



## Fenlake Construction - Standard Terms and Conditions

1. Definitions - For clarity the following phrases have the following meanings:
- 1.1 The **“Works”** means the work, goods and services described in the quotation, drawings and specification which form part of the agreement information
- 1.2 Any information provided by us that is marked **“preliminary”** forms no part of any agreement between us. This may refer to indicative drawings, schedules, or any other pre-agreement information provided by us or any third party and so marked
- 1.3 The **“Building Contractor”** means Fenlake Construction (Fenlake Extensions and Lofts Ltd) and is the person / main contractor who will carry out the works. Hereto after referred to as Fenlake Construction
- 1.4 The sub-agreement trades are led by the **“Independent Nominated Team Leader”** who will carry out the work to the agreed specification and to the drawings provided. The physical aspect of application of the work is handed down to nominated sub-agreement trades appointed by and under the direct supervision of Fenlake Construction. The client agrees to enter into the aforesaid arrangement.
- 1.5 The **“Commencement Meeting”** is the meeting on site at the property where the works are to be carried out and will be between the Client, appointed Fenlake Construction representative and the Independent Nominated Team Leader. This will take place prior to commencement of the works at a mutually agreed time and shortly before the works or the preparations for the works are to be started.
- 1.6 The **“Building Inspector”** is an appropriately qualified Building Control Surveyor who is approved by the Construction Industry Council (CIC) who is the responsible regulatory authority. The Building Inspector will be nominated by Fenlake Extensions and Lofts Ltd and the fees for the Building Control service, payable by the client independently of the sums displayed in the Quotation.

1.7 The **“Party Wall Agreement”** if any, is the agreement into which the client may have to enter with the joint owner of any **“Party Wall”** affected by the works prior to the work being carried out. Notices will be served free of charge to those neighbours affected but in the event that a Party Wall Surveyor becomes necessary, the Party Wall Surveyor fees will be payable by the client independently of the sums displayed in the Quotation.

1.8 In the case of works instructed by the client who is a tenant or leaseholder of the property, the **“Landlords Consent”** as permission to carry out the works should be agreed in writing prior to commencing the works including prior to any preparation or enabling work is carried out.

1.9 The **“Completion”** will be at the point where the Building Inspector has certified that the Building Works meet the Building Regulations compliance.

1.10 The **“Defects Liability Period”** is the period of six months from the issue of the Building Regulations Final Certificate or completion of the services, notwithstanding that this guarantee shall not apply to:

- a) Defects or flaws which are as a result of any misuse, failure to adequately and properly maintain, neglect or failure to follow Instructions or recommendations on the part of the Client.
- b) Any defect or flaw which is caused by mechanical or chemical damage (which is not in itself a result of some defect in the workmanship or materials) and which arises after risk in the property has passed to the Client.

1.11 References to any **statutory provision**, authority, rule or code of practice shall be deemed to include the amended versions, replacements or successors of such.

### What Fenlake Construction will do

2. On award of the agreement, Fenlake Construction will appoint a person or firm to produce detailed drawings, plans and if necessary, for Building Regulations compliance purposes, structural engineer's details associated with the project as awarded
3. Provided fees have been paid by the client to Fenlake Construction, for any Planning Permission, Permitted (Lawful) Development approval and / or Building Regulations approval, Fenlake Construction will use its best endeavours to secure such approvals in order that the project may reach a successful conclusion

4. Should Fenlake Construction be unable to secure any or all of the approvals suggested in clause 3 above before the works can be carried out, any sums the client has made as initial payments will be refunded, less any deduction for reasonable expenses incurred representing the cost of the services provided and expenses incurred in the client's interest. This sum will not usually exceed £3,750.

5. The following circumstances will apply to clause 4 above including refunding criteria.

5.1 Fenlake Construction are unable to secure any Planning Permission, Permitted (Lawful) Development approval or Building Regulations approval required for the works to be carried out despite best endeavours

5.2 Fenlake Construction discover that there has been, since the signing of the agreement and before the commencement meeting, a significant increase in the cost of materials or preliminaries such as, for example, architectural costs, which, in the opinion of Fenlake Construction, render the project cost significantly greater than the original quotation, then the quotation will be considered void.

5.3 Fenlake Construction, prior to the commencement meeting, having discovered reasonable grounds that materially prejudice Fenlake Construction's ability to discharge its duties under agreement, then Fenlake Construction will be discharged from any further performance of its obligations under this agreement.

6. Provided that the above-mentioned approvals are obtained, Fenlake Construction will nominate an Independent Nominated Team Leader to carry out the works and Fenlake Construction will manage the Independent Nominated Team Leader and subordinates thereof, on behalf of the client

7. The Payment schedule will be the reference for commencement, stage payment and completion dates and the client agree that these are to be considered as estimates. Fenlake Construction as the Building Contractor shall endeavour to ensure that said dates are met but are subject to alteration as circumstances may dictate and the client agrees that this is not to be viewed as grounds for varying or terminating the agreement. This applies to all dates mentioned including the written completion dates. If no completion date is agreed in writing, Fenlake Construction will do all it reasonably can to complete the works within a reasonable time period.

7.1 Fenlake Construction retains ownership of material used until all valid invoices are paid to the value of said invoices unpaid

8). Sub-contractors will be appointed at the discretion of Fenlake Construction, to ensure that its obligations under agreement can be carried out with due diligence and in order to meet timescales mentioned in the payment schedule. Fenlake Construction further agrees to exercise reasonable skill and care in the performance of its duties under this agreement.

9. Any opinions expressed by Fenlake Construction in order to secure compliance with any statutory requirements or agreement stipulations will be made on reasonable grounds and the client agrees that any damages arising from said information, advice, action or work, have been provided by Fenlake Construction or their agents reasonably and in good faith and will not be held liable for costs or damages arising from said information, advice, action or work.

#### **What Fenlake Construction will not do**

10. Fenlake Construction will be carrying out the works. This part will be carried out by the Independent Nominated Team Leader and nominated sub-contractors in accordance with the agreement and agreement information. Fenlake Construction will not be responsible for any defects or failure on the part of Independent Nominated Team Leader to complete the works.

11. Fenlake Construction will not pay compensation for defects or omissions or loss of any kind that the client may sustain, except from loss or damage that results directly from negligence on the part of Fenlake Construction, howsoever the damage or loss is incurred. This also applies to persons for whom Fenlake Construction has a legal responsibility. The Independent Nominated Team Leader and nominated sub-contractors are not persons for whom Fenlake Construction holds a legal responsibility.

12. Floor coverings left in place during the works are not the responsibility of Fenlake Construction and if not removed or adequately protected during the course of the works, should damage occur, no compensation will be considered, howsoever the damage may be caused

13. Any finishes or hairline cracks in existing walls or ceilings or joinery, however caused prior, during or after the works have been carried out will be the responsibility of the client. This does not include major cracks due to foreseeable circumstances which may be

attributable to negligence on the part of Fenlake Construction. The client understands that timber is a natural product and slight movement can occur over time.

### **The Clients Obligations**

14. The client agrees to furnish information reasonably requested by Fenlake Construction, such information as to enable the efficient execution of the agreement.

15. The client agrees to provide fees promptly, as requested, in the event that the project is awarded elsewhere or abandoned, in the amounts payable for the provision of Planning Permission, Permitted (Lawful) Development approval and Building Regulations approval that Fenlake Construction deems likely to be payable and required for the works to be carried out. This applies to any appeals that may be reasonably sought on the clients' instruction

16. The client authorises Fenlake Construction to apply for Planning Permission, Permitted (Lawful) Development approval and Building Regulations approval as required and at the discretion of Fenlake Construction and also to appeal against any refusal

17. The client agrees that dimensions offered in the drawings and plans are approximate and authorises that if, in the opinion of Fenlake Construction, these dimensions should be amended in order to comply with the conditions of any Planning Permission, Permitted (Lawful) Development approval and Building Regulations approval, this is so agreed

18. The client is responsible for the securing of any Party Wall Agreement or Landlords Consent that may be required prior to the works being carried out

19. When the Planning Permission, Permitted (Lawful) Development approval and Building Regulations approval have been actioned and are in force, the client hereby agrees to nominate an Independent Nominated Team Leader recommended by Fenlake Construction when required by Fenlake Construction to do so

20. The client will enter into the agreement with the Independent Nominated Team Leader nominated by Fenlake Construction and the form of agreement will be approved by Fenlake Construction and is delivered with the agreement total sum referred to in the payment schedule

21. The client will allow Fenlake Construction to deal with the Independent Nominated Team Leader and manage the building agreement

21.1. The client will be responsible for lifting floor finishes and protecting surfaces likely to be affected by the works or those finishes that in the opinion of Fenlake Construction should be lifted or adequately protected.

21.2. Where the Independent Nominated Team Leader stores or keeps any materials or equipment on Site, the Client shall be responsible for the security and safety of such and shall account to Fenlake Construction for any loss or damage.

22. The client agrees to abstain from giving any instructions to the Independent Nominated Team Leader or his sub-ordinates unless specifically authorised by Fenlake Construction. This relates to any instruction which may interfere with the works or lead to a variation in the extent or nature of the works.

23. The client permits Fenlake Construction to appoint the building Inspector whose responsibility it will be to periodically inspect the work and to certify that the work is complete in accordance with the Building Regulations

24. The client agrees not to occupy, decorate or place furniture or finishes to surfaces in any part of the works unless written consent has been issued by Fenlake Construction and all due sums paid to the Independent Nominated Team Leader via the accounting system operated by Fenlake Construction

25. Should the client become aware of any defects or inadequate workmanship during the course of the works, the client agrees to notify Fenlake Construction immediately and in writing. The client further agrees not to undertake repairs unless and until Fenlake Construction have had a reasonable opportunity to rectify any defects, inadequate workmanship or repairs.

### **Payments by the Client and Payment Schedule**

26. The client agrees, by signing the agreement, that the Initial payment amount specified on the payment schedule is now due. This Initial payment may be reduced by £150 should the client agree to the use of Fenlake Construction promotional material displayed at the property and in places of its choosing. If at any time prior to the completion of the works, the client withdraws this permission, the client will pay £150 to Fenlake Construction when required to do so.

27. At the commencement meeting, the client agrees to pay Fenlake Construction the amount specified at point 2 on the payment schedule. The client further agrees that all stage payments will be made at the times specified in the payment schedule. All payments will be made to Fenlake Construction to be disbursed to the Independent Nominated Team Leader to ensure and manage continuity of the works via the accounting system operated by Fenlake Construction

28. In addition, the client agrees to pay on instruction by Fenlake Construction and immediately, any additional costs incurred as a result of additional materials, work or equipment required as a result of requirements by the Building Inspector or nominated Structural Engineer or works over and above the works described in the agreement and on the agreed drawings and plans

29. On issue of the Final Building Regulations certificate, the client agrees to pay the final payment on the payment schedule or any greater or lesser sum that Fenlake Construction certifies as due. No retention sums are permitted under this agreement as defects deemed to be snags in the opinion of Fenlake Construction are dealt with under the Guarantee.

#### **Termination of the Agreement**

30. The client agrees that, if in the opinion of Fenlake Construction, the client fails to perform within the agreements and terms and conditions of this agreement, a formal written notice will be issued by Fenlake Construction and the client will be requested to act within the requirements or to desist from any act the client is required not to do as within these terms and conditions and the agreement information. Should the situation persist, and the client fails in his obligations for a further 7 days then termination will be by a further and final formal written notice.

31. The client agrees that should they become insolvent during this agreement period, the agreement is deemed terminated unless an authorised insolvency practitioner is appointed and makes a suitable arrangement for the works to continue

32. Should Fenlake Construction fail to meet any of its obligations under this agreement and persists in failing for a period of 7 days and after written notice from the client to carry out any act under this agreement the client is entitled to terminate this agreement by giving Fenlake Construction written notice

#### **Disputes**

33. Should a dispute arise between the client and Fenlake Construction regarding the performance of

either parties to the agreement in the discharge of their duties and obligations, they will endeavour to resolve the issues presented with the assistance of a mediator mutually agreed between them. If an agreed mediator cannot be found then by default a mediator from Harrison, Clark, Rickerbys will be appointed.

34. If mediation fails to bring about a satisfactory negotiated settlement, either party may refer the matter to arbitration and recruit the services of an arbitrator. Whether the Client and Fenlake Construction choose mediation or whether the differences between them are subject to arbitration, both parties accept that the rules and procedures in relation to costs and otherwise under the dispute resolution arrangements provided by The Federation of Master Builders will become part of this agreement. Further details of these costs are available from Federation of Master Builders, David Croft House, 25 Ely Place, London, EC1N 6TD - Tel: 0330 333 7777

35. Nothing in this agreement rules out or limits access to any other legal remedy which might be available to either party

#### **Copyright**

36. Any documents, plans or other information that relates to the works or this agreement will belong to Fenlake Construction and may not be copied or passed to any third party without the written consent of Fenlake Construction. The client agrees that this information is to be for the sole purpose of carrying out the works and for any future maintenance or repair requirements as may be required in relation to the property to which this information relates.

#### **Variations and Waiver**

37. This agreement is the current agreement and supersedes any agreements made either verbally or in writing that may have been previously discussed. It is agreed between the client and Fenlake Construction that the whole of this agreement, the terms and conditions are embodied in this form and the client acknowledges that they have not entered into this agreement on reliance of any previous representations or undertakings that have not been expressly recorded in this form.

38. To be legally effective, any variations to the agreement or the works should be recorded in writing and is to be recorded exclusively by a director of Fenlake Construction. No other person is authorised to agree any variation on behalf of Fenlake Construction

39. Should Fenlake Construction authorise additional time for the client to execute their obligations under this agreement or any other indulgence is so authorised, this should not be construed as having waived any legal entitlement Fenlake Construction would otherwise have enjoyed

#### **Force Majeure**

39.1. Neither party shall be liable for any delay or failure in performing its obligations or duties under this agreement which results from circumstances outside their reasonable control including but not limited to acts of God, industrial action, war, fire, threat of terrorism, civil disturbance or rioting, government or regulatory action, breakdown in plant or machinery or national shortage of raw materials or supplies.

#### **Interest**

40. Should the client miss making payments as per the payment schedule, or as indicated on our invoice, Fenlake Construction will be entitled to levy interest at a rate of 5 percentage points per annum above the Bank of England base rate on any payments which are not settled in accordance with the payment schedule, or from the date suggested on our invoice, from time to time until the debt is discharged.

41. This Agreement shall be governed by the Law of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts should mediation or arbitration fail in the event of dispute

#### **Guarantee**

42. Under the terms of the separate agreement with the Independent Nominated Team Leader, the Independent Nominated Team Leader undertakes to complete the works and to remedy any defects that may appear during the defects' liability period. The Nominated Team Leader shall perform all duties, services and obligations under this agreement with reasonable care and skill and to a reasonable standard.

43. In the event that the Independent Nominated Team Leader does not complete the works within 3 months of the end of the defects' liability period, Fenlake Construction will ensure that the works are completed. This also applies to the remedy of any defects. Should Fenlake Construction have to intervene, a different Independent Nominated Team Leader may be appointed to carry out this work, but no additional costs will be levied towards the client.

44. The clause above is conditional on the client having made all payments as described in the payment

schedule and within the other terms and conditions which constitute this form

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#### **General Specification**

All waste and unused material will remain the property of Fenlake Construction and will be removed from site, leaving the site clean and tidy.

The materials used in the construction remain the property of Fenlake Construction until such time as all payments have been made according to the payment schedule and any variations documented throughout the project period and in line with the terms and conditions above.

**This offer is valid for 30 days  
from the agreement date.**

## General Additional Specification

### Notes:

1. Any aerials or satellite dishes or Solar Panels requiring repositioning will be at an additional cost and outside the contract sum unless discussed and agreed in writing
2. Any feature / mosaic tiles for walls or floors to be supplied by the client and additional fixing costs payable outside the contract sum
3. Under no circumstances should dehumidifiers be used to speed up the drying out period of newly plastered areas
4. No decoration is included in the contract sum unless stated. However, decoration may be carried out by the Nominated Independent Team Leader (dependant on availability) at a cost to be negotiated with the Nominated Independent Team Leader and outside the contract sum.
5. Any snag list composed after practical completion to be agreed between the Nominated Independent Team Leader, the client and the Building Contractor and to be based on reasonable provision. Please note that minor defects in the plasterwork and joinery are the responsibility of the decorator.
6. Any bespoke fixtures and fittings may require a lengthy lead in time. The client should be aware of this and provide decisions in a timely manner so that the programme of works can be maintained. Any measurements provided by the client shall be at the client's risk if the ultimate fit is incorrect.
7. Adequate protection of external decorative surfaces (fences, block paving etc.) shall be discussed and agreed between the client and the building Contractor and additional costs may be levied for providing any agreed further protection.
8. All waste and unused material is the property of the main contractor and will be removed from site during and at the end of the project, leaving the site clean and tidy.
9. Scaffold, skips, labour and specified material are included as part of the service. All structural timber to be grade C24 or better and treated unless noted otherwise, all to BS 5286. Timber for non-structural partitions may be C16 or CLS (Canadian Lumber Standard)
10. New foundations are to extend to a minimum depth of 1 metre below the surrounding ground level, or to suitable subsoil. On chalk sub-soil, this depth may be reduced. On clay and / or to the invert of any found drainage, this depth may need to be increased in line with the Building Inspectors guidance – In this case additional foundation depth and the removal of additional spoil will be chargeable pro rata plus 15% for plant and shoring costs.
11. The excavations referred to in the specification assume a standard approximate dimension of 1 metre x 600 mm. Any additional excavations as required by the Building Inspector or ground condition will be in addition and charged at a rate pro-rata.
12. Since October 2011 the Water Authority became the owner of any shared underground drainage systems except where at the head of the run (first on the system shared between two or more properties). If

discovered to be under the ownership of the Water Authority, advice will be given promptly so as to satisfy their criteria and minimise delay. This ruling would occur where their pipe is discovered within 3 metres of any new foundation and assessments are then made.

13. We, the Building Contractor, shall not, in any way, be responsible for any work carried out by the Client before appointment to the project. In addition, any contributions of client effort during or after the project, without prior agreement with the Building Contractor, the Building Contractor shall also not accept any responsibility.

14. Insurance - The Building Contractor is required to comply with the guidelines issued in respect of the maintenance of Public Liability and Employers liability insurance. The Building Contractor shall on written request of the Client provide evidence that the insurance is properly maintained and shall immediately inform the Client if the insurance referred to ceases to be available.

15. It remains the responsibility of the Client to comply with the Building Regulations and any other statutory obligations that may arise as part of the works

16. The Client shall ensure that reasonable access to the site and facilities are provided, at all reasonable times, to allow the Building Contractor and team to make necessary progress of the project in order to complete the work

18. Gas and electrical work will be certified by the relevant competent person schemes on completion and after full payment has been received

## CDM Notes

### Construction (Design and Management) Regulations 2015

CDM REGULATIONS 2015 The client must abide by the Construction Design and Management Regulations 2015. The client must appoint a contractor, if more than one contractor is to be involved, the client will need to appoint (in writing) a principal designer (to plan, manage and coordinate the planning and design work) and a principal contractor (to plan, manage and coordinate the construction and ensure there are arrangements in place for managing and organising the project).

Domestic clients - The domestic client is to appoint a principal designer and a principal contractor when there is more than one contractor, if not your duties will automatically be transferred to the contractor or principal contractor. The designer can take on the duties, provided there is a written agreement between you and the designer to do so.

The Health and Safety Executive is to be notified as soon as possible before construction work starts if the works: (a) Last longer than 30 working days and has more than 20 workers working simultaneously at any point in the project. Or: (b) Exceeds 500 person days