

**TERMS AND CONDITIONS FOR PRIVATE HOME OWNERS**

**PEBBLES OF SALCOMBE LIMITED**

## **AGREED TERMS**

### **1. INTERPRETATION**

- 1.1 The definitions in this clause apply to these Terms:
- a. Force Majeure Event: shall have the meaning given in clause 9.
  - b. Order: your order for the Services.
  - c. Order Confirmation: shall have the meaning set out in clause 2.5(b).
  - d. Services: the services that we are providing to you as set out in the Order.
  - e. Terms: the terms and conditions set out in this document.
  - f. We/us: Pebbles of Salcombe LTD (CRN: 06545400)
  - g. Writing or written: includes faxes and e-mail.
- 1.2 Headings do not affect the interpretation of these Terms.

### **2. BASIS OF SALE**

- (a) We consider these Terms, the Order and our price list to set out the whole agreement between you and us for the supply of the Services. These Terms only apply to our contracts with private home owners.
  - (b) Please check that the details in these Terms and on the Order are complete and accurate before you commit yourself to the contract. If you think that there is a mistake, please make sure that you ask us to confirm any changes in writing, as we only accept responsibility for statements and representations made in writing by our authorised employees and agents.
  - (c) Please ensure that you read and understand these Terms before you sign and return the Order, because you will be bound by the Terms once a contract comes into existence between us, in accordance with *clause 2.5*.
- 2.2 Any samples, drawings, descriptions or advertising we issue, and any descriptions or illustrations contained in our catalogues or brochures, are issued or published solely to provide you with an approximate idea of the Services they describe. They do not form part of the contract between you and us or any other contract between you and us for the supply of the Services.
- 2.3 If any of these Terms are inconsistent with any term of the Order, the Order shall prevail.
- 2.4 The Order is an offer by you to enter into a binding contract with us, which we are free to accept or decline at our absolute discretion.
- 2.5 These Terms shall become binding on you and us when:

- (a) we issue you with written acceptance of an Order; or
- (b) we notify you that we are able to provide the Services,

whichever is the earlier, at which point a contract shall come into existence between us.

- 2.6 Any quotation for the Services is given on the basis that a binding contract shall only come into existence in accordance with *clause 2.5*.
- 2.7 You may within 28 calendar days of placing an Order amend or cancel an Order by providing us with written notice. If you amend or cancel an Order, your liability to us shall be limited to payment to us of all costs we reasonably incur in fulfilling the Order until we receive your amendment or cancellation. However, where the amendment or cancellation is due to our failure to comply with these Terms you shall have no liability to us for it. The contract between us is not otherwise capable of termination before the end of the minimum term specified in the Order
- 2.8 We have the right to revise and amend these Terms from time to time to reflect changes in market conditions affecting our business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in our system's capabilities. You will be subject to the policies and terms in force at the time that you order the Services from us, unless any change to those policies or these Terms is required by law or government or regulatory authority in which case it will apply to orders you have previously placed that we have not yet fulfilled. If the services are ongoing, we will give you prior notice of any changes to these Terms.

### **3. QUALITY OF SERVICES**

- 3.1 Unless we are prevented from doing so by a Force Majeure Event, we will provide Services which:
  - (a) conform in all material respects with their description;
  - (b) are carried out with reasonable care and skill;
  - (c) are fit for any purpose we say the Services are fit for, or for any purpose for which you use the Services and about which you have informed us, or we could reasonably expect you to use the Services;
  - (d) are free from material defects in design, material and workmanship; and
  - (e) comply with all applicable statutory and regulatory requirements for supplying the Services in the United Kingdom.
- 3.2 This warranty is in addition to your legal rights in relation to Services which are not carried out with reasonable skill and care or which otherwise do not conform to these

Terms. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

- 3.3 These Terms apply to any replacement Services we supply to you in the unlikely event that the original Services do not conform to these Terms.
- 3.4 You must provide us, in sufficient time, with any information and instructions relating to the Services that is or are necessary to enable us to provide the Services in accordance with these Terms.
- 3.5 If you do not, or you provide us with incomplete, incorrect or inaccurate information or instructions, we may cancel the Order by giving you written notice, or we may make an additional charge of a reasonable sum to cover any extra work that is required.
- 3.6 We only supply the Services for domestic and private use, and you agree not to use the Services for any commercial purpose.
- 3.7 It is your responsibility to ensure your property complies with the statutory requirements, such as fire risk assessments, PAT testing and gas safety certificates etc, and that you maintain your appliances in a good and proper condition. If you require assistance in complying with this clause, please contact us.
- 3.8 You are responsible for keeping and maintaining valid buildings and contents insurance of your property.
- 3.9 You must nominate one individual as the sole point of contact with us and let us have the contact details. You agree that we are entitled to accept instructions from that one person.
- 3.10 You will use our on-line portal to confirm occupancy arrangements or dates on which work is to be carried out at your property at all times. You may only notify us of this by other means if we have agreed in writing.

#### **4. PROVISION OF SERVICES**

- 4.1 We will supply the Services to you from the date set out in the Order.
- 4.2 We will make every effort to complete the Services on time but there may be delays due to circumstances beyond our control. In this case we will complete the Services as soon as reasonably possible.

4.3 We may have to suspend the Services if we have to deal with technical problems, or to make improvements to the Service. We will let you know in advance where this occurs, unless the problem is urgent or an emergency.

## **5. DEFECTIVE SERVICES**

5.1 In the unlikely event that the Services do not conform to these Terms, please let us know as soon as possible after we have carried them out. We will:

- (a) Re-perform the Services; or
- (b) provide you with a full or partial refund ,depending on what is reasonable;

5.2 These Terms will apply to any replacement Services we supply to you.

## **6. INTELLECTUAL PROPERTY RIGHTS**

6.1 The copyright, design right and all other intellectual property rights in any materials and other documents or items that we prepare or produce for you in connection with the Services will belong to us absolutely.

6.2 You may not use the materials, documents or other items detailed in *clause 6.1* for any commercial purpose.

## **7. PRICE AND PAYMENT**

7.1 The price of the Services will be as set out in the quotation we provided to you or, if we have not provided a quotation or the quotation have expired, in our price list in force at the time we confirm your Order. Prices are liable to change at any time, but price changes will not affect Orders that we have confirmed in writing.

7.2 We may invoice you for the Services as agreed in the Order. You must pay the invoice in cleared monies within the time period set out in the Order.

7.3 If you do not make any payment due to us by the due date for payment (as set out in *clause 7.4*), we will charge you a late payment fee of £20, in addition, we may charge interest to you on the overdue amount at the rate of 5% a year above the base lending rate of Lloyds TSB from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with the overdue amount.

7.4 Without limiting any other remedies or rights that we may have, if you do not pay us on time, we may cancel or suspend our performance of the Services or any other outstanding Order until you have paid the outstanding amounts.

7.5 *clause 7.3* and *clause 7.4* shall not apply for the period of the dispute if you dispute the payment owing in good faith and let us know within 7 days after you have received the invoice that you dispute it.

7.6 You must pay a 75% deposit for any order over £400 for an individual service item as set out on your Order. You will be invoiced for the remainder on completion of the service as set out on your Order.

## **8. LIMITATION OF LIABILITY**

8.1 Subject to *clause 8.2*, if either of us fails to comply with these Terms, neither of us shall be responsible for any losses that the other suffers as a result, except for those losses which we or you could reasonably foresee would result from the failure to comply with these Terms.

8.2 Neither of us shall be responsible for losses that result from our failure to comply with these Terms including, but not limited to, losses that fall into the following categories:

- (a) loss of income or revenue;
- (b) loss of business;
- (c) loss of anticipated savings; or
- (d) loss of data.

However, this clause 8.2 shall not prevent claims for foreseeable loss of, or damage to, your or your visitors' physical property where there is proven fault on the part of our staff. We maintain Public and Products Liability Insurance up to the sum of £1,000,000.

8.3 This clause does not include or limit in any way our liability for:

- (a) death or personal injury caused by our negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or
- (e) any other matter for which it would be illegal or unlawful for us to exclude or attempt to exclude our liability.

8.4 We are not responsible or liable for contractors, such as plumbers or electricians who you may engage from time to time. If you request us to instruct a contractor, their fee will be payable as a disbursement on your invoice and you will be charged an

arrangement fee in accordance with the Order, which will be payable on your next invoice.

## **9. EVENTS OUTSIDE OUR CONTROL**

9.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by events outside our reasonable control (Force Majeure Event).

9.2 A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes, in particular (without limitation), the following:

- (a) strikes, lock-outs or other industrial action; or
- (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; or
- (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; or
- (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; or
- (e) impossibility of the use of public or private telecommunications networks.

9.3 Our obligations under these Terms are suspended for the period that the Force Majeure Event continues, and we will extend the time to perform these obligations for the duration of that period. We will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which our obligations under these Terms can be performed despite the Force Majeure Event.

## **10. TERMINATION**

10.1 Either of us may terminate this arrangement at any time after the expiry of the minimum term stated in the Order by providing the other party with 30 calendar days' prior notice in writing.

10.2 Termination will not affect either party's outstanding rights or duties, including our right to recover from you any money you owe to us under these Terms.

10.3 You shall not, without the prior written consent of us, at any time from the date of this agreement to the expiry of 6 months after the last date of supply of the Services termination of this agreement, solicit or entice away from us or employ or attempt to employ any person who is, or has been, engaged as an employee or subcontractor of us in the provision of the Services.

- 10.4 Any consent given by us in accordance with clause 10.3 shall be subject to you paying to us a sum equivalent to 20% of the then current annual remuneration of the our employee or subcontractor or, if higher, 20% of the annual remuneration to be paid by you to that employee or subcontractor.

## 11. ASSIGNMENT

You may not transfer any of your rights or obligations under these Terms to another person without our prior written consent, which we will not withhold unreasonably. We can transfer all or any of our rights and obligations under these Terms to another organisation, but this will not affect your rights under these Terms.

## 12. NOTICES

All notices sent by you to us must be sent to Pebbles of Salcombe Limited at Brewery Quay, Island Street, Salcombe, Devon, TQ8 8DP. We may give notice to you at either the e-mail or postal address you provide to us in the Order. Notice will be deemed received and properly served 24 hours after an e-mail is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, which the e-mail was sent to the specified e-mail address of the addressee.

## 13. DATA PROTECTION

- 13.1 We will only use the personal information you provide to us to provide the Services, or to inform you about similar services, unless you tell us that you do not want to receive this information.

## 14. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 14 shall survive termination of the Contract.



## **15. GENERAL**

- 15.1 If any court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.
- 15.2 If we fail, at any time while these Terms are in force, to insist that you perform any of your obligations under these Terms, or if we do not exercise any of our rights or remedies under these Terms, that will not mean that we have waived such rights or remedies and will not mean that you do not have to comply with those obligations. If we do waive a default by you that will not mean that we will automatically waive any subsequent default by you. No waiver by us of any of these Terms shall be effective unless we expressly say that it is a waiver and we tell you so in writing.
- 15.3 A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.
- 15.4 These Terms shall be governed by English law and you and we both agree to the non-exclusive jurisdiction of the English courts.