

Standard Terms and Conditions – Works

The Contract Documents constitute the entire agreement for the Works, to the exclusion of any other terms or conditions.

The Guinness Partnership Limited (TGPL) is a charitable Community Benefit Society No. 31693R registered in England and is a Registered Provider of Social Housing No. 4729 whose registered office is situated at 30 Brock Street, Regent's Place, London NW1 3FG which shall include its successors and permitted assigns. For clarity, reference to The Guinness Partnership Limited will also include its subsidiaries.

Only to the extent there is direct conflict between the Conditions and any specifically negotiated written terms negotiated between the Supplier and TGPL which (i) are signed by both parties, and (ii) relate to the Works only, the provisions of those specific terms shall prevail.

Unless otherwise agreed in writing and signed by TGPL any Works carried out shall be taken as conclusive acceptance of the terms set out in this Contract.

1 Definitions and Interpretation

Conditions means these Conditions of Contract.

Contract means the Contract constituted by the Contract Documents.

Contract Documents means these Conditions, the Works Order and any TGPL Specification.

Intellectual Property Rights means all Intellectual Property Rights (including without limitation patents, trademarks, designs, design rights, copyright, inventions, trade secrets, know-how and confidential information) and all applications for protection of any of the same.

Supplier means the person or persons, firm or company named on the Order and includes the Supplier's personal representatives, successors and permitted assignees.

TGPL Specification means any specification or description of requirements provided by TGPL and any proposal made by the Supplier if accepted by TGPL.

Works means the Works and associated services and supplies as described in the Works Order.

Works Order means the Works Order issued by TGPL for the Works together with such supporting documents as may be issued to the Supplier.

2 Basis of Contract

2.1 The Contract shall be deemed to be accepted on the earlier of the Supplier issuing written acceptance of the Works Order and any act by the Supplier consistent with performing the Contract.

2.2 The Supplier shall from the date set in the Works Order or the date on which it first carries out the Works (whichever is earlier) and for the duration of this Contract carry out the Works in accordance with the terms of the Contract Documents.

2.3 The Supplier warrants to TGPL that it has exercised and shall continue to exercise in carrying out any design or specification required for the Works all the reasonable skill and care to be expected from a qualified and competent supplier experienced in carrying out works of a similar scope and complexity to the Works.

2.4 The Supplier shall carry out the Works in a good and workmanlike manner.

2.5 Without prejudice to clauses 2.1 to 2.4 above, the Supplier shall ensure that the completed Works shall conform with and fulfil in all respects all necessary licences and consents, and that it shall comply in the carrying out of the

Works with all applicable laws and regulations including without limitation in relation to the protection of the environment and health and safety.

2.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Works, and shall allow TGPL to inspect such records at all reasonable times on request.

3 The Contract Price and Invoicing

3.1 The sum payable to the Supplier for the satisfactory completion of the Works shall be as set out in the Works Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Works. Such charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Works. Each Works Order shall contain a unique Works Order reference number.

3.2 The Supplier shall send TGPL an application for payment in respect of the relevant Works Order on completion of the Works or, where specified in the Works Order, on completion of specified sections of the Works but not more frequently than once in each calendar month.

3.3 Each application for payment submitted by the Supplier shall set out (a) the Works Order number, (b) the TGPL regional/area office which issued the Works Order, (c) the property where the Works are to be undertaken, (d) a brief description of the Works, (e) the amount which the Supplier considers is due and the basis for that calculation. The due date for each payment shall be the date of the application for payment (the "Due Date"). The final date for payment shall be thirty (30) days following the Due Date (the "Final Date for Payment").

3.4 Within five (5) days from each Due Date, TGPL may issue a notice setting out the sum it considers to be payable and the basis for that calculation (a "Payment Notice") and/or no later than two (2) days before the Final Date for Payment may issue a notice setting out the sum it considers to be payable and the basis of that calculation (a "Pay Less Notice").

3.5 The amount payable by TGPL in relation to each application for payment shall be the amount set out in any Pay Less Notice, or where no Pay Less Notice is issued the amount set out in the Payment Notice, or

where no Pay Less Notice or Payment Notice is issued the amount set out in the application for payment.

- 3.6 Each application for payment must be issued to the Payments Processing at Bower House, 1 Stable Street, Hollinwood, Oldham OL9 7LH.
- 3.7 TGPL shall not be under any obligation to make payment in relation to any application for payment which does not satisfy the requirements of this Contract.

4 Delivery and Time for Performance

- 4.1 In respect of performance of the Contract by the Supplier, time shall be of the essence and subject to clause 4.3 no extension to any date and/or time for delivery, performance and/or completion of the Works specified in the Works Order shall be permitted without the written consent of TGPL.
- 4.2 If the Supplier requires access to TGPL's premises, facilities or storage, the Supplier shall comply with the reasonable requirements of TGPL concerning access and access shall be at the Supplier's risk.
- 4.3 Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from providing any of the Services for more than two weeks, TGPL shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.
- 4.4 The Supplier shall carry out the Works regularly and diligently.

5 Intellectual Property Rights

- 5.1 The Supplier hereby grants to TGPL an irrevocable, royalty free licence to use and copy any documents and information produced by the Supplier or on the Supplier's behalf in connection with this Contract (the "Documents") for any purpose whatsoever connected with the Works or the property which is the site of the Works. The licence shall survive termination of this Contract, carries the right for TGPL to grant sub-licences in similar terms and shall be transferable.
- 5.2 The Supplier hereby warrants that TGPL's (and its transferees and sub-licencees') use of the Documents shall not infringe the intellectual property rights of any third party and indemnifies TGPL against any losses, claims, expenses or similar which it incurs as a result of the Supplier's breach of this clause 5.2.

6 Indemnity and Insurance

- 6.1 Without prejudice to any rights of TGPL, the Supplier shall indemnify TGPL against all matters of any kind arising in contract, tort, statute or otherwise directly or indirectly out of the wrongful act, default, statement (whether in writing or otherwise), breach of contract or negligence of the Supplier, its sub-contractors, employees or agents in the course of or in connection with the Contract.
- 6.2 The Supplier shall effect and maintain during the Contract public and employer's liability and other insurances with a reputable company necessary to cover the risks contemplated by the Contract and shall at the request of

TGPL produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due under such policies. Public liability cover of at least £10 million in relation to each and every event shall be obtained, unless agreed otherwise with TGPL in writing.

- 6.3 The Supplier shall maintain professional indemnity insurance at such level as is specified in the Works Order or, where no such level is specified, with a minimum limit of indemnity of £5 million in respect of each and every claim and without unusual or onerous conditions.

7 Confidentiality and Information

The Supplier shall keep in strict confidence all information provided by or on behalf of TGPL in connection with the Contract. The Supplier shall not disclose any such information save as required by law or to the extent that such disclosure is strictly required in order for the Supplier to fulfil its obligations to TGPL in relation to the Works. Where such disclosure is required, the Supplier shall ensure that any party to whom information is disclosed is subject to confidentiality obligations equivalent to those in this clause 7. This clause 7 shall survive termination of the Contract.

8. Termination

- 8.1 Without prejudice to clause 8.2, TGPL may by notice in writing terminate the Contract in whole or in part (and enter upon and expel the Supplier from TGPL's premises or site to which the Supplier has been given access) if any of the following events occur. No minimum or particular period of notice shall be required but the notice shall state the date on which it takes effect:
 - 8.2 the Supplier has failed to complete the Works within a reasonable time or by such date(s) as are specified in the Works Order;
 - 8.3 the Supplier has materially breached the Contract;
 - 8.4 the Supplier has (without reasonable cause) failed to proceed regularly and diligently with the Works or (without lawful reason) suspends performance of the Works;
 - 8.5 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 8.6 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 8.7 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company);

- 8.8 the Supplier (being an individual) is the subject of a bankruptcy petition order;
- 8.9 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 8.10 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- 8.11 a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 8.12 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- 8.13 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.1.4 to clause 8.1.11 (inclusive);
- 8.13.1 the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- 8.13.2 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 8.14 TGPL may at any time and without having to give any reason terminate the Supplier's engagement in relation to the Works by not less than ten (10) days written notice.
- 8.15 Notwithstanding any other provision of this Contract, TGPL shall have no liability whatsoever to the Supplier as a result of its termination of the Supplier's appointment in accordance with this clause 8 other than that following termination in accordance with clauses 8.2 or 4.3 only, the Supplier shall be entitled to be paid for Works carried out in accordance with this Contract prior to the date of termination but shall not be entitled to be paid any other or greater amount including, without limitation, in respect of any lost profits, lost opportunities or similar.

9 Assignment and Sub-contracting

- 9.1 The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of TGPL.
- 9.2 TGPL may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

10 Disputes

- 10.1 In the event of a dispute between the parties or any action which could result in a dispute or difference arising between them, the parties agree first to try to settle the disagreement by mediation.
- 10.2 The mediation shall be commenced by giving a written notice to the other party at the address given for that party in the Order (unless a different address is notified to the other party). The notice shall include a brief statement of the matter or matters which it is desired to settle by mediation and a brief statement of the relief or remedy sought.
- 10.3 The mediation will be carried out by nominees of TGPL and the Supplier, who should preferably be directors of the parties not personally involved with the Contract.
- 10.4 If the nominees have been unable to resolve the disagreement within twenty-eight (28) Working Days of the notice commencing the mediation, clause 8.5 will apply.
- 10.5 Where clause 10.4 applies, either party may forthwith commence proceedings in the courts of England and Wales.

11 Third Party Rights

A person who is not a party to the Contract shall not have any rights under or in connection with it pursuant to the Contracts (Rights of Third Parties) Act 1999.

12 Waiver

- 12.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

13 Governing Law

The Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Court.