

## MERAKI HALO CONTRACTS LTD

### STANDARD TERMS AND CONDITIONS

#### 1. Definitions and Interpretation

In these terms and conditions:-

“**Agreement**” means these terms and conditions together with the Quotation.

“**the Client**” and “**You / Your**” means the party identified in the Quotation as the Client for whom the Project is to be undertaken and includes their successors or personal representatives.

“**Client Own Work**” means any work required by or impacting the Project which is carried out by a party or parties other than the Supplier, including but not limited to tradesmen, architects, surveyors or designers.

“**Completion**” means the stage in the Project identified in the Quotation as when the Project shall be complete.

“**Completion Date**” means the estimated date (if any) specified in the Quotation as the date on which the Project shall be complete.

“**the Quotation**” means the quotation and schedule of works (“**the Schedule**”) including any drawings annexed thereto which is sent to the Client by the Supplier and which sets out the work to be carried out, Contract Price, estimated completion time and such other specific contractual terms as may be appropriate.

“**the Contract Price**” means the price for the Project set out in the Quotation.

“**Instruction**” means the order from the Client for the Project.

“**the Supplier**” and “**We / Us / Our**” means Meraki Halo Contracts Ltd, a Company registered in Scotland (Company Number SC704512) and with its Registered Office at 10 Colin Gibson Drive, Monifieth, Dundee DD5 4HA.

“**Project**” is the work undertaken or service provided by the Supplier for the Client and as set out in the Quotation.

“**the Property**” means the house (including garden or other ground pertaining thereto) or other premises where the Project is being undertaken.

“**the Site**” means the specific location within the Property where the Project work is carried out

“**Working Day**” means Monday to Friday 0800 to 1700 hrs and excludes 25<sup>th</sup> December, 26<sup>th</sup> December, 1<sup>st</sup> January and 2<sup>nd</sup> January.

“**Writing**” includes any written paper document, any fax and any email correspondence.

#### 2. Conditions

2.1 Unless otherwise stated in writing, all orders are accepted subject to these terms and conditions as stated herein and the Client by authorising or allowing work to proceed is deemed to have acknowledged this fact.

2.2 These terms and conditions should be read together with the Quotation and Schedule. If there is any conflict between the Quotation and these terms and conditions, the provisions of the Quotation and Schedule shall prevail.

2.3 The Quotation and Schedule form part of this Agreement and the Client accepts and agrees that the works and materials specified therein meet the requirements of the Client. Whilst The Supplier are happy to advise on what installations and materials might suit the Client's requirements (insofar as stipulated), the Client acknowledges that they are fully responsible for the content of the Schedule once accepted.

2.4 No variation to these terms and conditions shall be binding unless agreed in writing to between the Supplier and the Client.

2.5 The Supplier's employees, agents or sub-contractors are not authorised to make any representations concerning the Instruction or any other aspect of this Agreement unless such authority is confirmed by the Supplier in advance in writing. In entering into the Agreement the Client acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.

### **3. Estimates**

3.1 An estimate by the Supplier is not an offer to contract or an acceptance of any offer of the Client. A contract shall only arise when the Client's order is accepted in writing by the Supplier.

3.2 Unless otherwise stated in writing the Supplier reserves the right to revise or withdraw any estimate prior to acceptance and to vary the estimated Instruction charges should any substantial increase in labour, materials or transport costs occur before commencement of the Project.

3.3 Acceptance of the Instruction is made strictly subject to the availability of sub-contractors. Whilst the Supplier shall endeavour to ensure timely provision of any service ordered, the Supplier reserves the right to select alternative sub-contractors where necessary.

3.4 The works to be carried out shall be as set out in the Quotation.

### **4. Responsibilities of The Supplier**

4.1 The Supplier will carry out and complete the Project in a proper and workmanlike manner using reasonable skill and care.

4.2 We shall take all reasonable precautions to minimise noise, dust and disturbance during the Project but the Client accepts that some noise, dust and disturbance is unavoidable in the execution of work such as will be undertaken during the Project.

4.3 We shall carry out the Project in a way that does not cause risk of injury or damage to the Client, his family or guests or pets.

4.4 Prior to or upon Completion of the Project, we shall remove all rubble, surplus materials, rubbish and tools on the Site and leave it clean and tidy. We will not be responsible for removing any items which you or any third party whom we do not control leave on the Site or the Property.

4.5 Upon completion of the Project we will restore the Site to as near as reasonably possible to its condition as at the commencement of the Project, however the Client understands and accepts that there may nonetheless still be minor imperfections in the condition of the Site as a consequence of the Project which we cannot be responsible for. Where the Supplier is not responsible for project management or is otherwise not in overall control of the work being carried out on the Site however, we cannot be responsible for the condition of the Site following Completion

4.6 The Supplier will carry out the works in accordance with the Schedule agreed with the Client. Although the Supplier and the Client have endeavored to clarify the works to be carried out as fully as possible, the Client accepts that inevitably the finished work may differ in matters of detail from what the Client may have pictured at the time the Schedule was agreed. The Supplier cannot be held responsible for such discrepancies.

### **5. Client Obligations and Undertakings**

5.1 The Client will ensure that the Supplier is provided in good time with all information, decisions and/or approvals which the Supplier requires for the Project.

5.2 The Client will ensure that the Site is cleared and ready for work to commence on the date and at the time specified in the Quotation.

5.3 The Client will allow the Supplier reasonable use of toilet facilities. The Supplier will ensure that such facilities are kept clean and tidy and any mess caused will be cleared up at the end of each day.

5.4 The Client will provide electricity and water at no cost for use by the Supplier for the duration of the Project.

5.5 The Client shall ensure that there is vehicular and pedestrian access to the Site at the commencement and for the duration of the Project.

5.6 The Client shall ensure that there is area adjacent to the entrance used to access the Site which can be used to position a skip for the duration of the Project.

5.7 The Client must notify the insurers of his buildings and contents that the work required by the Project is to be done.

5.8 The Client will provide any reasonable additional assistance which the Supplier may reasonably request during the Project.

5.9 Unless otherwise agreed, it is the Client's responsibility to apply for and obtain all necessary approvals, such as planning permission, building regulation approval and listed building consent prior to commencement of the Project.

## **6. Client Own Work**

6.1 Should any Client Own Work be identified in the Quotation or instructed by the Client at any time, the Client accepts that:-

6.1.1 The Supplier will not be responsible for the performance, safety or quality of such Client Own Work, nor shall we be responsible in any way for the party or parties involved in such Client Own Work;

6.1.2 No liability will be accepted for any delay to Project timescales or any Completion date which is attributable to a party or parties involved in Client Own Work.

6.2 The Client indemnifies the Supplier from any and all claims, suits, damages and/or costs which may arise as a consequence of Client Own Work.

## **7. Price and Payment**

7.1 Payment will be due immediately following Completion of the Project unless otherwise set out in the Quotation, upon receipt by Client of an invoice from the Supplier.

7.2 All prices are inclusive of VAT.

7.3 Payment may be made in cash, by debit/credit card or by electronic bank transfer.

7.4 The Contract Price has been prepared on the basis of Project continuity being maintained. The Supplier reserves the rights to increase the Contract Price to take account of any additional costs caused by delays requested or caused by the Client.

7.5 If you fail to make payment within the period specified in the Quotation then, without prejudice to any other right or remedy available to us, we shall be entitled to:-

7.5.1 suspend performance of the Project; and/or

7.5.2 cancel the Agreement; and/or

7.5.3 charge the Client interest on the amount unpaid, at the rate of 4 per cent per annum above the base rate from time to time of the Royal Bank of Scotland plc, calculated on a daily basis, until payment is made.

7.6 The Supplier will have lien on all materials and installations provided in connection with the Project until all payments due under this Agreement have been received by us.

## **8. Completion**

8.1 The Supplier shall provide the Client with an expected Completion Date for the Project if requested. The Supplier shall use all reasonable endeavours to meet any such estimated completion date but the Client acknowledges that unless agreed otherwise in writing, the time for completion of the Instruction or the Project is not an essential term of this Agreement.

8.2 In the event of any significant delay becoming likely, The Supplier will notify the Client and provide a revised estimate as to timescales. For the avoidance of doubt, the Supplier will have no liability to the Client in respect of any loss suffered by reason of delay in completion of the Project.

## **9. Changes**

9.1 If you wish to change any aspect of the Project, you must let us know as soon as possible. We will advise whether it is possible to implement the change and the effects (if any) on performance, cost and any other matters. If you require the change to be implemented, the parties shall negotiate in good faith the increase or decrease, if any, to the Contract Price arising directly from the implementation of the change.

9.2 Agreed changes shall be documented in Writing.

9.3 If any items or materials specified in the Schedule become unavailable to the Supplier at the price quoted, we will notify the Client providing a revised costing and/or suggested alternative materials. The Client's instructions in response thereto will be treated as a change and subject to the provisions of this clause 8.

## **10. Unforeseen circumstances**

10.1 Notwithstanding the initial Site assessment or survey which will have been conducted prior to the commencement of the Project, the Client accepts that unforeseen circumstances may arise once the Project is underway. Such circumstances may include without prejudice to the foregoing generality, rot, damp or structural issues.

10.2 Should any unforeseen circumstance be encountered, the Supplier will make an assessment of whether the Project can proceed. The Supplier shall be sole arbiter on the matter of whether the Project can proceed. If the Project can proceed but only if additional work requires to be carried out, or there are other implications, we shall discuss this with the Client and agree a way forward. Should additional costs be involved, we shall provide a breakdown of such costs.

10.3 In the event that utility companies or other third party organisations are required to carry out works before the Project can proceed, this will be the Client's responsibility to organise and to project manage unless agreed otherwise. The Supplier will be pleased to undertake the organisation and project management if asked to do so, under separate arrangements.

10.4 In the event that the Project continues following agreement pursuant to sub-clause 10.2, the Project Completion Date, if any, will be adjusted as required. All effects of the unforeseen circumstance on the Contract Price and other terms of this Agreement will be documented in writing.

## **11. Right to Extend**

11.1 The Completion Date or any estimate of Project duration shall be extended by a reasonable period to take account of any one or more of the following:

- 11.1.1 your delayed instructions or lack of instructions in respect of the Project;
- 11.1.2 any changes pursuant to clauses 8 or 9 or the effects of any Client Own Work;
- 11.1.3 any suspension of the Agreement pursuant to clause 12;
- 11.1.4 any matter falling within clause 18 (Force Majeure) or if the work is obstructed by any other matter which we do not control.

## **12. Termination**

A party ('the Initiating Party') may terminate this agreement with immediate effect by written notice to the other party ('the Breaching Party') on or at any time after the occurrence of one or more of the following events:-

- 12.1 the Breaching Party committing a material breach of this agreement and failing to remedy the breach within 30 days starting on the day after receipt of notice from the Initiating Party giving details of the breach and requiring the Breaching Party to remedy it;
- 12.2 the Breaching Party passing a resolution for winding up, a court of competent jurisdiction making an order for the Breaching Party's winding up or the presentation of a petition for the Breaching Party's winding up that is not dismissed within seven days, in each case other than for the purposes of solvent amalgamation or reconstruction in such manner that the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the Breaching Party's obligations under this agreement;
- 12.3 the making of an administration order in relation to the Breaching Party or the appointment of a receiver over, or an encumbrancer taking possession of or selling any asset of, the Breaching Party;  
Or
- 12.4 the Breaching Party making an arrangement or composition with his creditors generally or making an application to a court of competent jurisdiction for protection from his creditors generally.

## **13. Client's right to terminate**

13.1 The Client is entitled to terminate this Agreement within 14 days without any penalty. Up to this point the terms of the Agreement will not operate.

13.2 Should the Client wish to terminate the Agreement after 14 days but prior to Completion, we shall be entitled to payment for all work carried out and costs incurred up to the date of termination.

## **14. Defect Liability**

14.1 In the event of any defect in materials or workmanship then the Client should notify the Supplier as soon as possible in order that the Supplier can have the problem rectified. The Supplier cannot accept responsibility for materials or installations which are specified or provided by the Client for inclusion in the works, or if sub-clause 14.2 applies.

14.2 We will not be responsible for any one or more of the following defects:

- 14.2.1 defects which are due to the conditions of the Site or Property that existed before we began work;  
(This sub-clause 14.2.1 will only apply:

a) If we consider that the condition of the Site, Property, or adjoining property or the access to it may affect the work and we write and tell you this. We will have carried out our duty by giving you that warning. If you still insist that we carry out the work with the Site, Property or adjacent property in this condition, you should confirm this in writing and it will be at your own risk.

b) If the condition of the Site, Property, or adjoining property or the access to it will affect the work and this condition could not be foreseen before the work started.)

14.2.2 defects which are caused by you or any other person or caused by any event, which happens after Completion of the Project;

14.2.3 defects due to wear and tear caused to the materials/installations following completion of the Project, or

14.2.4 anything excluded under sub-clause 6.1.1.

14.3 The Supplier will have no liability whatsoever following a period of 6 months from completion of the works.

14.4 Subject to all of our invoices being settled in full, the Supplier will pass any manufacturers/suppliers warranties they receive on to the Client.

## **15. Liabilities and Insurance**

15.1 The Supplier shall be liable for, and shall indemnify the Client against any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or death of any person arising out of or in the course of or caused by the carrying out of the Project, except to the extent that the same is due to any act or neglect of the Client or of any person for whom the client is responsible.

15.2 The Supplier shall be liable for, and shall indemnify the Client against any expense, liability, loss, claim or proceedings whatsoever in respect of any loss, injury or damage whatsoever to any property real or personal insofar as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Project and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of The Supplier or any person employed or engaged by The Supplier on or in connection with the Project.

15.3 The Supplier shall not be liable to the Client for any indirect or consequential loss the Client may suffer, even if the loss is reasonably foreseeable or the Supplier has been advised of the possibility of the Client incurring it.

15.4 Without prejudice to our obligations to indemnify the Client under clauses 15.1 and 15.2, the Supplier shall take out and maintain (and shall cause any sub-contractors similarly to take out and maintain) insurance in respect of claims arising out of our liability referred to in sub-clauses 15.1 and 15.2.

15.5 The Client is responsible for any loss, injury or damage to any property, existing structures and contents unless it falls within our obligations in sub-clause 15.2. The Client must ensure that adequate insurance is taken out and maintained in respect of the Client's liability under this sub-clause 15.5.

## **16. No Waiver**

Failure or delay by either party in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement. Any waiver by a party of any breach of, or any default under, any provision of the Agreement by the other party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.

## **17. Force Majeure**

17.1 The Supplier shall not be liable for any delay or failure to perform any of its obligations under this Agreement if delay or failure results from events or matters beyond its reasonable control, including but not limited to, acts of God, fire, lightning, explosion, war, disorder, accidents, flood, industrial dispute (whether or not involving its employees), failures or interruptions of electricity supplies, weather of exceptional severity, pandemics or epidemics, acts or omissions of local or central government or other authorities, the acts or omissions of any internet service provider, or the delay or failure in manufacture, production or supply by third parties of equipment or services, and it shall be entitled to a reasonable extension of its obligations after notifying the Client of the nature and extent of such events.

17.2 In the event of suspension variation or cancellation for any of the foregoing reasons or for any other reason beyond the Supplier's control the Supplier shall be entitled to be paid that part of the Contract Price for the services completed up until the time at which any such suspension, variation or cancellation occurs together with any other monies due and owing by the Client to the Supplier.

## **18. Severability**

If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.

## **19. Disputes**

19.1 The parties will attempt in good faith to resolve any dispute or difference which arises out of or in relation to this Agreement.

19.2 Should the dispute or difference not be resolved by the parties in terms of sub-clause 19.1, parties shall attempt to settle it by Mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

## **20. Remedies**

The rights and remedies provided for by this agreement are cumulative with and not exclusive of any rights or remedies provided by law.

## **21. Assignment**

The Client shall not assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this Agreement in whole or in part without the prior written consent of The Supplier, which consent shall not be unreasonably withheld or delayed. The Supplier may subcontract, assign or transfer our obligations or rights to a competent third party or to any associated company whether in whole or in part.

## **22. Entire Agreement**

These terms and conditions together with the Quotation set out the entire understanding of the parties with respect to their subject matter and replace any prior agreements or understandings or representations (unless fraudulent), whether written or oral.

## **23. Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of Scotland the courts of which shall have non-exclusive jurisdiction.