

TERMS AND CONDITIONS OF BUSINESS - COMMERCIAL CUSTOMERS ONLY

August 2021

BACKGROUND

These Terms and Conditions of Business shall apply to the provision of painting and decorating services by Concept Coatings Specialist Limited trading as Concept Coatings of Unit 1 Little Cold Harbour Farm, Tong Lane, Lamberhurst, Kent mTN3 8AD ("the Contractor") to customers that require painting and decorating services or specialist coatings.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Agreement"	means the contract into which the Customer and Contractor will enter on the Customer's acceptance of the Quote and of these Terms and Conditions which shall incorporate, and be subject to, these Terms and Conditions;
"Agreed Date"	means the date on which the provision of the Services will commence as agreed by the Customer and Contractor;
"Agreed Times"	means the times which the Customer and Contractor shall agree upon during which the Contractor shall have access to the Property to render the Services;
"Business Day"	means, any day (other than Saturday or Sunday) excluding UK bank and public holidays.
"Confidential Information"	means, in relation to either Customer or Contractor, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
"Customer"	means the individual or business that requires the Services subject to these Terms and Conditions of Business;
"Final Fee"	means the total of all sums payable which shall be shown on the Invoice issued in accordance with Clause 4 of these Terms and Conditions.
"Job"	means the complete rendering of the Services;
"Party" "Parties"	means the Customer or Contractor in the singular, and both Customer and Contractor in the plural.

“Products”	means the products, (including materials, sundries and equipment) required to render the Services which the Contractor shall procure and supply (unless otherwise agreed);
“Property”	means the Customer’s property or premises, as detailed in the Quote or Order, at which the Services are to be rendered;
“Quote”	means a quote detailing proposed fees and services to be supplied to the Customer (including but not limited to, materials, sundries and equipment) in accordance with Clause 2 of these Terms and Conditions;
“Quoted Fee”	means the Fee which will be quoted to the Customer following the Order which may vary according to the actual work undertaken as set out in Clause 4 of these Terms and Conditions;
“Quote Request”	means the Customer’s initial request for a Quote (and site survey booking if necessary) to provide the Services from the Contractor as set out in Clause 2 of these Terms and Conditions;
“Services”	means the painting and decorating services provided by the Contractor as detailed in Clause 5 of these Terms and Conditions;
“Visit”	means any occasion, scheduled or otherwise, on which the Contractor shall visit the Property to render the Services; and
“Website”	means our Website at www.concept-coatings.co.uk
“Work Area”	means the part of the Property within which the Services are to be rendered.

- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
 - 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 a "Party" or the "Customer and Contractor" refer to the parties to the Agreement.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

2. QUOTE REQUESTS

- 2.1 The Contractor accepts requests for Quote for his Services through email correspondence.
- 2.2 When making a request for a Quote, the Customer shall set out, in detail, the Services required. Details required include the location and size of project.
- 2.3 Once the Quote Booking is complete, the Contractor shall prepare and submit a Quotation to the Customer either by email or first class post which shall set out the required Deposit and Fee, detailed in Clauses 3 and 4 respectively.
- 2.4 The Customer shall be free to make changes to the Quote prior to acceptance. The Customer may accept the Quote by signing the bottom of the Quote and returning to the Contractor, or by email, or first class post. Acceptance by text messaging or via messaging applications are accepted on the strict proviso that such acceptance is promptly sent by email.

3. DEPOSIT

- 3.1 At the time of accepting the Quote or not more than seven (7) days thereafter the Customer shall be required to pay a Deposit to the Contractor. The Deposit shall be a sum determined solely and entirely by the Contractor and clearly stated on the Quote. Quotes shall not be deemed accepted and confirmed until the Deposit is paid in full.
- 3.2 The Contractor reserves the right, at his sole and entire discretion, to waive the requirement to pay any Deposit. Any such waiver shall not negate or sever any terms and conditions herein or any part of the Agreement. In absence of a Deposit, for the avoidance of doubt, the Agreement between Customer and Contractor becomes legally binding on the Customer and Contractor on commencement date as agreed or when materials, sundries and equipment have been ordered, whichever the sooner.
- 3.3 Subject to the provisions of Clause 7 the Deposit shall be non-refundable.

4. FEES AND PAYMENT

- 4.1 The Quoted Fee shall include the price payable for the Services and for the estimated materials, sundries and equipment required to render the Services.
- 4.2 The Contractor shall use all reasonable endeavours to use only the materials, sundries and equipment (and quantities thereof) set out in the Quote; however if additional materials, sundries and equipment are required the Final Fee shall be adjusted to reflect this. Any such increases shall be kept to a minimum.
- 4.3 In the event that the price of materials, sundries and equipment or services increases during the period between the Customer's acceptance of the Quote and the commencement of the provision of the Services, the Contractor shall inform the Customer of such increase and of any difference in the Final Fee.

- 4.4 The Contractor shall invoice the Customer (and send by email) when the provision of the Services is complete, or where Customer and Contractor agree to phased rendering of Services, immediately upon expiry of the relevant agreed phase completion date(s). Where the provision of Services is ongoing or no date(s) have been expressly agreed, the Contractor reserves the right to invoice for Services provided to date, at least each calendar month.
- 4.5 All invoices must be paid within seven days (7) of Invoice Date and payment must be made to the Contractor's nominated account, by electronic BACS/CHAPS (at Customer's cost), as stated on the invoice.
- 4.6 Any sums which remain unpaid following the expiry of the time period set out in sub-Clause 4.5 shall incur statutory charges and interest on a daily basis at 8% above the base rate of nominated bank obtaining at the time in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended)

5. SERVICES

- 5.1 The Services shall be rendered in accordance with the specification set out in, or annexed to, the accepted Quote (as may be amended by mutual agreement from time to time).
- 5.2 The Contractor may provide images, drawings, sketches, impressions, plans or similar documents in advance of the Job. Any such material is intended for illustrative purposes only and is not intended to provide an exact specification of the Job nor to guarantee specific results.
- 5.3 The Contractor shall ensure that the Services are rendered with reasonable care and skill and to a reasonable standard which is commensurate with best practice in the painting and decorating trade.
- 5.4 The Contractor shall ensure that he complies with any and all relevant statutory codes of practice.
- 5.5 While rendering the Services the Contractor shall ensure that furniture, flooring and any surfaces in the Work Area that are not the subject of the Services are suitably covered and protected for the duration of the Job.
- 5.6 [The Contractor shall properly dispose of all waste that results from his rendering of the Services.]
- 5.7 Time shall not be of the essence in the rendering of the Services under these Terms and Conditions or under the Agreement.
- 5.8 Following completion of the Job the Customer shall have a period of seven days time within which to inspect the completed work and to notify the Contractor of any snagging defects. The Contractor shall correct any such snagging defects at no additional cost to the Customer provided such snagging defects are not due to the negligence of others, including other tradespeople.

6. CUSTOMER'S OBLIGATIONS

- 6.1 If any consents, licenses or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Customer's responsibility to obtain the same in advance of the commencement of the Services.
- 6.2 The Contractor may require the removal of certain furniture, fixtures and fittings in the Property prior to the commencement of the Services. Unless specifically agreed otherwise any such removal shall be the responsibility of the Customer.
- 6.3 The Customer shall ensure that the Contractor can access the Property at the Agreed Times to render the Services.
- 6.4 The Customer shall have the option of giving the Contractor a set of keys to the Property or being present at the Agreed Times to give the Contractor access. The Contractor warrants that all keys shall be kept safely and securely.
- 6.5 The Customer shall ensure that the Contractor has access to electrical outlets, toilet, sanitation and a supply of hot and cold running water.
- 6.6 The Customer must give the Contractor at least 24-hours notice if the Contractor will be unable to provide the Services on a particular day or at a particular time. The Contractor will not invoice for cancelled Visits provided such notice is given. If less than 24-hours notice is given the Contractor shall invoice the Customer at his normal rate.

7. CANCELLATION OR RESCHEDULE

- 7.1 The Customer may cancel or reschedule the Job at any time before the Agreed Date. The following shall apply to cancellation or rescheduling:
 - 7.1.1 If the Customer cancels the Job more than 28-DAYS before the Agreed Date the Contractor shall issue a full refund of all sums paid, including the Deposit.
 - 7.1.2 If the Customer reschedules the Job more than 28-DAYS before the Agreed Date the Contractor shall retain all sums paid, including the Deposit and shall deduct all such sums from any related balance payable on the rescheduled Job.
 - 7.1.3 If the Customer cancels the Job less than 28-DAYS but more than 14-DAYS before the Agreed Date the Contractor shall refund any sums paid less the Deposit and the cost of customised materials, sundries and equipment.
 - 7.1.4 If the Customer reschedules the Job less than 28-DAYS but more than 14-DAYS before the Agreed Date the Contractor shall retain any sums paid including the Deposit and shall deduct all such sums (excluding the Deposit) from any balance payable on the rescheduled Job. A new Deposit shall be payable on the rescheduled Job.

- 7.1.5 If the Customer cancels the Job less than 14-DAYS before the Agreed Date the Contractor shall retain all sums paid and any outstanding sums shall become immediately payable. No refund shall be issued.
- 7.1.6 If the Customer reschedules the Job less than 14-DAYS before the Agreed Date the Contractor shall retain all sums paid and any outstanding sums shall become immediately payable. No refund shall be issued and no sums paid will count toward the Fees and Deposit payable on the rescheduled Job.
- 7.2 The Contractor may cancel the Job at any time before the Agreed Date and shall refund all sums paid, including the Deposit.

8. LIABILITY, INDEMNITY AND INSURANCE

- 8.1 The Contractor shall ensure that he has in place at all times suitable and valid insurance which shall include public liability insurance.
- 8.2 The Contractor's total liability for any loss or damage caused as a result of his negligence or breach of these Terms and Conditions or of the Agreement shall be limited to £5 MILLION
- 8.3 The Contractor is not liable for any loss or damage suffered by the Customer which results from the Customer's failure to follow any instructions given by the Contractor. Further, the Contractor is not liable for any loss or damage suffered by the Customer where the Customer had instructed their own tradespeople to carry out any work in the Work Area.
- 8.4 Nothing in these Terms and Conditions shall limit or exclude the Contractor's liability for death or personal injury.
- 8.5 The Contractor shall indemnify the Customer against any costs, liability, damages, loss, claims or proceedings arising out of the Contractor's rendering of the Services or any breach of these Terms and Conditions.
- 8.6 The Customer shall indemnify the Contractor against any costs, liability, damages, loss, claims or proceedings arising out of the Customer's failure to meet any of its obligations or any other breach of these Terms and Conditions.

9. GUARANTEE

- 9.1 The Contractor guarantees that the workmanship and/or product of all Services provided shall be free from any and all defects for a period of 12 MONTHS following completion of the Job. If any defects in workmanship and/or product of the Services appear during the guarantee period set out in sub-Clause 9.1 the Contractor shall rectify any and all such defects at no cost to the Customer, excluding any cracks in new buildings (including extensions) which the builder or developer is liable in the first two years.

10. DATA PROTECTION

- 10.1 The Contractor will only use the Customer's personal information as set out in the Contractor's Privacy Policy and Data Protection available from www.concept-coatings.co.uk

11. CONFIDENTIALITY

- 11.1 Except as provided by sub-Clause 11.2 or as authorised in writing by the other Party, each Party shall, at all times during the continuance of the Agreement and for TWO years after its termination:

11.1.1 keep confidential all Confidential Information;

11.1.2 not disclose any Confidential Information to any other party;

11.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;

11.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

11.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 11.1.1 to 11.1.4 above.

- 11.2 Either Party may:

11.2.1 disclose any Confidential Information to:

11.2.1.1 any sub-contractor or supplier of that Party;

11.2.1.2 any governmental or other authority or regulatory body; or

11.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 11.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 11, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

11.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.

11.3 The provisions of this Clause 11 shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

12. FORCE MAJEURE

12.1 No Party to the Agreement will be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

12.2 In the event that a Party to the Agreement cannot perform their obligations thereunder as a result of force majeure for a continuous period of SIX MONTHS, the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Customer and Contractor shall agree upon a fair and reasonable payment for all Services completed up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.

13. TERMINATION

13.1 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:

13.1.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within FIVE Business Days of the due date for payment;

13.1.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within FIVE Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;

13.1.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

13.1.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

- 13.1.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
 - 13.1.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 13.1.7 that other Party ceases, or threatens to cease, to carry on business; or
 - 13.1.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of this Clause 13, “control” and “connected persons” shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 13.2 For the purposes of sub-Clause 13.1.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 13.3 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

14. EFFECTS OF TERMINATION

Upon the termination of the Agreement for any reason:

- 14.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
- 14.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain In full force and effect;
- 14.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which exist at or before the date of termination;
- 14.4 subject as provided in this Clause 14 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 14.5 each Party shall (except to the extent referred to in Clause 11) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

15. NO WAIVER

- 15.1 No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

16. FURTHER ASSURANCE

- 16.1 Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

17. COSTS

- 17.1 Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

18. SET OFF

- 18.1 Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

19. ASSIGNMENT AND SUB-CONTRACTING

- 19.1 Subject to sub-Clause 19.2 the Agreement shall be personal to the Customer and Contractor. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.
- 19.2 The Contractor shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of the Contractor.

20. TIME

- 20.1 The Customer and Contractor agree that the times and dates referred to in the Agreement are for guidance only and are not of the essence of the Agreement and may be varied by mutual agreement between the Customer and Contractor.

21. RELATIONSHIP OF THE CUSTOMER AND CONTRACTOR

- 21.1 Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Customer and Contractor other than the contractual relationship expressly provided for in the Agreement.

22. THIRD PARTY RIGHTS

- 22.1 No part of the Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Customer and Contractor) Act 1999 shall not apply to the Agreement.

23. NOTICES

- 23.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

- 23.2 Notices shall be deemed to have been duly given:

23.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

23.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

23.2.3 on the fifth Business Day following mailing, if mailed by national ordinary mail, postage prepaid; or

23.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

24. ENTIRE AGREEMENT

- 24.1 The Agreement contains the entire agreement between the Customer and Contractor with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Customer and Contractor.

- 24.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

25. COUNTERPARTS

- 25.1 The Agreement may be entered into in any number of counterparts and by the Customer and Contractor to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

26. SEVERANCE

- 26.1 In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

27. DISPUTE RESOLUTION

- 27.1 The Customer and Contractor shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 27.2 If negotiations under sub-Clause 27.1 do not resolve the matter within 30 DAYS of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.
- 27.3 If the ADR procedure under sub-Clause 27.2 does not resolve the matter within 30 DAYS of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.
- 27.4 The seat of the arbitration under sub-Clause 27.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Customer and Contractor. In the event that the Customer and Contractor are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.
- 27.5 Nothing in this Clause 27 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 27.6 The decision and outcome of the final method of dispute resolution under this Clause 27 shall be final and binding on both Customer and Contractor.

28. LAW AND JURISDICTION

- 28.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 28.2 Subject to the provisions of Clause 27, any dispute, controversy, proceedings or claim between the Customer and Contractor relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.