

RE BAZELEY TRADING AS EXPRESS SOLUTIONS
TERMS OF BUSINESS

1. Interpretation

1.1 In these Conditions:

“Customer” means the person who accepts a quotation of RB for the supply of the services or whose order is accepted by RB.

“Services” means the services, work and materials which RB is to supply provide or carry out in accordance with these Conditions.

“RB” means Roy Bazeley (trading as Express Solutions) of Meadowview Station Road Hodnet Shropshire TF9 3JD

“Completion” means the substantial completion of the Services.

“Conditions” means the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and RB.

“Contract” means the contract for the provision of the Services

“Drawings” include, without limitation, drawings and plans, photographs, models, patterns, samples, data and technical information of every description whether written, oral electronic machine readable or three dimensional.

“Input Property” means any Drawings or other materials, and any data and any form of electronic data (including, without limitation, source codes and graphics) or other information provided by the Customer relating to the Services.

“Materials” means any goods or materials and any form of electronic data (including, without limitation, source codes and graphics) which are to be supplied by RB in connection with the Contract

“Output Property” means any Drawings or other materials, any data and any form of electronic data (including, without limitation, source codes and graphics) or other information provided by RB relating to the Services.

“Writing” includes writing and type sent by post or e-mail, facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the sale

2.1 Any estimate or quotation given by RB is an invitation to treat only and is valid for a period of 30 days only (unless previously withdrawn by RB). Any orders issued by the Customer are subject to acceptance in Writing by RB and a binding contract shall not be formed until RB has accepted the Customer’s offer in Writing. Any Contract shall be governed by these Conditions to the exclusion of any other term and conditions subject to which any such quotation is accepted or an order is placed or purported to be accepted or placed by the Customer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Customer and RB.

2.3 RB’s employees or agents are not authorised to make any representations concerning the Services unless confirmed by RB in Writing. In entering into the contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by RB shall be subject to correction without any liability on the part of RB.

3. Specifications

3.1 The Customer shall be responsible to RB for ensuring the accuracy of the terms of any order (including, without limitations, all applicable Drawings, specifications and data or publicity that the Customer would like RB to use, process or display) submitted by the Customer, and for giving RB any necessary information relating to the Services within a sufficient time to enable RB to perform the Contract in accordance with its terms

3.2 The quantity, quality and description of and any specification for the Services shall be those set out in RB’s acceptance or if none RB’s quotation.

3.3 All dimensions quoted are nominal only.

3.4 RB shall not be obliged to provide test or performance certificates unless agreed in Writing. Any costs incurred in carrying out such testing or inspection shall be paid by the Customer in addition to the price of the Services.

3.5 RB reserves the right to make any changes in the specification which are required to conform with any applicable safety or other

statutory requirements or which do not materially affect their quality or performance.

3.6 No order drawing or specification may be amended varied or cancelled by the Customer except with the agreement in Writing of RB and on terms that the Customer shall indemnify RB in full against all loss (including loss of profit), costs (including the cost of all labour and materials used) damages, charges and expenses incurred by RB as a result of such amendment variation or cancellation

4. Price of the services

4.1 The price for the Services shall be RB’s quoted price

4.2 RB reserves the right, by giving notice to the Customer at any time prior to Completion to increase the price of the Services to reflect any increase in the cost to RB which is due to any factor beyond the control of RB (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labour, materials or other costs of manufacture) any change in delivery dates, quantities or specifications for the Services which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give RB adequate information or instructions.

4.3 The price is exclusive of any applicable value added tax

5 Terms of payment

5.1 Subject to any special terms agreed in Writing between the Customer and RB, RB shall be entitled to invoice the Customer for the price of the Services on or at any time after Completion.

5.2 The Customer shall pay the price of the Services less any discount to which the Customer is entitled, but without any other deduction within 30 days after the date of RB’s invoice. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon receipt.

5.3 RB may at any time at RB’s discretion withdraw credit facilities and/or require the Customer to make payment in cash or to provide security for payment.

5.4 If the Customer fails to make payment on the due date then, without prejudice to any other right or remedy available to RB, RB shall be entitled to:

5.4.1 cancel or suspend the contract;

5.4.2 appropriate any payment made by the Customer to such of the Services (or the goods and/or services supplied under any other contract between the Customer and RB) as RB may think fit; and

5.4.3 charge the Customer interest (both before and after any judgment) on the amount unpaid at the greater of the rate of eight per cent (or as varied by the Secretary of State under the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 or any statutory instrument thereunder) per annum above the Official Dealing Rate of the Bank of England from time to time or the Law Society’s interest rate from time to time until payment in full is made a part of a month being treated as a full month for the purpose of calculating interest

5.4.4 Dismantle or remove any electronic data (including, without limitation, source codes and graphics) or work comprised in the Materials from the Customers equipment or any equipment used or shared by the Customer or held on the server equipment of an internet service provider on the Customer’s behalf.

5.5 Payment shall not be deemed to have been made until payment in cash or cleared funds has been received by RB.

6. Risk and property

6.1 Risk of damage to or loss of any Materials shall pass to the Customer:

6.1.1 in the case of Materials to be delivered at RB’s premises at the time when RB notifies the Customer that the Materials are available for collection; or

6.1.2 in the case of Materials to be delivered otherwise than at RB’s premises at the time of delivery or if the Customer wrongfully fails to take delivery of the Materials the time when RB has tendered delivery.

6.2 Notwithstanding delivery and the passing of risk in the Materials or any other provision of these Conditions the property in the Materials shall not pass to the Customer until RB has received in cash or cleared funds payment in full of the price of the Services and all other services agreed to be sold by RB to the Customer for which payment is then due.

6.3 Until such time as the property in the Materials passes to the Customer the Customer shall hold the Materials as RB’s fiduciary agent and bailee and shall keep the Materials separate from those of the Customer and third parties and properly stored protected and insured and identified as RB’s property and shall not resell them

6.4 Until such time as the property in the Materials passes to the Customer RB shall be entitled at any time to require the Customer to

deliver up the Materials to RB and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the materials are stored and repossess them whether or not they have been affixed to any property.

6.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Materials which remain the property of RB, but if the Customer does so all moneys owing by the Customer to RB shall (without prejudice to any other right or remedy of RB) forthwith become due and payable.

6.6 Nothing contained in this Clause shall confer any right on the Customer to return the Materials or refuse or delay payment.

7 Warranties and liability

7.1 Subject to the conditions set out below RB warrants that the Services shall be provided or carried out with reasonable care and skill.

7.2 The above warranty is given by RB subject to the following conditions:

7.2.1 RB shall be under no liability in respect of any defect in the Services arising from any Drawings design or specification supplied by the Customer;

7.2.2 RB shall be under no liability in respect of any defect arising from fair wear and tear wilful damage; negligence abnormal working conditions failure to follow RB's instructions (whether oral or in Writing), misuse or alteration or repair with RB's approval;

7.2.3 RB shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Services has not been paid by the due date for payment;

7.2.4 The above warranty does not extend to materials which have not been manufactured by RB in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to RB.

7.3 Subject as expressly provided in these Conditions and except where the Services are provided to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law

7.4 Where the Services are provided under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statement) Order 1976 the statutory rights of the Customer are not affected by these Conditions

7.5 Any claim by the Customer which is based on any defect in the Services or their failure to correspond with specification shall be notified to RB in Writing within 5 days from the date of Completion or (where the defect or failure was not apparent on reasonable inspection) from the date of discovery of the defect or failure. If the Customer does not notify RB accordingly, RB shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Services had been provided in accordance with the Contract.

7.6 Where any valid claim in respect of the Services is notified to RB in accordance with these Conditions, RB shall be entitled to carry out such repairs or remedial work as it considers necessary free of charge or, at RB's sole discretion, refund to the Customer the price of the Services (or a proportionate part of the price), but RB shall have no further liability to the Customer.

7.7 Except in respect of death or personal injury caused by RB's negligence or any liability imposed on RB by Part I of the Consumer Protection Act 1987, RB shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect special or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of RB, its employees or agents or otherwise) which arise out of or in connection with the provision of the Services

7.8 RB shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of RB's obligations in relation to the Services, if the delay or failure was due to any cause beyond RB's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond RB's reasonable control

7.8.1 Act of God, explosion, flood, tempest, fire or accident;

7.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition

7.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of the governmental, parliamentary or local authority;

7.8.4 import or export regulations or embargoes;

7.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of RB or of a third party);

7.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery

7.8.7 power failure or breakdown in machinery;

7.9 Notwithstanding any other clause herein RB shall never be liable for any losses damages costs or expenses suffered or incurred as a result of the theft, loss, misappropriation or accessing of any confidential information, computer password user name or source code provided to RB by the Customer

7.10 Except in respect of death or personal injury caused by RB's negligence or any liability imposed on RB by Part I of the Consumer Protection Act 1987 RB's total liability for any one claim or for the total of all claims arising from any one act or default of RB shall not exceed the contract price

8. Insolvency of Customer

This clause applies if:

8.1.1 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

8.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

8.1.3 the Customer ceases, or threatens to cease, to carry on business; or

8.1.4 RB reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

8.2 If this clause applies then, without prejudice to any other right or remedy available to RB, RB shall be entitled to cancel the Contract or suspend any further work under the Contract without any liability to the Customer, and if any Services have been provided but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

9. Rights in Input Property and Output Property

9.1 The property and any copyright or other intellectual property rights (including, without limitation the right to apply for any patent) in any Output Property shall, unless otherwise agreed in writing between the Customer and RB, belong to RB, subject only to the right of the Customer to use the Output Property for the purposes of utilising the Services.

9.2 All Output Property or other information provided by RB which is so designated by RB shall be kept confidential by the Customer; but the foregoing shall not apply to any Drawings or other materials, data or other information which are public knowledge at the time when they are so provided by RB, and shall cease to apply if at any future time they become public knowledge through no fault of the Customer.

9.3 The Customer warrants that any Input Property and its use by RB for the purpose of providing the Services will not defame or infringe the copyright or other rights of any third party and the Client shall indemnify RB against any loss, damages, costs, expenses or other claims arising from any such defamation or infringement.

10. General

10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

10.2 No waiver by RB of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

10.4 Nothing in this contract is intended to confer any benefit on any third party (whether referred to herein by name, class, description or otherwise) or any right for a third party to enforce a term contained in this Contract.

10.5 The Contract shall be governed by the laws of England and the Customer hereby submits to the jurisdiction of the Courts of England and Wales.