authorised representative or by the Order Confirmation Form. In the event of the Works comprising emergency service works, such Supplier acceptance may however also be confirmed by the earlier of (a) the Supplier's attendance at the site of the Works or (b) the commencement by the Supplier of the Works, or (c) by the placement by the Supplier of any necessary order for Goods which is also communicated to the Customer.

4.2 The quantity, quality and description of and any specification for the Goods shall be those set out in writing in the Estimate or Quotation and unless otherwise expressly set out therein the Supplier gives no warranty that the Goods or the Works will conform to any particular standard specification or test.

4.3 By confirming Project Acceptance the Customer is deemed to have accepted that the goods and materials referred to in the Estimate or Quotation (including the amount of goods and materials) are suitable for the Works.

4.4 The Supplier reserves the right to make any changes to the Goods set out in the Estimate or Quotation which are required to conform to any applicable safety of other statutory requirements or which do not materially affect their quality or performance.

4.5 The descriptions of the Goods set out in the Estimate or Quotation are not binding. The Supplier reserves its right to change any of the Goods to the nearest commercially available alternative due to a change in supply, price or technical developments.

4.6 All measurements set out in the Estimate or Quotation are approximate.

4.7 Subject to clause 7, no variation to the Contract shall be binding unless agreed in writing between the authorised representatives of the Supplier and the Customer.

5. Price

5.1 The Price shall be the price set out in the Estimate or Quotation, as agreed by the Customer's Project Acceptance. Where the Works involve a fixed price service, the Price only includes for a routine service of the relevant appliance. Any defects or faults identified may be rectified by the Supplier and may incur additional costs in accordance with clause 7.

5.2 Save where agreed otherwise in writing, the Price does not include for any opening up or making good works, any standard or expedited delivery charges or expenses reasonably incurred or time reasonably spent in collecting or otherwise obtaining any Goods, any provision of site security, any unforeseen circumstances, or any VAT as may be chargeable at the prevailing rate.

5.3. Save where and/or to the extent agreed in writing by the Supplier, the Price does not include for alteration to any existing building services (including but not exclusively), to plumbing, heating or air conditioning services; or for any alterations to, or for the supply of lighting, power, data and communications wiring, sprinklers, fire and burglar alarm systems; or the installation of isolation or connection points to any of the said services.

5.4 The Price does not include the cost of the provision of any additional contract documents such as collateral warranties, guarantees or performance bonds. For the avoidance of doubt additional contract documents such as collateral warranties, guarantees or performance bonds will be provided at the Supplier's discretion and no such documents (including any requested warranties) will be provided unless and until the Price has been paid in full. In the event any warranty (or any other document) is supplied to the Customer before the Price has been paid in full to the Supplier, the Customer will have no right to rely on such document(s) provided unless and until the Price has been paid in full.

5.5 If at the Customer's request or approval, the Supplier agrees to carry out work outside normal working hours, (Monday to Friday 8:00am to 5:00pm) then, where not defined in the Estimate or Quotation, the Customer agrees to pay the additional cost of such overtime working at the Supplier's current hourly rates per engineer, or as may otherwise be agreed.

5.6 The Price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay the Supplier.

6. Terms of payment

6.1 The Price shall be paid in stage payments, as set out in the Estimate or Quotation or in the Order Confirmation Form, the latter of which shall prevail in the event of inconsistency.

6.2 The Supplier shall invoice the Customer on completion of each stage. The date that the Customer receives the Supplier's invoice shall be the due date for payment.

6.3 The final date for payment of the Supplier's invoice shall be as stated in the Estimate or Quotation. In the event that no final date for payment is stated therein, the final date shall be 14 days after the due date.

6.4 Within 5 calendar days of each due date the Customer may give a payment notice to the Supplier specifying the amount of the interim payment to be made and the basis on which such amount is calculated (a "Payment Notice"). If the Customer fails to issue a Payment Notice in accordance with this clause, the Supplier's invoice will become the payment notice by default.

6.5 If the Customer intends to pay less than the amount stated in a Payment Notice (or any form of default payment notice) then the Customer shall give a pay less notice to the Supplier not later than 5 days before the final date for payment specifying the revised amount of the interim payment to be made and the basis on which such amount is calculated.

6.6 If there are no stage payments set out within the Estimate or Quotation or the Order Confirmation Form, the Supplier shall invoice the Customer as and when appropriate throughout the duration of the Works. In that event, the date that the Customer receives the Supplier's invoice shall be the due date. Clauses 6.3 – 6.5 thereafter apply to such invoices. Invoices sent by email or fax shall be deemed received on the day of sending. Invoices sent by post or other surface mail shall be deemed received on the second working day after sending.

6.7 In the event of a failure to pay any sum due to the Supplier by the Customer by the final date for payment the Supplier shall have the right to:

6.7 (a) Suspend, following 7 days' notice in writing, all or part of the Works. Upon the ending of any period of suspension the Customer shall pay the Supplier all reasonable costs incurred by the suspension and shall grant the Supplier an extension of time for the period of the suspension; and / or

6.7 (b) Charge the Customer interest for the period of late payment at a rate of 4% above the base rate of the Bank of England, or 2% per month, whichever is greater.

6.8 All amounts due under the Contract shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6.9 The Supplier may at any time, without notice to the Customer, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Supplier of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

7. Variations

7.1 Subject always to clause 7.4, the Customer may, without invalidating the Contract, instruct an addition to or omission from or other change in the Works or change by instruction the order or period in which they are to be carried out.

7.2 Any instructions as referred to in clause 7.1 shall be valued by the Supplier on the basis of the rates and prices in the Estimate or Quotation or, where not available in the Estimate or Quotation, on a fair and reasonable basis.

7.3 The Supplier shall in addition to its entitlement under clause 7.2 be entitled to reasonable direct loss and/or expense incurred by the Supplier or its agents, and any extension of time for completion of the Works as may be reasonably necessary as a result of the change instructed pursuant to clause 7.1.

7.4 The Supplier shall be entitled to refuse to carry out any instructed change in the works where such change is by its nature unreasonable; or where it has the potential to pose or increase any risk to the health and safety of any person.

8. Contract Period

8.1 Any dates specified by the Supplier for the delivery of the Goods and/or for the installation of the Works, either set out within the Estimate or Quotation or elsewhere, are approximate only and shall not form a condition of the Contract. The Supplier will not be liable for any losses whatsoever that arise as a result of such dates not being adhered to; as a result of any non-attendance or late attendance on site of its engineer(s); or as a result of the late or non-delivery of Goods. Time shall not be of the essence for the provision of the Services by the Supplier.

8.2 In the event the Customer or any third party acting on the Customer's behalf delays the Works for any reason whatsoever, the Supplier reserves its right to charge the Customer for any costs or losses which it reasonably incurs as a result of such delay.

8.3 The Customer shall also act reasonably in agreeing a fair and reasonable extension of time for the Supplier's completion of the Works in the event that the progress with the same is delayed for any reason(s) beyond the Supplier's reasonable control, including without limitation as a result of preceding trades.

9. Risk, Title and Defects

9.1 The risk and title in any Goods or part thereof shall pass to the Customer on delivery to site.

9.2 If the Goods are collected by the Customer, risk in those Goods shall pass to the Supplier upon collection.

9.3 All goods, materials and equipment shall remain the property of the Supplier until all sums invoiced by the Supplier have been paid to the Supplier by the Customer.

9.4 Until the Price has been paid in full to the Supplier, the Customer grants the Supplier an irrevocable licence to enter the premises where the Goods are stored in order to inspect them or to repossess them at any time.

9.5 (a) Where the Works constitute the supply of Goods only, the Customer will inspect the Goods within 24 hours of delivery (or within 24 hours of the Customer's collection as the case may be) and shall at once notify the Supplier in writing of any loss or damage to such Goods. If the Customer fails to notify the Supplier of any such loss or damage to the Goods within 24 hours of delivery the Supplier shall not be liable to the Customer in respect of any loss or damage.

9.5 (b) Where the Works relate to the clearance of blockages in waste or drainage systems (or were carried out to substandard pre-existing installations or to installations more than ten years old) the Supplier will use reasonable endeavours to achieve the desired clearance or other result, however cannot guarantee the effectiveness of the Works.

9.6 Subject to clause 9.5, when the Supplier in his reasonable opinion considers that the Works have been completed, he shall notify the Customer and the Customer shall inspect the Works. The Customer shall notify the Supplier of any defects in those Works within 3 days of the Supplier's notification of completion. If no defects are notified within such time the Works will be deemed to be complete without the existence of defects.

9.7 Where the Works include the use or installation of any goods or materials which are not provided by or through the Supplier, the Customer warrants to the Supplier that the quality of such goods or materials shall be satisfactory and adequate for the carrying out of the Works detailed in the Estimate or Quotation. For the avoidance of doubt the Supplier has no liability whatsoever in respect of any defects as may exist in any such goods or materials or any costs of or incidental to the removal and/or replacement of the same. The Customer shall indemnify the supplier in respect of any costs, expenses, or loss incurred or sustained as a result of any such goods or materials not being of satisfactory quality or not being appropriate for the Works.

9.8 Where defects in the Works become apparent within 9 months of completion of the Works the Customer must notify the Supplier as soon as possible and in any event within 3 months of such defect becoming apparent, and must provide satisfactory proof of the defect, and must also provide access at all reasonable times to the Supplier and/or its insurers to carry out inspection and remedial work.

9.9 Rectification period: The Supplier will rectify any defects in its Works notified in accordance with clause 9.8 save for:

9.9(a) wherever the Works (or any other works for which the Supplier has invoiced the Customer) have not been paid for in full;

9.9(b) where any defects in the Works have arisen as a result of the misuse or negligence of or intervening acts by (including but not limited to repairs, modification or tampering carried out by) the Customer or any third party;

9.9(c) where any defects have arisen as a result of the failure of the Customer to instruct or otherwise arrange the carrying out of such further work as the Supplier may have recommended as necessary or requiring attention, including (but not limited to) where the Customer has chosen to retain any substandard installation which is connected to the Works; and/or

9.9(d) where any defects have arisen as a result of defective goods or materials used in the Works on the Customer's instruction, but which were not provided by the Supplier.

9.10 The Customer shall also permit the Supplier to rectify any workmanship defects notified in accordance with clause 9.8 and for which the Supplier accepts responsibility in accordance with clause 9.9.

10. Termination

10.1 If the Customer cancels or rescinds the Contract before any Goods are supplied or before any Works are carried out or completed then the Supplier may, at its absolute discretion, accept the cancellation or rescission. If the Supplier does this it shall serve notice in writing accepting the cancellation or rescission of the Contract within ten days of such cancellation or rescission whereupon the Customer will pay to the Supplier as agreed damages a sum equal to 25% of the Price plus VAT within 20 days of cancellation or rescission of the Contract.

10.2 If either party:

10.2 (a) makes a Estimate or Quotation for a voluntary arrangement or is subject to an Administration Estimate or Quotation or has a Provisional Liquidator appointed or has a Winding Up Estimate or Quotation made or passes a resolution for voluntarily winding up (other than for amalgamation or reconstruction) or is otherwise "insolvent" for the purposes of Section 113 (2) of the Housing Grants, Construction and Regeneration Act 1996 (as amended); or

10.2 (b) is, in the reasonable opinion of the other party, in breach of the 2010 Bribery Act; or

10.2 (c) is, in the reasonable opinion of the other party, believed to have engaged in anti-competitive behaviour, such that their actions would be in contravention of the Competition Act 1998 and/or the Enterprise Act 2002;

The other party may terminate the Contract with immediate effect.

10.3 The Customer shall have no other right to cancel or terminate the Contract and shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of any cancellation or termination in breach of these terms.

10.4 If the Customer commits a breach of Contract which is considered by the Supplier to be of a fundamental or repudiatory nature, the Supplier may terminate the Contract with immediate effect.

10.5 The Supplier may terminate the contract with 7 days' written notice if the Customer fails to make payment in accordance with clause 6.

10.6 In addition to any other rights and remedies which the Supplier may have, the Supplier may at any time by 7 days' written notice to the Customer immediately terminate the whole or any part of the Supplier's engagement under the Contract.

10.7 In the event of cancellation or termination for any reason the Customer shall cooperate reasonably in allowing the Supplier access to the site for the collection of the Supplier's property and /or as may be necessary for reasons of health and safety.

11. Copyright

11.1 All designs, sketches, drawings or other documentation prepared by the Supplier for the purposes of carrying out the Works, and the copyright in such documents, shall remain the Supplier's property. Any such documentation is produced solely to enable the Supplier to carry out the works and cannot be relied upon for use for any purpose by a third party.

11.2 All designs, sketches, drawings or other documentation prepared by the Supplier shall be confidential and the Customer shall not share any such documentation with any third party without the express permission of the Supplier.

12. Drawings

12.1 Any drawings or other visuals produced are an artistic representation only and do not form part of the Contract.

12.2 The Estimate or Quotation shall take precedence over any drawings or other visuals.

13 Insurance and Liability

13.1 The Customer shall ensure that both the Works and the Goods are covered by an insurance policy taken out by the Customer (or other third party). Such insurance must be 'all risks' insurance to cover all materials from the point at which they are delivered to the premises (or from the point of collection by the Customer if applicable). Such insurance must also cover accidental damage to the premises (or to any other goods at the premises) that arises as a result of the Works being carried out.

13.2 In the event that the premises, or goods at the premises, are damaged as a result of the Supplier carrying out the Works, the Customer shall in the first instance claim such loss from the insurance policy.

13.3 In the event the Supplier is ever found to be liable for damage to any goods at the premises, the Supplier's liability for the same will be limited to the cost at which the Customer purchased or manufactured such goods. In any event the Supplier shall not be liable for any unavoidable damage in this regard.

13.4 The Supplier shall have no liability to the Customer for loss of profit or for any consequential loss.

13.5 Without affecting any other clause of the Contract, the Supplier's total liability to the Customer in respect of all 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 the Price.

13.6 Clauses 13.1 to 13.5 inclusive shall take effect provided always that nothing in these conditions shall limit the Supplier's liability for death or personal injury arising as a result of the Supplier's negligence; or for fraud or fraudulent misrepresentation.

14. Dispute Resolution

14.1 If a dispute or difference arises between the Customer and Supplier the parties agree to meet in good faith to attempt to resolve the dispute or difference that exists between them.

14.2 If any dispute or difference concerning the Works shall arise between the Customer and Supplier, such dispute or difference may be referred to adjudication such adjudication to be conducted in accordance with the Scheme for Construction Contracts Regulations (England and Wales) 1998 (as amended). For the purposes of such adjudication the parties agree that the nominating body for appointment of the adjudicator shall be the President or Vice President of the Royal Institute of Chartered Surveyors.

15. Governing law and Jurisdiction

15.1 The governing law of this contract shall be the law of England and Wales.

15.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Works or these Conditions (including non-contractual disputes or claims)

15. Third Party Rights

Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

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