

TERMS AND CONDITIONS

DEFINITIONS AND INTERPRETATION

1.1 Agreement

Shall mean these agreed Terms and Conditions for the provision of goods and/or services

1.2 Client

Means the person or organisation that orders goods and/or services from Construct.

1.3 Construct

Means Construct Scenery Limited, a company incorporated and registered in England and Wales with Company number 05904483 whose registered office is Lyndoe Reeve 34-36 Maddox Street London W15 1PD and VAT registration is number 898966323

1.4 Goods

Means all goods supplied by Construct in the course of this Agreement.

1.5 Order

Means the formal acceptance of the Quote by the Client

1.6 Purchase Order

Means the document raised by the Client and sent to Construct which constitutes formal acceptance of the Quote

1.7 Quote

Means an oral or written communication from Construct specifying the nature and price of the Goods and/or Services to be delivered to Client

1.8 Services

Means all services supplied by Construct in the course of this Agreement

1.9 Works

Means the provision of Goods and/or Services delivered and/or carried out by Construct as part of this Agreement at a date, place and time agreed between the Parties at the time an Order (see clause 2.3 below) is placed.

1.10 Working Day

Means a day (not being a Saturday or Sunday) excluding Bank holidays or other national holidays

1.11 Working Hours

Means the hours between 8am and 5.30pm.

1.12 Unless the context otherwise admits words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa

1.13 Reference to any statutory provisions in this Agreement shall include any statutory provisions which amends or replaces it

2. Quote

2.1 On the request of the Client, Construct will prepare a Quote.

2.2 The Quote will remain valid for a period of 5 Working Days.

2.3 Acknowledgment and acceptance of the Quote is made by (i) the Client placing a Purchase Order; and (ii) Construct receiving a cleared interim payment of 50% of the price specified in the Quote at which time the Client will be bound by these Terms and Conditions. Such contract is hereinafter referred to in these Terms and Conditions as "an Order". Construct reserves the right to ask clients without an active account history with Construct to provide an interim payment of 100% of the price specified in the Quote.

2.4 Construct reserves the right to amend a Quote after it has been provided if, upon inspection of the Purchase Order, the Goods and/or Services specified in the Purchase Order differ from the specifications and/or timescales given by the Client to Construct when the Quote was prepared.

3. Goods and Services Specification

3.1 The Goods and/or Services provided by Construct to the Client are those detailed in the Quote.

3.2 If the Client wishes to vary any of the Goods and/or Services specified in the Quote, it must notify Construct of the variation within the period referred to in Clause 2.2 above. Construct will in its discretion issue a revised Quote. Construct's written consent to the Client's proposed variation must be obtained no later than five (5) working days before the Works commence.

3.4 Construct reserves the right to make additional charges for any agreed variation to the Order. Such charges will be notified to Client as soon as is reasonably possible and in any event before the Works commence.

3.5 Any descriptions, promotional material, drawings or sketches provided by Construct or third parties are for illustrative purposes only and to provide an outline of what Goods and/or Services will be provided.

4. Price

4.1 The price quoted for the Goods and/or Services contained in the Quote is provided is exclusive of Value Added Tax (VAT) and such other charges that may apply.

4.2 If the rate of VAT increases between the date of the Order and the date of the completion of the Works Construct will add the necessary additional amount of value added tax to the price of the Goods and/or Services.

4.3 If the price of the Goods and/or Services increases for any other reason between the date of the Order and the date of completion of the Works, Construct will notify the client as soon as is reasonably practicable before the Works commence.

5. Overtime

5.1 The price provided by Construct in the Quote will be based on a Working Day unless the Client specifies otherwise. At the time of the Works, the Client must notify Construct that the Works or any part of them will be required to be carried out outside Working Hours. Construct will charge the Client at the overtime rates specified in the current BECTU guidelines.

6. Title and Payment

6.1 No payment shall be deemed received until the funds are cleared in Construct's bank account.

6.2 For Clients who have purchased Goods and/or Services on account, Construct will issue an invoice detailing the remaining sums payable within 2 days of the completion of the Works.

6.3 Client shall pay all sums due within thirty (30) days of Construct's invoice (hereinafter referred to as the "Invoice Due Date") unless otherwise agreed.

6.4 If the Client disputes any invoice or other statement of monies due, the Client shall immediately (and in any event no later than two (2) Working Days after receipt of the invoice by the Client) notify Construct in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. Construct shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. Where only part of an invoice is disputed, the undisputed amount shall be due and payable by the Client in accordance with these Terms and Conditions.

6.5 If the Client fails to make any payment due to Construct under these Terms and Conditions by the Invoice Due Date, then the Client shall pay interest on the overdue amount at the rate set by the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the Invoice Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.

6.6 Construct will claim all additional costs (including but not limited to legal costs) incurred in obtaining payment from the Client where the Client is late paying Construct.

6.7 Title to the Goods comprised in the Order shall not pass to the Client until the Client has paid the full price. Furthermore, Construct reserves the right to sue for the price once payment becomes due notwithstanding that title may not have passed.

7. Delivery and Risk

7.1 Unless otherwise stated in the Quote, the price quoted includes delivery of materials, machinery and equipment needed by Construct to carry out the Works.

7.2 Risk in the Goods shall pass to the Client upon the completion of the Works.

8. Construct Obligations

8.1 Construct will carry out all Works in accordance with the Quote and subsequent Order.

8.2 Construct may where necessary sub-contract parts of the Works to suitably qualified sub-contractors.

8.3 Construct will comply with all relevant health and safety regulations, including (but not limited to) site safety and personal safety of employees, contractors and visitors.

8.4 Construct will at all times hold appropriate and valid insurance, including public liability insurance and Employers liability insurance.

8.5 Construct shall ensure that all Works are carried out with reasonable care and skill and to a reasonable standard.

8.6 If during the carrying out of the Works any issues are communicated by the Client to Construct which will require additional time to be spent and/or materials to be purchased which causes an increase in the price specified in the Quote, Construct will provide the Client with a further Quote whilst the Works are being carried. This revised Quote will provide detail of the extra costs to be incurred. Construct will only proceed with the Works once the Client's acceptance in writing to the additional costs has been received.

9. Client Obligations

9.1 The Client will permit Construct access during normal working hours to undertake the Works.

9.2 The Client will obtain at its own cost, all consents, licenses and permissions from landlords, local authorities and others, including any required parking dispensations from local authorities for parking of required crew vehicles or skips. If the required dispensations are unavailable then the Client is liable for any parking charges and/or fines incurred.

9.3 Where the Client is required to provide Construct with measurements or other information such measurements or information must be correct. If the Client provides such measurements and Construct relies on the measurements and/or information given when preparing the Quote, if such measurements and/or information are subsequently demonstrated by Construct to be incorrect, Construct reserves the right to increase the price set out in the Quote in order to make good any errors or carry out additional work required as a result.

10. Warranties and Guarantees

10.1 Construct warrants that the Works will be carried out using all reasonable skill and care.

10.2 Construct warrants that the Goods and/or Services shall be fit for purpose and within the brief of designs provided by the client.

10.3 If the Goods and/or Services provided by Construct are found to be defective Construct shall in its discretion re-perform, repair or reinstall the Goods.

11. Exclusions

11.1 Construct does not exclude liability for death or personal injury

11.2 Construct shall not be liable for any direct loss or damage suffered by the Client howsoever caused, as a result of negligence, breach of contract or otherwise in excess of Ten Thousand Pounds (£10,000).

11.3 Construct shall not under any circumstances be liable for any indirect or consequential loss howsoever caused whether by negligence, breach of contract, misrepresentation or otherwise.

11.4 Construct shall not be liable to the Client for damage caused by the Client or any third party failing to follow instructions given by Construct.

12. Indemnity

12.1 Client will indemnify Construct against all claims, costs, damages, or fines that Construct may incur arising from the Client's breach of its obligations under these Terms and Conditions.

13. Cancellation

13.1 The Client may cancel the Order by giving Construct written notice of cancellation provided that such notice of cancellation is provided to Construct no later than 5 Working Days before the commencement of the Works.

13.2 Construct reserves the right to retain the amount of 50% of the total order value to cover costs already incurred in respect of the Order.

13.3 Any balance owed to the Client will be refunded within 30 days of completion of the Works without any further retention.

13.4 If the Client does not notify Construct within the time period stated in paragraph 13.1 above any monies paid by the Client will be retained in full by Construct.

14. Termination of Contract

14.1 Either party may terminate this Agreement in the event that:

- (a) Either party is unable to pay or has no reasonable prospects of paying its debts the amount or aggregate amount of which equals or exceeds the bankruptcy level within the meaning of the Insolvency Act 1986; or
- (b) Being a company becomes subject to an administration order or goes into liquidation (other than for the purpose of amalgamation or reconstruction); or
- (c) Has a receiver appointed to administer any of its property or assets; or
- (d) Ceases or threatens to cease to carry on business; or

(e) Makes a voluntary agreement or enters into a compromise for the benefit of its creditors.

14.2 Construct may terminate this Agreement in the event that the Client fails to make payment in accordance with the terms of this Agreement.

14.3 Construct may terminate this Agreement immediately upon the Client's breach of clauses 9.1 or 9.2 of Client's obligations.

15. Force Majeure

Neither party shall be liable for delay or failure to perform any obligation under this Agreement if the delay or failure is caused by any circumstances beyond its reasonable control, including but not limited to Acts of God, war, civil disorder or industrial disputes or extreme weather conditions. If such delay or failure continues for a period of at least Sixty (60) days the party not subject to the force majeure shall be entitled to terminate this Agreement by written notice to the other.

16. Waiver

Failure by either party to enforce any accrued rights under this Agreement is not to be taken as or deemed to be a waiver of those rights unless the waiving party acknowledges the waiver in writing.

17. Assignment

Neither party may assign their rights under this Agreement without the prior consent in writing of the other party.

18. Severance

The paragraphs, sub paragraphs and clauses of this Agreement shall be read and construed independently of each other. Should any part of this Agreement or its paragraphs, sub paragraphs or clauses be found invalid it shall not affect the remaining paragraphs, sub paragraphs and clauses.

19. Entire agreement

This Agreement sets out the entire agreement and understanding of the parties and is in substitution of any previous written or oral agreement between the parties.

20. Jurisdiction

These terms and conditions shall be construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English courts.