



Terms & Conditions

Playforce Ltd Terms and Conditions for Design and Build Projects

Please note that these terms headed "Playforce Terms and Conditions for Design and Build Projects" apply to all works projects and any products ordered from Playforce Ltd for installation projects.

1. Definitions

CDM Regulations means the Construction (Design and Management) Regulations 2015.

Customer means the person to whom the Quotation is addressed.

Commencement Date means the date agreed in writing by Playforce Limited for commencement of the Works, as adjusted in accordance with the Contract.

Conditions means these terms and conditions.

Contract means the agreement between Playforce Limited and Customer for the carrying out and completion of the Works by Playforce Limited for the Customer as set out in the Quotation, the Conditions and the Order Acknowledgement.

Defects

- (i) Any part of the Works which is not in accordance with the Contract or any applicable law; or
- (ii) Any part of the Works, the design of which is the responsibility of Playforce Limited, that has not been prepared with the reasonable skill and care to be expected of a suitably qualified designer experienced in the design of works similar in scale and character to the Works or the relevant part of the Works; or
- (iii) Any part of the Works which is not in accordance with the Working Drawings.

Materials means any materials or goods supplied by Playforce Limited for incorporation in the Works.

Order Acknowledgement means the letter from Playforce Limited to the Customer confirming receipt of the Customer's acceptance of the Quotation.

Playforce Limited means Playforce Limited a company registered in England and Wales with company number 03792761 and whose registered office is at 1 Pegasus Way, Bowerhill, Melksham, Wiltshire, SN12 6TR.

Price means the sum stated in the Quotation as the sum to be paid by the Customer to Playforce Limited, as adjusted in accordance with the Contract.

Quotation means the quotation document provided by Playforce Limited to the Customer for the Works to which the Conditions apply.

Site means the site where the Works are to be carried out as referred to in the Order Acknowledgement.

Working Drawings means the drawings, calculations, specification sheets and other documentation, including updates and revisions, that are agreed between the parties, to enable

the Works to be performed.

Works means the design (where so agreed in writing) and construction of the works to be carried out by Playforce Limited as specified in the Quotation.

2. Primary Obligation

- 2.1** Playforce Limited shall, upon and subject to the terms of the Contract, carry out and complete the Works within a reasonable time and be paid the Price (as adjusted pursuant to these Conditions), together with any VAT payable thereon at the rate prevailing at the time of invoice, which shall be payable in accordance with these Conditions.

3. Offer and Acceptance

- 3.1** Unless expressly withdrawn, the Quotation is open for acceptance for three (3) months from its date.
- 3.2** In the event of a conflict or inconsistency between the Contract documents, the order or priority shall be:
- 3.2.1** The Conditions;
 - 3.2.2** The Order Acknowledgement;
 - 3.2.3** The Quotation; and
 - 3.2.4** Any other documents or information supplied by the Customer.
- 3.3** The Customer's acceptance of Playforce Limited's Quotation constitutes an offer by Playforce Limited to the Customer. The Customer's acceptance of that Quotation will only be deemed to be accepted when Playforce Limited issues an Order Acknowledgement to the Customer in respect of that Quotation or, if such offer has not otherwise already been accepted, and the Customer invites Playforce Limited to commence the Works, Playforce Limited' commencing the Works shall constitute acceptance of the Quotation.
- 3.4** The Contract shall come into existence when the Customer's acceptance of Playforce Limited's Quotation is accepted by Playforce Limited in accordance with clause 3.3 above.

4. Performance

- 4.1** Playforce Limited shall carry out the Works using reasonable skill and care.
- 4.2** Where Playforce Limited is responsible for design, Playforce Limited shall use the reasonable skill and care to carry out that design.
- 4.3** Where Playforce Limited is not responsible for design the Customer shall supply to Playforce Limited such number of copies as Playforce Limited may reasonably require of the Working Drawings and of such other details or information necessary for the performance of the Works.
- 4.4** The Customer will provide general attendance free of charge to enable Playforce Limited to carry out and complete the Works in accordance with the Contract. General attendance shall be deemed to include unrestricted access to the Site during the hours of 7am to 6pm on normal working days, the provision of lighting and clean water supplies, distribution boards for lighting and power, security, space for the storage of plant and materials and the use of mess rooms, sanitary accommodation and welfare facilities.
- 4.5** Playforce Limited shall be permitted to carry out the Works to its programme allowing continuity of work in a proper sequential manner.



4.6 Each Party acknowledges that he is aware of and undertakes to the other that in relation to the Works and Site he will duly comply with the CDM Regulations.

4.6.1 If, by the final date for payment in respect of any invoice submitted by Playforce Limited, the Customer fails to pay the full amount stated in any invoice after deducting the amount referred to in Pay Less Notice served in accordance with clause 12.8, Playforce Limited may suspend the performance of all or any of its obligations under this Contract. Such right is subject to Playforce Limited first giving the Customer at least 7 days notice in writing of such intention and stating the grounds for suspension by reference to the invoice concerned and the amount which Playforce Limited states is due. The right to suspend performance of the obligations shall cease on payment of the amount due to Playforce Limited. Any period of suspension shall be disregarded for the purposes of contractual time limits (if any) and the Customer shall pay Playforce Limited a reasonable amount in respect of costs and expenses reasonably incurred by Playforce Limited as a result of the exercise of this clause. Such amount may be claimed in any subsequent invoice for payment issued by Playforce Limited.

4.7 The Customer may cancel the Works at any time before the Commencement Date.

If the Customer cancels the Works, its liability to Playforce Limited arising from the cancellation shall be calculated as follows:

Cancellation more than 6 weeks prior to the Commencement Date: 25% of the Price;

Cancellation 3 – 6 weeks prior to the Commencement Date: 50% of the Price;

Cancellation less than 3 weeks prior to the Commencement Date: 100% of the Price.

5. Statutory Obligations

5.1 Unless otherwise agreed, the Customer at its cost shall make all necessary statutory applications, give all notices and pay all fees required by law or by any government organisation (of any tier), including planning permission, building regulation approval and listed building consent as the same may be modified and amended from time to time and which are necessary for the carrying out and completion of the Works. Playforce Limited shall have no liability and/or responsibility in this respect and neither shall it have any liability and/or responsibility for determining and/or advising the Customer on whether there is any requirement or otherwise to make any such statutory applications and/or to give any such notices as referred to in this clause, including planning permission, building regulation approval and listed building consent.

6. Date for Commencement and Delay to Commencement

6.1 Subject to the Customer complying with any pre-commencement activities including, without limitation, obtaining any relevant consents or permissions, Playforce Limited shall commence the Works on the Commencement Date and shall carry out and complete the Works within a reasonable time.

6.2 Where a delay to the Commencement Date or the Works arises for reasons beyond Playforce Limited's control (including, without limitation a variation pursuant to clause 10 or delay due to making and/or determining statutory applications and/or giving notices in relation to the Works) Playforce Limited shall be entitled to an adjustment in the Price to reflect its reasonable additional costs incurred as a consequence thereof.

6.3 Playforce Limited shall have no financial liability for late completion of the Works.

7. Exclusions from the Works

Playforce Limited shall have no liability, whether in tort (including for negligence or breach of statutory duty), contract, breach of statutory duty, misrepresentation or otherwise to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any damage to underground services on the Site save where Playforce Limited has been advised by the Customer prior to the date of the Contract in writing of the location of underground services on the Site by reference to a detailed plan.

8. Property and Risk

8.1 The risk of loss or deterioration of or damage to the Materials provided by Playforce Limited will be borne by the Customer after 30 days from delivery of the Materials to the Customer save as regards any defect not apparent on reasonable inspection of the Materials at the time of delivery.

8.2 The property in the Materials will not pass to the Customer until the Customer has paid in full all of the sums due and payable to Playforce Limited in accordance with the Contract and until that time the Customer agrees to keep the Materials separate from other goods and materials in such a way as to indicate clearly that they remain Playforce Limited's property and in the condition in which they were delivered or installed by Playforce Limited.

8.3 Following delivery, the Customer shall take all reasonable steps to protect and preserve the Materials in the condition in which they were in upon delivery.

8.4 Except as required, or agreed by Playforce Limited, after property in the Materials has passed to the Customer under this clause 8, the Customer will not in any circumstances return any of the Materials to Playforce Limited and the Customer will not be entitled to a refund in respect of those Materials. Where Playforce Limited agrees to the return of any Materials and the property in any such Materials has passed to the Customer, such Materials will nevertheless remain the Customer's property and at the Customer's risk unless Playforce Limited has agreed otherwise in writing before their return.

9. Instructions

Playforce Limited shall use reasonable endeavours to comply with any instruction and any decision of the Customer issued or made under or pursuant to this Contract in relation to the Works (provided that such instruction or decision shall not change the Works to any material extent) and any such instruction or decision shall have effect except to the extent that it is varied by the Customer or under the dispute resolution procedures under this Contract provided always that such Customer instructions or decisions may only be given by a duly authorised representative of the Customer or a person holding them self out to be a duly authorised representative of the Customer. Playforce Limited shall be entitled to payment of its reasonable additional costs incurred as a consequence of such instruction or decision.

10. Variations

10.1 The Contract is a fixed price lump sum contract.

10.2 The Customer may not make any variation or addition to or omission from the Works or change the Commencement Date without Playforce Limited's consent, which will not be unreasonably withheld. Playforce Limited shall notify the Customer of any amendments to the Price as a result of such change.

10.3 The following events shall be deemed variations to the Works:

10.3.1 Any changes to the Works instructed by the Customer and agreed by Playforce Limited under clause 10.2 above;

10.3.2 All adverse ground conditions which were not reasonably apparent on inspection of the Works prior to the date of the Quotation including but not limited to rock, running sand, unstable ground, excessive water, poor drainage;

10.3.3 Any changes to the ground conditions occurring after the date of Quotation;

10.3.4 The discovery of any service such as gas, electricity, drainage, etc., save where the Customer has advised Playforce Limited of the presence of such service in writing before the date of the Quotation;

10.3.5 Any changes to the access to the Site;

10.3.6 Any other unforeseen circumstances affecting the Works.

10.3.7 Any delay and/or change to the Works which is caused by

10.3.7.1 any inadequate, ambiguous or incorrect information, instructions, designs or specifications that are provided by the Customer;

10.3.7.2 any adverse weather on Site; and



10.3.7.3 a breach by the Customer of its obligations pursuant to clause 19 of these Conditions.

10.4 In the event of a variation under clause 10.3 arising Playforce Limited shall be entitled to an adjustment in the Price to reflect payment of its reasonable additional costs incurred as a consequence thereof and Playforce shall be provided with additional time to complete the Works.

10.5 The amount to be paid or allowed therefore shall be such fair and reasonable sum as shall be determined by Playforce Limited, having regard to the Price.

11. Defects

11.1 The Customer shall allow Playforce Limited a reasonable opportunity to rectify any Defects arising in connection with the Works.

11.2 Playforce Limited's obligations under this clause 11 and in relation to Defects generally do not apply to:

11.2.1 Natural wear and tear of parts meaning any natural consequences or behaviour of the Materials;

11.2.2 Failures due to improper use, non-compliance with the Maintenance Schedule and extreme environmental conditions (climate, humidity, chemicals);

11.2.3 Damage due to use, contrary to the intended use;

11.2.4 Materials supplied by the Customer;

11.2.5 Damage reasonably believed to be caused by vandalism;

11.2.6 UV degradation or discolouration.

11.3 The Customer acknowledges that any natural materials and resources used in the Works may carry natural imperfections such as surface cracks, shakes, knots and holes ("Natural Imperfection"). Any such Natural Imperfections existing in the Works or fair wear and tear, shall not amount to a breach of the terms of the Contract and the Customer shall not be entitled to claim against Playforce Limited in respect of that.

12. Payment

12.1 Unless stated otherwise elsewhere in the Contract, Playforce Limited shall following deemed receipt of the Order Acknowledgement require the Customer to pay a deposit of up to 50% of the value of the Contract.

12.2 Subject to clause 12.1, the Price shall be paid in intervals of not less than one month beginning one month after commencement of the Works, unless the Works are completed before the end of that period, in which case the Price shall be paid on completion of the Works.

12.3 Playforce Limited shall submit to the Customer an invoice for each instalment of the Price specifying the sum that Playforce Limited considers will become due on the payment due date and the basis on which that sum is calculated.

12.4 Payment shall be due on the date the Customer receives each invoice.

12.5 The final date for payment shall be 14 days after the date on which the payment becomes due.

12.6 No later than five days after payment becomes due the Customer shall notify Playforce Limited of the sum that the Customer considers to have been due at the payment due date and the basis on which that sum is calculated (the Payment Notice).

12.7 Unless the Customer has served a notice under clause 12.8, it shall pay Playforce Limited the sum referred to in the Payment Notice (or if the Customer has not served a Payment Notice, the sum referred to in the invoice) (the 'Notified Sum') on or before the final date for payment.

12.8 Not less than five days before the final date for payment the Customer may give to Playforce Limited a notice that it intends to pay less than the notified sum (a Pay Less Notice). Any Pay Less Notice shall specify the sum that the Customer considers to be due on the date the notice is served and the basis on which that sum is calculated.

12.9 If the Customer fails to pay any sum due to Playforce Limited within the time specified herein the Customer shall pay to Playforce Limited, in addition to the sum due, interest thereon calculated in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

13. Guarantees

13.1 Forthwith upon the completion of the Works Playforce Limited shall furnish to the Customer guarantee/s for the completed Works as advised in the Order Acknowledgement provided that all payments due under clause 12 have been paid to Playforce Limited.

13.2 The liability of Playforce Limited under the said guarantee/s shall cease in accordance with the period stipulated on the said guarantee/s, from the date of completion of the Works.

14. Third Parties

Save as otherwise specifically agreed in writing between Playforce Limited and the Customer, no warranty is given to any third party. 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.

15. Termination

15.1 Playforce may terminate the Contract immediately upon receipt by the Customer of a written notice to the Customer at its registered office or last known address or abode, if the Customer has::

15.1.1 become bankrupt or insolvent or compound with creditors, or a resolution be passed or proceedings be commenced for the liquidation of the Customer; or

15.1.2 suspended the Works for a continuous period or combined periods of 3 months or more; or

15.1.3 failed or refused to allow Playforce Limited to commence the Works within the period of 3 months from the date of the Contract';

15.1.4 breached its obligations under this Contract.

15.2 On termination pursuant to clause 15.1, the Customer shall indemnify Playforce in respect of:

15.2.1 all sums that are due to Playforce pursuant to this Contract but have not yet been paid;

15.2.2 all works carried out by Playforce prior to the termination date in accordance with the Contract (including, without limitation, demobilisation costs) which had not yet been invoiced;

15.2.3 all direct and indirect costs, expenses, and losses that Playforce incurs as a result of the termination.

Playforce shall submit an invoice for the payment of these sums in accordance with clause 12 of these Conditions.

15.3 Termination pursuant to this clause 15 shall be without prejudice to any other rights or remedies either party might have under or arising in connection with this Contract.

16. Entire Agreement Clause

16.1 The Contract constitutes the entire agreement between the parties and supersedes and replaces all prior communications, representations, warranties, stipulations, undertakings and agreements whether oral or written between the parties. Each party acknowledges that, in entering into this Contract, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Contract or not) other than as expressly set out in this Contract.

16.2 The Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

16.3 No terms or conditions endorsed on, delivered with or contained in the Customer'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.

16.4 If any provision of this Contract is held to be void or unenforceable, the enforceability of the other provisions shall not be affected.

16.5 No amendment to the terms of this Contract shall be effective and binding unless it is recorded in writing and signed by both parties.



- 16.6** All intellectual property rights, registered or unregistered, including but not limited to patents, trademarks, design rights and know-how remain the property of Playforce and cannot be used by the Customer without Playforce's prior written permission.
- 16.7** Any notices to be given by either party to the other may be served by email, personal service or post to the address of the other party given in the Contract or such other address as such party may from time to time have communicated to the other in writing, or that party's last known registered office, place of business or address. If sent by email or delivered personally, notice is deemed to have been received on the same day it was sent or delivered. If sent by post it shall be deemed to have been served on the second day after the posting.

17. Disputes

- 17.1** The adjudication provisions of the Scheme for Construction Contracts (England and Wales) Regulations 1998 shall apply to the Contract.
- 17.2** Save as above, any dispute arising under the Contract shall be determined by litigation and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales.

18. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 18.1** Nothing in this Contract shall limit or exclude Playforce Limited's liability for:
- 18.1.1** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 18.1.2** fraud or fraudulent misrepresentation; or
- 18.2** breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 18.3** Subject to clause 18.1:
- 18.3.1** Playforce Limited shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill or any indirect or consequential loss; and
- 18.3.2** Playforce Limited's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Works that the event giving rise to liability relates to.
- 18.4** The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

19. Customer's Obligations

- 19.1** The Customer shall:
- 19.1.1** ensure that any applicable specification or information it provides to Playforce Limited meet its requirements and are complete and accurate;
- 19.1.2** co-operate with Playforce Limited in all matters relating to the Works;
- 19.1.3** provide Playforce Limited, its employees, agents, consultants and subcontractors, with access to the Site (including keys, if required), the Customer's premises, office accommodation and other facilities as reasonably required by Playforce Limited;
- 19.1.4** provide Playforce Limited with such information and materials as Playforce Limited may reasonably require in order to supply the Works, and ensure that such information is accurate in all material respects;
- 19.1.5** prepare the Site for the supply of the Works in accordance with the requirements of Playforce Limited;
- 19.1.6** provide Playforce Limited with all relevant information on the nature of the Site including, without limitation, the location of any gas, water, electricity, internet or waste services within the Site;

- 19.1.7** ensure that any preparatory work carried out in accordance with this clause 19.1 is of a sufficient quality to enable Playforce Limited to carry out the Works;
- 19.1.8** obtain and maintain all necessary licences, permissions and consents (including, where relevant, planning permission, building regulations approval and listed building consent) which may be required before the date on which the Works are to start. For the avoidance of doubt, Playforce Limited has no responsibility for advising the Customer what licences, permissions and consents may be required;
- 19.1.9** keep and maintain all materials, equipment, documents and other property of Playforce Limited (Supplier Materials) at the Site in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to Playforce Limited, and not dispose of or use the Supplier Materials other than in accordance with Playforce Limited's written instructions or authorisation;
- 19.1.10** ensure that its insurer is notified of the Works prior to the Commencement Date and that the Works are covered by that insurance. The Customer shall add the Supplier as a joint named insured on that policy of insurance for the duration of the Works
- 19.1.11** ensure that its staff, representatives, agents and all those persons on Site that are not under Playforce's control, follow any site rules prepared by Playforce and do not interfere or delay the performance of the Works
- 19.2** If Playforce Limited's performance of any of its obligations under the Contract in respect of the Works is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- 19.2.1** Playforce Limited shall without limiting its other rights or remedies have the right to suspend performance of all or any part the Works until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Playforce Limited's performance of any of its obligations;
- 19.2.2** Playforce Limited shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Playforce Limited's failure or delay to perform any of its obligations as set out in this clause 19.2; and
- 19.2.3** the Customer shall indemnify Playforce Limited on written demand for any costs or losses sustained or incurred by Playforce Limited arising directly or indirectly from the Customer Default by way of an adjustment to the Price.