



SiZe Matters Design - Terms and Conditions

General Conditions of Contract

Our General Conditions of Contract are issued below, and your attention is drawn to this.

No works, goods or services will be ordered or commenced until signed acceptance and payment of deposit is made in full.

Extra work is charged on the following rates:

Project manager – £75/hr

Engineer – £45/hr

Standard Terms and Conditions apply to this project

These have been provided below. Specific terms for this project are listed below and take precedence over any other terms and conditions in any other document. It is assumed that the Client provides data, drawings (including full plans, elevations and fabric build-ups) layouts and access as required if needed. One build type will be investigated. One round of revisions in design has been allowed for only. Other services (installation, legal, H&S, CDM, Air Quality and Environmental Impact Assessment, planning and building control fees or associated tests, asbestos, pressure test and electrical safety certificates etc.) are excluded.

If works are done by others then we have not allowed for any time/cost in rectifying mistakes or take responsibility for the results.

In compiling any work or report, we have relied on information supplied to us by the Client and by third parties. We accept no Liability for the completeness and/or veracity of the information supplied to us, nor for our conclusions or recommendations based on such information should it prove not to be complete or true. We have been asked to comment on Building Services only, in accordance with the Client's instructions as to the scope of this report. We will not comment on any other matter and exclude all Liability for any matters out with the said scope of this report.

Interpretation

The definitions and rules of interpretation in this condition apply in these conditions.

Client: the person, firm or company who purchases the Goods or Services from SiZe Matters Design

Company: “SiZe Matters Design”

Contract: any contract or quotation between the Company and the Client for the sale and purchase of the Goods or Services, incorporating these conditions.

Contract Price: the total sum paid by the Client to, and received by the Company, under the Contract.

Delivery Point: the place where delivery of the Goods/ Services is to take place under condition 4.

Goods: any goods agreed in the Contract to be supplied to the Client by the Company (including any part or parts of them).

Words in the singular include the plural and in the plural include the singular.

A reference to one gender includes a reference to the other gender.

Condition headings do not affect the interpretation of these conditions.

2. Application of Terms

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Client’s purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company’s sales and any variation to these conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed by a Director of the Company. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company’s liability for fraudulent misrepresentation.

2.4 Any Estimate is given on the basis that no Contract shall come into existence until the Binding Quotation has been signed by the Client and counter-signed by the Company and any deposit due is received.

2.5 The receipt by the Client of a formal Quotation for Goods & Services signed on behalf of the Company shall be deemed to be an offer by the Company, which the Client can accept subject to these conditions by signing the Quotation. Any formal Quotation is valid for a period of 14 days only from its date, provided that the Company has not previously withdrawn it.

2.6 The Client warrants that the terms of its order and any applicable specification are complete and accurate.

3 Description

3.1 The quantity and description of the Goods & Services shall be as set out in the Company's formal Quotation.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract, and this is not a sale by sample.

3.3 The service offered is aimed at domestic single air source heat pump applications. The pricing quoted is for a project with size of plant/heat pump which will be covered by MCS (e.g. less than 45kW thermal output) and for a single domestic dwelling up to 5-6 bedrooms/3-4 bathrooms. If outside of this scope we will provide you with a bespoke price for design services.

4 Delivery

4.1 Delivery of the Services shall take place at the place specified in the formal Quotation ("the Delivery Point").

4.2 The Client shall take delivery of the Services on such date as the Company advises, providing notification of delivery has been given not less than 7 days in advance of the date of delivery.

4.3 Any dates specified by the Company for delivery of the Services are an estimate and time for delivery shall not be of the essence. If no dates are so specified, delivery shall be within a reasonable time.

4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Client to terminate or rescind the Contract unless such delay exceeds 90 days.

4.5 If for any reason the Client fails to accept delivery of any of the Services when they are ready for delivery, or the Company is unable to deliver the Services on time because the Client has not provided appropriate instructions, documents, licences or authorisations:

4.5.1 risk in the Goods shall pass to the Client (including for loss or damage caused by the Company's negligence upon notification by the Company to the Client);

4.5.2 the Services shall be deemed to have been delivered on the date specified under Condition 4.2.

5 Non-Delivery

5.1 The quantity of any consignment of Services as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Client on delivery unless the Client can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Services (even if caused by the Company's negligence) unless the Client gives written notice to the Company of the non-delivery within 7 days of the date when the Services would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Services shall be limited to replacing the Services within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Services.

6 Risk/Title

6.1 N/a

6.2 Ownership of the Services shall not pass to the Client until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

6.2.1 the Services; and

6.2.2 all other sums which are, or which become due to the Company from the Client on any account.

6.3 The Company shall be entitled to recover payment for the Services notwithstanding that ownership of any of the Goods & Services has not passed from the Company.

6.4 N/a

6.5 Where the Company is unable to determine whether any Services are the services in respect of which the Client's right to possession has terminated, the Client shall be deemed to have sold all services of the kind sold by the Company to the Client in the order in which they were invoiced to the Client.

6.6 On termination of the Contract, howsoever caused, the Company's (but not the Client's) rights contained in this condition 6 shall remain in effect.

7 Contract Price

7.1 Unless otherwise agreed by the Company in writing, the price for the Services shall be the Contract Price set out in the Company's formal Quotation.

7.2 The price for the Goods and services shall be exclusive of any value added tax.

7.3 In the event of the suspension of the work by reason of any act of omission of the Client, any prices quoted may be increased by LSL to cover any extra expenses incurred by it on this or any other contract by reason of such suspension.

8 Payment

8.1 Subject to condition 8.4, payment of the price for the Services is due in pounds sterling.

8.2 Time for payment shall be of the essence.

8.3 All Services will require payment on job acceptance date (e.g. no credit is offered). No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Client shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Client.

8.6 If the Client fails to pay the Company any sum due pursuant to the Contract, the Client shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 10% above the base lending rate from time to time of the Bank of England, from the due date until the outstanding amount is paid in full. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9 Quality

9.1 n/a

9.2 The Company warrants that (subject to the other provisions of these conditions) upon delivery, and for a period of 12 months from the date of delivery, the Services shall:

9.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

9.2.2 be fit for their purpose; and

9.2.3 be fit for any particular purpose for which the Services are being bought if the Client had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Client to rely on the skill and judgement of the Company.

9.3 The Company shall not be liable for a breach of any of the warranties in condition 9.2 unless:

9.3.1 the Client gives written notice of the defect to the Company, and within 14 days of the time when the Client receives the Service; and

9.3.2 the Company is given a reasonable opportunity after receiving the notice of examining the defect and (if asked to do so by the Company) at the Company's cost for the examination to take place at the site if requested there.

9.4 The Company shall not be liable for a breach of any of the warranties in condition 9.2 if:

9.4.1 the defect arises because the Client failed to follow the Company's oral or written instructions as to the project data; or

9.4.2 the Client alters any data/information without the written consent of the Company.

9.5 Subject to condition 9.3 and condition 9.4, if any of the Services do not conform with any of the warranties in condition 9.2 the Company shall at its correct or replace such Services (or the defective part) or refund the price of such Services at the pro rata Contract rate.

9.6 If the Company complies with condition 9.5 it shall have no further liability for a breach of any of the warranties in condition 9.2 in respect of such Services.

9.7 Any Services replaced shall belong to the Company and any repaired or replacement Services shall be guaranteed on these terms for the unexpired portion of the 12-month period.

10 Limitation of Liability

10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

10.1.1 any material breach of these conditions;

10.1.2 any use made or resale by the Client of any of the Services, or of any product incorporating any of the Services; and

10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes or limits the liability of the Company:

10.3.1 for death or personal injury caused by the Company's negligence; or

10.3.2 under section 2(3), Consumer Protection Act 1987; or

10.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

10.3.4 for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

10.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the relevant element of the Contract Price; and

10.4.2 the Company shall not be liable to the Client for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11 Confidentiality/Intellectual Property

11.1 Both the Company and the Client agree to keep the terms of this Contract and all ancillary information received by the Client from the Company confidential ("Confidential Information"), unless the information is already within the public domain or subsequently becomes public knowledge other than by a breach of this Contract provided that the Company may publicise generally the fact that it has supplied the Goods to the Client.

11.2 To the extent necessary to implement the provisions of this Contract, each party may disclose Confidential Information to those employees of either party as may be reasonably necessary or desirable, provided that before any such disclosure each party shall make those employees aware of its obligation of confidentiality under this Contract, and shall at all times procure compliance by those employees with them.

11.3 The Client acknowledges that all copyright and title to intellectual property in relation to the Goods, and any ancillary service or documents provided in relation to the Contract, are owned by the Company.

11.4 For the purposes of Clause 11.3, intellectual property includes: patent rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in goodwill, rights in design, database rights, and the right to sue for passing-off, in each case whether registered or unregistered and including all applications (or rights to apply) for renewals or extensions of such rights and similar or equivalent rights or forms to protection which may now or in the future subsist in any part of the world.

12 Assignment

12.1 The Company may assign the Contract or any part of it to any person, firm or company.

12.2 The Client shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13 Force Majeure

13.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Client (without liability to the Client) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Client shall be entitled to give notice in writing to the Company to terminate the Contract.

14 General

14.1 The Client shall give a minimum of 10 working days' notice of cancellation of an agreed attendance on behalf of the Company to fulfil any of the Company's obligations under this Contract. Cancellation or postponement after such notice will incur a charge for the obligations that were to be carried out, at the advised rate.

14.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

14.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Client shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by Scottish law and the parties submit to the exclusive jurisdiction of the Scottish courts.

15 Communications

15.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first-class post:

15.1.1 (in case of communications to the Company) to its registered office.

15.2 Communications shall be deemed to have been received:

15.2.1 if sent by pre-paid first-class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

15.2.2 if delivered by hand, on the day of delivery.

15.3 Communications addressed to the Company shall be marked for the attention of the Project Manager.