

## 1. Introduction

- 1.1. These Terms apply to all *Orders* to the exclusion of any other terms unless there is a specific contract between *You* and *Derby Homes* governing this *Order*. *Your* terms and conditions of contracting are expressly excluded. Where there is a specific contract it shall apply in conjunction with these Terms to the extent that they are not inconsistent with the contract and this *Order* will be treated as a task or order under that contract.
- 1.2. In these Terms a reference to:
  - "*Goods*" is to any items to be supplied to *Derby Homes* under this *Order*;
  - "*Order*" is to the Purchase Order or Task Form to which these Terms relate;
  - "*Services*" is to any services to be supplied to *Derby Homes* under this *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, installation and building completion, design and planning, and any ancillary services;
  - "*DPA*" means the Data Protection Act 1998;
  - "*EIR*" means the Environmental Information Regulations 2004;
  - "*FOIA*" means the Freedom of Information Act 2000; and
  - "*Confidential Information*" means any information communicated by either Party to the other on the basis that it is confidential.

## 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 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.
- 2.2. *You* will indemnify *Derby Homes* in full against any costs, expenses, damages and losses (direct or indirect) that may be caused due to the discovery and correction of latent defects in the *Goods*.
- 2.3. 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 *Derby Homes*.
- 2.4. 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 *Derby Homes*; 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 *Derby Homes*.

## 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 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 *Derby Homes'* policies supplied to you by *Derby Homes*.

## 4. Delivery and waste

- 4.1. *You* must deliver the *Goods* and/or *Services* and/or *Works* within 14 (fourteen) days of the *Order* unless the *Order* states otherwise. *You* must obtain a receipt for all *Goods* delivered from an *authorised employee of Derby Homes*.
- 4.2. If delivery of the *Goods*, or performance of the *Services* or *Works*, is delayed due to any cause beyond *Your* reasonable control and *You* tell *Derby Homes* of this immediately, *Derby Homes* may either reschedule the time for delivery/performance or cancel the *Order* without any liability to *You*.
- 4.3. If delivery is delayed in any other circumstances *You* must reimburse *Derby Homes* for any additional costs *Derby Homes* incurs.
- 4.4. *You* must attach a copy of *Derby Homes'* original *Order* to all *Orders*, advice notes, invoices and packing notes. These must also contain:
  - *Your* name and address; *Derby Homes'* *Order* 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. *Derby Homes* may reject all or any *Goods* that do not comply with the *Order* at any time within 1 (one) month from the date of delivery.

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- 4.6. Risk and title in *Goods* will pass to *Derby Homes* on delivery of the *Goods* to the delivery address in the *Order*.
- 4.7. Whilst on *Derby Homes'* premises or any premises *Derby Homes* manages (including tenanted properties), *You* and all persons for whom *You* are responsible must comply with *Derby Homes'* rules relating to those premises. *Derby Homes* may refuse admission to *Your* personnel or require such personnel to leave those premises at any time without giving any reason
- 4.8. *You* and all persons for whom *You* are responsible must dispose of any waste in connection with the *Goods* and/or *Services* and/or *Works* yourself and must not use *Derby Homes'* waste transfer station. You must not deposit any waste on *Derby Homes'* premises or any premises *Derby Homes* manages (including tenanted properties).

## 5. Intellectual Property

- 5.1. *You* grant *Derby Homes* 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 *Derby Homes* all intellectual property rights in any *Goods* and/or *Services* and/or *Works* that are produced for *Derby Homes* as bespoke.
- 5.2. *You* will indemnify *Derby Homes* in full against all costs, expenses, damages 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. *Derby Homes* will consider and verify *Your* invoices promptly.
- 6.2. Where there is undue delay in *Derby Homes* considering and verifying an invoice, that invoice shall be regarded as valid and undisputed after a reasonable time has passed.
- 6.3. *Derby Homes* will pay *You* the price due for the *Goods* and/or *Services* and/or *Works* within 30 (thirty) days from the date on which *Your* invoice is regarded as valid and undisputed. Subject to clause 7 in relation to construction works.
- 6.4. If *You* enter into any subcontract in relation to the *Order*, *You* must insert into that subcontract terms:
  - requiring *You* to consider and verify invoices from the subcontractor promptly;
  - stating that where there is undue delay in *Your* considering and verifying a subcontractor's invoice, that invoice will be regarded as valid and undisputed after a reasonable time has passed;
  - requiring *You* to pay the amount due to the subcontractor within 30 (thirty) days from the date on which the invoice is regarded as valid and undisputed; and
  - requiring *Your* subcontractors (of any tier) to include similar terms in all of their subcontracts related to the *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.
- 6.6. *Derby Homes* 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* *Derby Homes* 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.

## 7. Housing Grants Construction and Regeneration Act 1996 (as amended)

- 7.1. Where works relate to construction operations (as defined in the Housing Grants Construction and Regeneration Act 1996) the Contractor will be entitled:
  - The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with the these terms within 14 days of either party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute to the chief executive (or equivalent) of each party.
  - If the parties cannot resolve the dispute in accordance with the bullet point above either party may refer it for mediation by the Centre for Effective Dispute Resolution ("CEDR") under CEDR's model procedure then in place.
  - to invoice for stage payments (where the *Works* are due to last more than 45 days) as agreed by the Authorising Officer)
  - to payment in full by the final date unless having received a prior notice of Derby Homes intention to withhold payment;

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- to suspend performance (subject to giving 7 days prior written notice) where payment has not been received by the final date and where no notice to withhold payment has been served by Derby Homes.
- to suspend performance (subject to giving 7 days prior written notice) where payment has not been received by the final date and where no notice to withhold payment has been served by Derby Homes.
- The right to suspend performance will cease and full working will re-commence immediately an overdue payment is made.

## 8. Liability and Insurance

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:

- Product Liability Insurance (for *Goods*) - £2 million
- Professional Indemnity Insurance (for *Services/ Works*) - £1 million
- Public Liability Insurance (for *Services/Works*) - £2 million (£5 million if working with heat)
- Employer's Liability Insurance (for *Services/Works*) – £5 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 *Derby Homes*.
- 9.2. You must not subcontract the provision of any *Goods* and/or *Services* and/or *Works* without *Derby Homes*' prior written consent.
- 9.3. You will be responsible for all the actions of your permitted subcontractors, suppliers, agents and advisors in connection with the *Goods* and/or *Services* and/ or *Works*.

## 10. Termination

- 10.1. Where the *Order* is for *Services* *Derby Homes* may terminate the *Order* by giving you at least 14 (fourteen) days' written notice.
- 10.2. *Derby Homes* 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 *Derby Homes* within 7 (seven) days of written notice from *Derby Homes* 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 has offered or agreed to give any person working for or engaged by *Derby Homes* any gift or consideration, in relation to this *Order*, or any other contract between You and *Derby Homes*; and
  - You have been the subject of any insolvency related procedure including having:
    - had an administrator, receiver, receiver and manager or administrative receiver appointed, or having notified or been notified of an intention, or taken any steps to appoint, any of them;
    - suspended the payment of debts or commenced negotiations with your creditors to reschedule your debts;
    - had a winding up petition presented against You; or
    - suffered any equivalent insolvency related procedure.

## 11. Notices

All notices or other communications in connection with this *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

Nothing in these Terms or the *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

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This contract shall be governed by English law and the parties shall submit to the exclusive jurisdiction of the English courts.

### 14. Force Majeure

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 this 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. Each Party agrees that in relation to any Personal Data it holds in relation to these Terms it will comply with the DPA

16.2. *You* agree that if you acquire Personal Data from Derby Homes in connection with these Terms you will:

- 16.2.1. maintain a valid and up to date registration or notification under the DPA which covers all processing of such Personal Data which *You* undertake;
- 16.2.2. only undertake processing of such Personal Data where it is reasonably required in connection with the performance of *Your* obligations under these Terms;
- 16.2.3. not disclose such Personal Data to any third party other than:
  - 16.2.3.1. a disclosure on terms substantially the same as and no less stringent than those required by this Paragraph 16, to its employees, agents and contractors to whom such disclosure is reasonably necessary in connection with the performance *Your* obligations under these Terms.
  - 16.2.3.2. as required by court order;
- 16.2.4. bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including taking reasonable steps to ensure the reliability of Staff having access to the Personal Data.

16.3. *You* shall provide such assistance as Derby Homes reasonably requires to enable it to comply with FOIA or EIR.

16.4. *You* acknowledge that Derby Homes is responsible for determining in its absolute discretion (but having regard to any guidance or codes of practice issued by the Information Commissioner or the Ministry of Justice):

16.4.1. whether any information is exempt from disclosure under FOIA and/or EIR;

16.5. If Derby Homes decides to disclose any Confidential Information under FOIA, it shall use reasonable endeavours to notify *You* of this decision before making the disclosure.

### 17. National Fraud Initiative

Derby Homes is participating in an exercise to promote the proper spending of public money.

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.

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The Audit Commission currently requires us to participate in its anti-fraud initiative. For this initiative, we are providing details of creditor payments so that they can be compared to information provided by other public bodies. This will ensure that creditors are being paid appropriately.

Sometimes wrong payments are made because of a genuine error. These exercises, therefore, help promoted the best use of public funds.