

TERMS AND CONDITIONS

1. This document is intended to contain all the terms upon which the Client agrees to purchase the products, services and Works described overleaf from Brygate Construction. No additional terms, conditions or verbal contracts shall apply to or vary this Contract unless written down and signed by both the Client and Brygate Construction's representative. Catalogues, pictures, manuals, drawings or instruction leaflets or equivalent are not an offer to create a contract unless we indicate otherwise.
2. The Client shall grant Brygate Construction's representatives unrestricted access to the Premises at all reasonable times for the purposes of taking measurements, of carrying out the Works, installing the products and providing the services forming the subject of the Contract and for any subsequent remedial work if required. In some cases Brygate Construction may need to site skips, ladders, scaffolds or vehicles on the Premises in order to complete its contractual obligations. The Client agrees at no cost to Brygate Construction to provide such electricity, gas, water or other services to enable Brygate Construction to complete the installation and, if necessary, any remedial works. In the event of access being required to neighbouring land it is the Client's responsibility to ensure that access is granted and Brygate Construction shall not be held liable for any delays arising out of the Client's inability to gain such access. The Client shall also provide access for Brygate Construction employees, agents and suppliers to welfare facilities at the Premises.
3. As soon as practicable and in any event within 7 days of the date of this Contract the Client will arrange an appointment for access to the Premises by a representative of Brygate Construction ("the Survey") so that Brygate Construction may verify:
 - a. the technical viability of the Works;
 - b. the current status and situation of the site on which Works will be performed; and
 - c. the appropriateness of the Price specified overleaf in the light of (a) and (b) above.

The Survey will be carried out at the earliest opportunity and not later than 10 days after the date of this Contract. Brygate Construction is entitled to rely upon any information provided by the Client in connection with the Works.

The time limits provided in this Contract are subject to access being provided by the Client in accordance with clause 2 of the Contract.

4. Brygate Construction agrees to supply the products, Works and services at the Price specified in the Contract. Price quotes are valid for 30 days. In the event of any modification to the Works or Price being required due to the Survey, within 14 days of the Survey Brygate Construction shall either cancel the Contract or send the Client a written notice explaining the reason for any modification required to the Works or the Price. In the event that planning permission or Party Wall Act consent is required, Brygate Construction may in its absolute discretion decide whether to cancel or proceed with the Contract. If the Client does not accept the proposed modifications within 7 days of their notification, the Contract shall be cancelled with no liability on Brygate Construction. Thereafter Brygate Construction reserves the right to cancel the Contract where the Client is unable to provide adequate evidence of ability to pay for the products, Works and services provided under this Contract.
5. If the Contract is cancelled in accordance with the Client's statutory cancellation rights, any deposit paid shall be returned to the Client in full as soon as reasonably practical for Brygate Construction to do so.
6. If the Contract is terminated for any other reason, Brygate Construction shall be entitled to set off the deposit against any reasonable charges that the Client would be liable to pay under this Contract, or in partial settlement against the balance payable on completion of the Contract.
7. The Client is responsible for ensuring that the necessary consents, permissions and approvals for the Works are obtained. If the Client is unable or unwilling to obtain those, then the Contract shall be cancelled.
 - a. It is the Client's responsibility to inform Brygate Construction whether the Premises are a listed building, within a conservation area as defined by statute, or subject to any other form of restriction that may prevent the execution of the proposed Works.
 - b. Should any approval, consent, permission or licence for the Works, products or services delivered under this Contract:
 - i. prove to be obtainable only by revision of the Works specified overleaf Brygate Construction will quote a revised Price to the Client. In the event that this is not accepted by the Client within 7 days of the quotation Brygate Construction will be at liberty to cancel the Contract by written notice to the Client; or
 - ii. not be forthcoming Brygate Construction will likewise be at liberty to cancel the Contract.
 - c. If the Client fails to inform Brygate Construction that the premises are a listed building, within a conservation area, or subject to any other form of restriction as outlined above Brygate Construction shall be entitled to assume without any further enquiry that either they are not or that the Client has obtained any relevant consent, permission or approval to the carrying out of

the Works and shall be under no liability whatsoever in the event of any enforcement or other action by the Local Authority or any other person or body.

8. If the Contract is cancelled in accordance with clause 7 Brygate Construction will refund such money as appropriate having taken into account the work done and services rendered, including any application for relevant consents made by Brygate Construction on behalf of the Client, and may set off against those reasonable costs any deposit held.
9. If the Client cancels the Contract otherwise than in accordance with these terms and conditions, Brygate Construction reserves the right to charge the following, which represent the losses and expenses incurred by Brygate Construction prior to cancellation:
 - a. 25% of the total Contract Price where the Client cancels prior to commencement of the Survey;
 - b. 30% of the total Contract Price where the Client cancels after commencement of the Survey but prior to ordering of materials;
 - c. 90% of the total Contract Price where the Client cancels after the commencement of manufacture or, where relevant, Brygate Construction is committed to take delivery of the products provided that credit will be given to the Client if Brygate Construction is able to re-use elsewhere any of the products that it has ordered.
10. Save for fraud, death and personal injury, Brygate Construction has no liability in any circumstances for loss of profit, loss of use, loss of opportunity, loss of value or any indirect, economic or consequential loss suffered by the Client.
11. Save for fraud, death and personal injury, the maximum aggregate liability of Brygate Construction for all claims under or in connection with or arising from this Contract howsoever arising shall be limited to a sum equivalent to the Price.
12. Samples and photographs are used to demonstrate a typical product and its composition. No guarantee is given that the products supplied will conform precisely to the samples. Performance figures quoted are based on actual performance tests, but no guarantee is given that precisely that level of performance will be achieved, as actual performance is dependent on a number of external factors that are outside Brygate Construction's control. Measurements for the products, Works and services provided under the Contract are approximate and used only for the purposes of calculating the Price specified overleaf. Brygate Construction reserves the right to make minor non-aesthetic alterations to the specification of the products.
13. Unless otherwise agreed in writing, Brygate Construction will not undertake the re-siting of any gas, electrical, wiring or plumbing or telephone installations or other services. It is the Client's responsibility to ensure that all areas of work and access to those areas are completely clear and unobstructed to allow unhindered commencement and progress of the Works. Suitable arrangements should be made by the Client for any such works to be carried out prior to commencement of the Works required under this Contract, failing which Brygate Construction may refuse to start the Works and shall be entitled to charge the Client for the wasted costs that it has incurred and any loss of profit that it has suffered.
14. Brygate Construction will use its reasonable endeavours to honour any installation date given or date for commencement of or completion of Works or delivery of services, but cannot be held liable for any losses suffered as a result of any delay that has resulted from factors that are outside the reasonable control of Brygate Construction. Such factors include (but are not limited to) adverse weather or traffic conditions, mechanical breakdown, or previous contracts over-running for reasons that could not reasonably have been foreseen. If Brygate Construction is unable to meet a previously notified date, it shall give the Client as much notice as possible and arrange an alternative mutually convenient date.
15. If the Works are not completed within the delivery period quoted to the Client, the Client may serve written notice on Brygate Construction requiring that the Works be completed within a reasonable period, being in any event not less than 8 weeks, as the Client may specify ("the Completion Notice"). If the work is not completed within that extended period the Client may cancel the Contract by serving written notice of cancellation on Brygate Construction following the cancellation procedure set out in these terms and conditions. Notwithstanding the foregoing:
 - a. Brygate Construction shall not be liable for losses arising from any delay caused by factors beyond the reasonable control of Brygate Construction. Where a Completion Notice has been served that Completion Notice shall be automatically extended to take into account any such delays that have occurred; and
 - b. the Client shall remain liable to pay for such part of the work as has been completed in cases where the Client cancels the Contract part completed.
16. Brygate Construction will issue a formal written guarantee in respect of each product type that it supplies but only to the extent (if at all) that the same is available from the manufacturer of such product and the guarantee certificate(s) will be sent to the Client upon receipt of the balance payable on completion.
17. Save for fraud, death and personal injury, Brygate Construction accepts no liability in respect of the following:
 - a. Damage due to accident, storm, flood, lightning or other abnormal weather

- conditions; including but not limited to paintwork
- b. Any defect that arises from, or as a consequence of any defect or failure in the structure or condition of the Premises or any adjacent property;
- c. Damage or deterioration to the product (including colour fading) arising out of the effects of weathering, pollution and the effect of sea or salt water;
- d. inability to exactly colour match any repair works to the remainder of the Premises;
- e. Any defect that arises out of the Client's failure to properly maintain the external façade of the Premises at which the Works are to be carried out, including any drains, gutters or downpipes;
- f. Minor cracks to the Works that are due to settlement;
- g. industrial disputes
- h. Damage caused by any items that the Client fixes or attaches to the Premises after completion of these Works;
- i. Any liability arising from use of or access to scaffolding installed by Brygate Construction for the purpose of performing its obligations under the Contract, as long as Brygate Construction has made reasonable efforts to secure the same;
- j. work carried out by the Client or third parties on, near, connected with or relating to the Works, products and services provided under the Contract;
- k. damage or loss accrued where the Client has not take reasonable steps to secure the Premises
- l. inability to perform the Works due to changes in law that affect Brygate Construction, the Client, the Premises or the Works.

This does not affect Brygate Construction's obligation to exercise reasonable care and skill when performing the Contract and to use products that are of satisfactory quality and comply with its statutory obligations.

18. All work and any repairs will be carried out between 9.00am to 5.30pm Monday to Friday, excluding Bank Holidays, unless otherwise specified. Access to the Premises must be available at those times. A request to attend outside of those hours will be charged at reasonable out of hours rates. For more information a schedule of rates can be supplied.
19. If the Client sells the Premises or the right to occupy the Premises is legitimately transferred to a third party, Brygate Construction will on request transfer the unexpired portion of the Guarantee(s) to the new owner/occupier provided that the transfer fee of £99.00 inclusive of VAT is paid. Brygate Construction reserves the right to make a reasonable increase to the transfer fee on an annual basis. Any request for transfer must be made within three months of completion of the sale of the Premises. Brygate Construction's liability to the new owner/occupier shall be no greater or more extensive than its liability to the Client. Failing this, Brygate Construction reserves the right to charge the new owner/occupier for an inspection of the installation prior to transferring the Guarantee. Brygate Construction will issue a replacement guarantee certificate on request if any original guarantee certificate is lost or destroyed at a cost of £22 inclusive of VAT per certificate.
20. Brygate Construction accepts no responsibility for any damage resulting from inherent structural or other defects in the Premises at which the Work is carried out or the services are provided or the products are installed but Brygate Construction will make reasonable efforts to rectify any defects in the goods, products or services that occur as a result of such inherent defects.
21. The balance is due on completion of the Works, or on delivery where the Contract is for supply only. Time is of the essence in relation to payment and access to the Premises. Sums are due for payment upon achieving the milestone and finally payable 10 days later. Ownership of goods, products and materials passes to the Client upon payment. However risk of damage to or loss of the goods passes to the Client upon delivery to the Premises. Payment shall be by cash, banker's draft or direct bank transfer. Payment is only deemed to have occurred when Brygate Construction are in receipt of cleared funds. If payment is not made on the due date in accordance with this clause, Brygate Construction shall have the right to require payment of interest on the outstanding amount at a rate of 4% above Barclays Bank plc base rate accruing on a daily basis from the due date until date of actual payment.
22. If the Client owes Brygate Construction any money, the Client grants Brygate Construction an irrevocable licence to enter the Premises upon reasonable notice to inspect and/or repossess the goods and materials (at the sole discretion of Brygate Construction).
23. By signing this Contract, the Client confirms that he is the owner of the Premises at which the Works are to take place or has the legal right to commission the Works for the Premises and that he has complete authority to enter into this Contract. The Client will also be asked to confirm this at the date of the Survey.
24. The Price set out overleaf is exclusive of VAT at the prevailing rate as at the date of this Contract, unless the Contract is noted as being VAT exempt on the front of this document. Any variation in the applicable rate of VAT or, where no VAT is shown overleaf as chargeable, any imposition of VAT after the date of the Contract overleaf will be passed to the Client. In addition to the Price the Client must pay VAT and also all other taxes, duties, carriage charges or loading and unloading costs. If the Client requires off site storage, then Brygate Construction reserve the right to charge the Client a reasonable sum to cover all associated storage, transport, security and insurance charges.
25. Brygate Construction shall insure the Works during the period in which they are installed and during the

period in which Brygate Construction provides the Services but in all other circumstances, the Client shall insure the Premises and any unfixed goods and materials.

26. The Client shall allow access to the premises for Brygate Construction and any persons nominated by Brygate Construction for audit purposes at all reasonable times subject to written request from Brygate Construction.
27. The terms of this Contract and all Works, products and services provided pursuant to the Contract and all information relating to the Works are confidential and the Client shall not release the same without Brygate Construction's express written consent.
28. The Client shall allow Brygate Construction to keep a written and photographic record of all works, products and services performed under the Contract and shall allow Brygate Construction to use the same for reasonable marketing and advertising purposes.
29. Neither Brygate Construction nor the Client intend to confer any benefits on third parties by virtue of the Contract (Rights of Third Parties) Act 1999. Brygate Construction agree that this Contract is governed by English Law.