

# Derby Homes - Standard terms and conditions for the purchase of goods and/or services ("these Terms")

## 1 Introduction

1.1 These Terms apply to all Orders notwithstanding any other contract or other agreement You may have with Us. Where You do have other contracts or agreements with Us the terms of such contract or other agreement shall apply to the extent that they are not inconsistent with these Terms and an Order will be treated as having been made under that contract.

1.2 In these Terms a reference to:

- "Goods" is to any items to be supplied to Us under an Order;
- "Order" is to the Purchase Order or Task Form to which these Terms relate;
- "Services" is to any services to be supplied to Us under an Order;
- "You" or "Your" is to the supplier of the Goods and/or Services and/or Works;
- "Works" means the execution of and any activity in connection with, building and civil engineering, repairs, installation and building completion, design and planning, and any ancillary services;
- "Data Protection Legislation" is to the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK.
- "EIR" is to the Environmental Information Regulations 2004;
- "FOIA" is to the Freedom of Information Act 2000;
- "Confidential Information" is to any information communicated by either Party to the other on the basis that it is confidential;
- "Us" "Our" or "We" is Derby Homes Limited;
- "Purchase Order" is the document setting out Our requirements for the Order;
- "Task Form" is the detailed description of the Services required by Us;
- "Authorised Employee" is the person or persons (together with any duly authorised deputies) appointed by Us to act in such capacity in respect of this Order, or any replacement notified by Us to You;
- "Nominated Representative" is the person or persons (together with any duly authorised deputies) appointed by Us to act in such capacity in respect of this Order, or any replacement notified by Us to You;
- "Guarantee Period" is the guarantee period applicable to the Goods and/or Works and shall be 12 (twelve) months from putting into service or 18 (eighteen) months from delivery, whichever is the shorter (subject to any alternative guarantee arrangements agreed in Writing between Us and You). If We, within such guarantee period or within 30 (thirty) days thereafter, give notice in Writing to You of any defect in any of the Goods and/or Works as may have arisen during such guarantee period under proper and normal use, You shall (without prejudice to any other rights and remedies which We may have) as quickly as possible, remedy such defects (whether by repair or replacement as We shall elect) without cost to Us.

## 2 Quality and performance

2.1 All Goods supplied must:

- conform to the specification in the Order; be of sound design, materials and workmanship; be free from defects and remain so for the period stated in the Order and if no period is stated for 12 (twelve) months from their date of delivery; be fit for their purpose; be new (unless the Order states otherwise); and comply with all statutory and regulatory requirements relating to their manufacture, labelling, packaging, storage, handling and delivery.
- You will indemnify in full and keep indemnified Us in full against any costs, expenses, damages, claims, actions, proceedings and losses (whether direct or indirect) that may be caused due to the discovery and correction of defects in the Goods and any breach or non-compliance with this clause 2.1.

2.2 All Services must be performed:

- by appropriately qualified and experienced staff; using reasonable care, skill and diligence; in a timely, efficient and professional manner; and to the reasonable satisfaction of Us.
- You will indemnify in full and keep indemnified Us in full against any costs, expenses, damages, claims, actions, proceedings and losses (whether direct or indirect) that may be caused due to any breach or non-compliance with this clause 2.2.

2.3 All Works must be carried out:

- using reasonable skill, care and diligence; in accordance with all applicable Law; in accordance with all applicable European or British Standards; in accordance with good industry practice; without the use of any prohibited materials; by any deadline agreed with Us; in a manner that causes the minimum inconvenience and nuisance from obstruction, dust, noise etc; within a culture and working environment in which health and safety is paramount to everybody involved with the Works; in accordance with any reasonable instructions given by Us.

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- You will indemnify in full and keep indemnified Us in full against any costs, expenses, damages, claims, actions, proceedings and losses (whether direct or indirect) that may be caused due to any breach or non-compliance with this clause 2.3.

### 3 Health and Safety, equality and counter terrorism etc

3.1 In providing the Goods and/or Services and/or Works You and Your personnel, sub-contractors, sub-contract labour and agents will comply with:

- all applicable laws (including counter terrorism, modern slavery, bribery, health and safety and equality, CDM and diversity laws and regulations); and any Our policies supplied to you by Us.

### 4 Delivery and waste

4.1 You must deliver the Goods and/or Services and/or Works within 14 (fourteen) days of an Order unless the Order states otherwise. You must obtain a receipt for all Goods delivered from an Authorised Employee of Us.

4.2 If the delivery of any Goods, or performance of the Services or Works, is delayed due to any cause beyond Your reasonable control and You tell Us of this immediately, Us may either reschedule the time for delivery/performance or cancel the Order without any liability to You.

4.3 If there are any delays in any circumstances except as set out in clause 4.2 You must reimburse Us for any additional costs which We incur (howsoever incurred) within 28 days of You becoming aware of the delay.

4.4 You must attach a copy of Our original Order to all Orders, advice notes, invoices and packing notes. These must also contain:

- Your name and address; Our Order number; the Procurement reference number; the date of despatch, and a description of the Goods and/or Services and/or Works; the address for delivery and the due delivery date.

4.5 We may reject all or any Goods that do not comply with an Order at any time within 1 (one) month from the date of delivery notwithstanding the provisions of clause 4.6.

4.6 Title in Goods will pass to Us on delivery of the Goods to the delivery address in the Order.

4.7 Whilst on Our premises or any premises We manage (including tenanted properties), You and all persons for whom You are responsible (including for the avoidance of doubt Your agents, sub-contractors and/or sub-contract labour) must comply with Our rules relating to those premises. We may refuse admission to Your such persons or require such persons to leave those premises at any time without giving any reason.

4.8 You and all persons for whom You are responsible (including for the avoidance of doubt Your agents, sub-contractors and/or sub-contract labour) must dispose of any waste in connection with the Goods and/or Services and/or Works Yourself and must not use Our waste transfer station. You must not deposit any waste on Our premises or any premises We manage (including tenanted properties).

### 5 Intellectual Property

5.1 You grant Us an irrevocable, non-exclusive, royalty free licence to use all applicable intellectual property rights in connection with the use of the Goods or receipt of the Services and/or Works. You assign to Us all intellectual property rights in any Goods and/or Services and/or Works that are produced for Us as bespoke.

5.2 You will indemnify and keep Us indemnified in full against all costs, expenses, damages, claims, actions, proceedings, and losses (whether direct or indirect) incurred in connection with any actual or alleged infringement of a third party’s intellectual property rights in any Goods and/or Services and/or Works provided in connection with any Order.

### 6 Payment

6.1 We will verify Your invoice within 20 (twenty) days of receipt of a valid invoice.

6.2 We will pay Your invoice for the Goods and/or Services and/or Works within 30 (thirty) days from the date on which Your invoice is verified subject to clause 7 in relation to construction works.

6.3 In the event that an Invoice is not verified by Us in accordance with clause 6.1 You may:

- be entitled to payment in full by 30 (thirty) days, unless having received a prior notice of Our intention to withhold payment;
- suspend performance (subject to giving Us 7 (seven) days prior written notice) where payment has not been received by 14 (fourteen) days and where no notice to withhold payment has been served by Us.

PROVIDED THAT any suspension of performance will cease and full working will re-commence immediately once an overdue payment is made.

6.4 If You enter into any subcontract in relation to an Order, You must insert into that subcontract terms:

- which are identical to 6.1 to 6.3 above; and
- requiring Your subcontractors to include similar terms to these Terms in all of their subcontracts which relate to an Order so that they are included in all subcontracts related to the Order regardless of the subcontractor’s position in the supply chain.

6.5 The prices in the Order will apply (without variation) for the stated quantity of the Goods and/or Services and/or Works through the period of provision of the Services in the Order. These prices include all delivery costs.

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- 6.6 We may set off any sums owed by You against any sums payable to You in relation to the Order.
- 6.7 On the late payment of any valid and undisputed invoice related to the Order We will pay interest at a rate of 5% (five per cent) above the base rate of the Bank of England in lieu of interest under the Late Payment of Commercial Debts (Interest) Act 1998. to invoice for stage payments (where the Works are due to last more than 45 (forty five) days) as agreed by the Authorising Officer)

**7 Dispute resolution**

- 7.1 In the event of a dispute arising:
- The parties through their Nominated Representatives shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with these Terms within 14 (fourteen) days of either Party notifying the other of the dispute.
  - In the event that the Nominated Representatives are unable to reach agreement the matter shall be escalated to the chief executive (or equivalent) of each Party.
  - If the parties cannot resolve the dispute through the chief executive (or equivalent) of each Party either Party may refer it for mediation by the Centre for Effective Dispute Resolution ("CEDR") under CEDR's model procedure, then in place.

**8 Liability and insurance**

- 8.1 You will maintain the minimum insurance set out below during the Guarantee Period for Goods and/or throughout the period during which the Services and Works are provided:
- Employer's Liability Insurance – minimum £10 (ten) million
  - Public and Products Liability Insurance – minimum £5 (five) million
  - Professional Indemnity Insurance (where applicable) - £1 (one) million

**9 General**

- 9.1 No variation, and no terms and conditions additional to these Terms, will be valid unless accepted in writing and signed by Us.
- 9.2 You must not subcontract the provision of any Goods and/or Services and/or Works without Our prior written consent.
- 9.3 You will be responsible for all the actions of your permitted sub-contractors, sub-contract labour, suppliers, agents and advisors in connection with the Goods and/or Services and/ or Works.

**10 Termination**

- 10.1 Where an Order is for Services We may terminate the Order by giving You at least 14 (fourteen) days written notice.
- 10.2 We may terminate an Order with immediate effect by giving You written notice if:
- You commit a material breach of these Terms which is not remedied to the satisfaction of Us within 7 (seven) days of written notice from Us notifying You of the breach and stating that if it is not remedied this Order will be terminated;
  - You or anyone for whom You are responsible has acted fraudulently or made a fraudulent misrepresentation in connection with the Goods and/or Services and/or Works;
  - You or anyone for whom You are responsible for has offered or agreed to give any person working for or engaged by Us any gift or consideration, in relation to an Order, or any other contract or other agreement between the two parties;
  - If a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, Your creditors; or
  - You convene a meeting for the purpose of considering a resolution that You be wound up or a resolution for Your winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
  - a petition is presented for Your winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
  - a receiver, administrative receiver or similar officer is appointed over the whole or any part of Your business or assets; or
  - an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given in respect of You; or
  - You are or become insolvent within the meaning of section 123 of the Insolvency Act 1986.

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**11 Notices**

- 11.1 All notices or other communications in connection with an Order or these Terms must be in writing and shall be validly served if:
- delivered to the other Party personally; or
  - sent by prepaid first-class post or recorded delivery to:
    - its registered office (if a company); or
    - (in any other case) its principal place of business.

**12 Contract (Rights of Third Parties) Act 1999**

- 12.1 Nothing in these Terms or an Order confer any rights on any person under the Contracts (Rights of Third Parties) Act 1999 except as otherwise expressly so stated.

**13 Governing Law**

- 13.1 These Terms shall be governed by English Law and the parties shall submit to the exclusive jurisdiction of the English courts.

**14 Force Majeure**

- 14.1 Both parties shall be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the (reasonable) control of the parties or either of them renders the performance of an Order impossible.

**15 Confidentiality**

- 15.1 Subject to Paragraph 15.2 each Party shall keep confidential any Confidential Information communicated to it by the other on the basis that it is confidential.
- 15.2 Paragraph 15.1 shall not apply to:
- 15.2.1 any disclosure of information that is reasonably required by either Party to perform its obligations under these Terms to persons performing those obligations;
  - 15.2.2 any Confidential Information which is in the public domain other than as a result of a breach of this Paragraph 15;
  - 15.2.3 any disclosure required by any court order or statutory, legal or parliamentary obligation of the Party making the disclosure or the rules of any government or regulatory authority having the force of Law, including the Information Commissioner or the Information Tribunal (as defined in the FOIA);
  - 15.2.4 any disclosure by either Party for the purpose of:
    - (a) the examination, certification and/or audit of that Party's accounts; or
    - (b) complying with FOIA or EIR, provided that such disclosure is made in accordance with Paragraph 16 Data Protection and Freedom of Information

**16 Data Protection and Freedom of Information**

- 16.1 Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 16.2 The parties acknowledge that for the purposes of the Data Protection Legislation, We are the controller and You are the processor (where controller and processor have the meanings as defined in the Data Protection Legislation). Schedule One sets out the scope, nature and purpose of processing by the Provider, the duration of the processing, the types of personal data and categories of data subject (as defined in the Data Protection Legislation, personal data and data subject.

Schedule One - Processing, personal data and data subjects	
1.	Processing by You
1.1	Scope
1.2	Nature
1.3	Purpose of processing
1.4	Duration of the processing
2.	Types of personal data
3.	Categories of data subject

- 16.3 Without prejudice to the generality of clause 16.1, We will ensure that We have all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to You for the duration and purposes of these Terms.
- 16.4 Without prejudice to the generality of clause 16.1, You shall, in relation to any personal data processed in connection with the performance by You of Your obligations under these Terms:
- process that personal data only on Out written instructions unless You are required by the laws of any member of the European Union or by the laws of the European Union applicable to You to process personal data (Applicable Laws). Where You are relying on laws of a member of the European Union or European

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Union law as the basis for processing personal data, You shall promptly notify Us of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit You from so notifying Us;

- ensure that You have in place appropriate technical and organisational measures, reviewed and approved by Us, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by You);
  - ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
  - not transfer any personal data outside of the European Economic Area unless Our prior written consent has been obtained and the following conditions are fulfilled:
    - appropriate safeguards have been provided in relation to the transfer;
    - the data subject has enforceable rights and effective legal remedies;
    - You comply with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred;
    - You comply with reasonable instructions notified to it in advance by Us with respect to the processing of the personal data;
    - assist Us, at Our cost, in responding to any request from a data subject (including by forwarding to Us promptly following receipt any such request that a data subject should have sent direct to Us) and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
    - notify Us without undue delay on becoming aware of a personal data breach;
    - at Our written direction, delete or return personal data and copies thereof to Us on termination of these Terms unless required by Applicable Law to store the personal data; and
    - maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Customer or the Customer's designated auditor.
- 16.5 We do not consent to You appointing any third party processor of personal data under these Terms.
- 16.6 You shall provide such assistance as We reasonably require to enable it to comply with FOIA or EIR.
- 16.7 You acknowledge that We are responsible for determining in Our absolute discretion (but having regard to any guidance or codes of practice issued by the Information Commissioner or the Ministry of Justice):
- 16.7.1 whether any information is exempt from disclosure under FOIA and/or EIR;
- 16.8 If We decides to disclose any Confidential Information under FOIA, We shall use reasonable endeavours to notify You of this decision before making the disclosure.

### **17 National Fraud Initiative**

- 17.1 We are participating in an exercise to promote the proper spending of public money.
- 17.2 We are required by law to protect the public funds We administer. We may share information provided to us with other bodies responsible for auditing or administering public funds in order to prevent and detect fraud. This includes the Governments National Fraud Initiative exercises.