

TC01 - Terms and conditions for Robust Detail type-approvals

1. INTRODUCTION AND SCOPE

- 1.1 The purpose of this Agreement is to enable RDL to Assess and, subject to successful Assessment, approve and issue new Type-specifications including amendments to existing Type-specifications. Amendments may include, for example, new flanking conditions, specification enhancements and/or alternative components.
- 1.2 As used herein the term "Agreement" shall mean, collectively, the Terms and Conditions and/or (if any) exhibits and schedules attached hereto as any of the same shall be amended from time to time in accordance herewith.
- 1.3 If we approve a Type-specification, we will publish and make it available for use in new-build attached dwellings in England and Wales as a means of demonstrating compliance with Requirement E1 in Schedule 1 to the Building Regulations (E&W) and/or in Scotland as a means of demonstrating compliance with Mandatory Standard 5.1 of the Building (Scotland) Regulations.
- 1.4 For England and Wales, the following is excluded from the scope of the Robust Details Part E Scheme: building work (as defined in Regulation 3(1) of the Building Regulations) which is classified for building control purposes as being material change of use (as defined in Regulation 5 of the Building Regulations) and/or Residential (as defined in Table D1 of Approved Document B).
- 1.5 For Scotland, the following is excluded from the scope of the Robust Details Section 5 Scheme: building work (as specified in schedule 2 to regulation 4) to convert, which makes such change in the occupation or use of the building; and/or that not within the definition of "Domestic building" as specified in Appendix A to the Domestic Technical Handbook for Building (Scotland) Regulations
- 1.6 This Agreement shall be effective as of the date of your submission to us of your first Application hereunder.
- 1.7 By submitting an Application, you agree to comply with the Terms and Conditions.

2. DEFINITIONS AND INTERPRETATION

- 2.1 Except where the context otherwise requires, the following interpretations apply in this Agreement:
 - **'Agreement'** is as defined in Clause 1.2.
 - **'Application'** means an application in accordance with this Agreement by the Proposer for RDL to Assess or amend a Type-specification.
 - **'Assessment'** means any part of the process in which we conduct an assessment, evaluation and/or review of an Application including Test data, information and/or drawings, and "Assess" shall be construed accordingly.
 - **'Building Regulations'** means the Building Regulations 2000 (SI 2000 No 2531) in England & Wales and/or Building (Scotland) Regulations 2004 (Building (Scotland) Act, 2003).
 - **"Business Day"** means any day other than: a Saturday or a Sunday or a public holiday in England.

- **'Document'** and **'documentation'** refer to any form of information including when in paper or electronic form.
- **'Force Majeure'** is as defined in Clause 16.6.
- **'Information'** is as defined in Clause 10.1.1
- **'Intellectual Property'** means all intellectual property rights of whatever nature throughout the world (including patents, patentable rights, copyright, moral rights, performers' rights, get-up, design rights, utility models, rights in domain names, trade marks (whether or not any of the above are registered), trade names, rights in inventions, rights in data, database rights, rights in know-how and confidential information and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and right to apply for or register the same (present, future and contingent and including all renewals, extensions, revivals and all accrued rights of action)).
- **'Proposer'**, **'you'** and **'your'** mean the company, organisation or person who is responsible for an Application.
- **'Proprietary'** refers to a design that cannot be specified without reference to one or more named and branded systems or products.
- **'Robust Detail'** is as defined in the Schedule hereto.
- **'Terms and Conditions'** means these written terms and conditions.
- **'Test'** means acoustic test of a separating wall or floor structure built on an actual building site which is subject to the normal building control process and built in accordance with the design submitted in your Application.
- **'Type-specification'** means a specification detailing the design of a specific Robust Detail type (e.g. EWM1 or VWM11 are the names of specifications for types of Robust Detail masonry cavity separating wall).
- **'We'**, **'us'** and **'RDL'** mean Robust Details Limited.

2.2 In this Agreement (except where the context otherwise requires):-

- 2.2.1 the headings of Clauses and the Schedule are included for convenience only and shall not affect the interpretation of the Agreement;
- 2.2.2 the Schedule is an integral part of the Agreement, and any reference to the Agreement includes the Schedule;
- 2.2.3 a **"party"** means either party to the Agreement and includes (and the Agreement shall be binding on and inure to the benefit of) its permitted assignees (if any) and/or the successors in title to substantially the whole of its undertaking, and **"parties"** shall be construed accordingly;
- 2.2.4 words denoting the singular shall include the plural and vice versa; references to a gender shall include all other genders; and references to the word **"include"** or **"including"** are to be construed without limitation;
- 2.2.5 any reference to a statute, statutory provision or subordinate legislation (**"Legislation"**) shall (except where the context otherwise requires) be construed as referring to such Legislation as amended and in force from time to time and to any Legislation which enacts or consolidates (with or without modification) any such Legislation;
- 2.2.6 **"loss"** includes destruction; **"month"** means calendar month unless otherwise defined; and **"personal injury"** includes sickness and death.

3. ELIGIBILITY

- 3.1 Any Proposer who is able and willing to fulfil this Agreement is entitled to submit an Application. However, in the case of an Application to amend an existing Proprietary Type-specification, we only agree to Assess it if (a) you are the original proposer or (b) you are the assignee or successor-in-title of the original proposer or (c) you obtain and serve on us the written approval of the original proposer in advance.

4. APPLICATIONS

- 4.1 In making an Application, you agree to the Terms and Conditions and to meet our Test and performance requirements as published by us from time to time. If you do not so agree or if you fail to comply with any of your obligations under the Agreement at any time, we may (without prejudice to any of our other rights and remedies) cease our Assessment of the Application and, if applicable, decide whether or not to refund all, part or none of any fees paid by you to us in respect of the said Application.
- 4.2 You must promptly notify us of any subsequent change to the Application details (e.g. changes to the design specification, change of contact details).

5. ASSESSMENTS

- 5.1 You agree to notify to RDL details of the location of Test structures in advance and facilitate access for us (or third parties engaged by us) to inspect them or observe Testing if we wish (as stated in our Test and performance requirements as published by us from time to time).
- 5.2 We may engage third parties to perform some Assessment activities under our direction and supervision but we will always make the final Assessment decision.

6. APPROVAL AND WITHDRAWAL OF TYPE-SPECIFICATIONS

- 6.1 Following a successful Assessment and approval of an Application, we will publish the new or revised Type-specification and make it available for use as a means of satisfying Requirement E1 of Schedule 1 and/or Standard 5.1 to the Building Regulations. While any particular Type-specification remains in service, we will monitor its performance by inspecting and testing samples of the corresponding 'as built' Robust Detail type in the market. If any particular Robust Detail type consistently fails to meet our performance targets (as stated in our quality policy as published by us from time to time), we will take appropriate action at our discretion, which may include suspension or even withdrawal from service of that Robust Detail type.

7. CHANGES TO PROPRIETARY PRODUCTS

- 7.1 You agree to seek our written approval for any proposed change to any Proprietary products incorporated in your Application that could affect acoustic performance and/or function. You agree to do this prior to the change taking effect and regardless of whether the change occurs during the course of our processing of your Application or afterwards when the Type-specification is published and in service. Depending on the nature of any such change, we may request acoustic Test data or other evidence to assist in our assessment of whether we can maintain the Type-specification, in which case you will promptly provide the same to us at your own cost and expense. We may amend, suspend or withdraw the Type-specification if you fail to obtain our approval for any such change.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 As between you and us we own all property rights (including Intellectual Property rights) throughout the world in all information, documents, reports, plans, drawings, works and materials which may be discovered or produced during or incidental to the performance of any service provided hereunder by RDL, alone or jointly.
- 8.2 As between you and us you own all property rights (including Intellectual Property rights) throughout the world in all information, documents, reports, plans, drawings, works and materials provided by you in connection with your Application. However, you agree to make any of the aforesaid available for our use on a royalty-free basis where requested by us for the performance of our service and for the full duration of this Agreement.

9. CONFIDENTIAL INFORMATION

- 9.1 Save as may be required by operation of law or the rules of any Stock Exchange or by any authority of competent jurisdiction, the Proposer:-
- 9.1.1 shall keep strictly confidential all confidential information received, obtained or learned from RDL before or during the term of this Agreement pursuant to or in preparation or contemplation of its performance of its obligations hereunder relating to RDL or any of its officers, directors, servants, agents, customers, or suppliers or to the business of any of the foregoing persons, and whether or not expressly designated confidential and/or in tangible format ("**Information**");
- 9.1.2 shall not without the prior written consent of RDL use or permit or cause any Information to be used save for the direct purposes of the Agreement; and
- 9.1.3 shall not without the prior written consent of RDL disclose or permit or cause any Information to be disclosed to any person other than to those of its officers, directors, servants, agents or professional advisers (a) who need to be informed thereof to enable the Proposer to perform its obligations hereunder or to take advice thereon and (b) who have been informed of the Information's confidentiality and directed to keep it confidential and (c) who are under an enforceable obligation of confidentiality to the Proposer.
- 9.2 The Proposer shall forthwith notify to RDL any actual, suspected or threatened use or disclosure of RDL's Information in contravention of this Clause 10 of which it becomes aware and shall render such assistance to restrain such use as RDL may request.
- 9.3 The Proposer acknowledges and agrees that, in the event of a breach or threatened breach of this Clause 10, RDL may have no adequate remedy in money or damages and accordingly may be entitled to preliminary, permanent and/or other injunctive relief.
- 9.4 Notwithstanding the foregoing the Proposer will have no obligation in connection with specific Information to the extent, but only to the extent, that:-
- 9.4.1 it is in the public domain at the time it is received, obtained or learned by it;
- 9.4.2 it subsequently becomes part of the public domain through no wrongful act by it; or
- 9.4.3 it is received by the Proposer from a third party who is lawfully authorised to disclose the same without breach of the Agreement and/or of any obligation to the Proposer.

10. PUBLICITY AND PROMOTION

10.1 You are not at any time, whether during or after the pendency of the Application or the term of this Agreement, permitted to use any of our Intellectual Property, including the Robust Details mark, name or any of our documents in any publicity or promotional material (or otherwise) without our prior written agreement.

10.2 You will not at any time, whether during or after the pendency of the Application or the term of this Agreement, make any misleading statement concerning us, our scheme, our Intellectual Property, any anticipated, potential or actual approval by us of your Application or products, or any RDL documents that we have permitted you to use.

11. FEES AND CHARGES

11.1 You undertake to pay the fees applicable at the time of the Application and as published on our web site.

11.2 Without prejudice to any other right or remedy that it may have, if the Proposer fails to pay any sum due to RDL hereunder on the due date, RDL may:

11.2.1 charge interest on such sum from the due date for payment at the annual rate of one per cent above the Bank of England base lending rate from time to time, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment, and RDL may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or

11.2.2 suspend all or any services hereunder until payment has been made in full.

11.3 All sums payable to RDL under the Agreement shall become due immediately on its termination, despite any other provision. This Clause 11.3 is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.

12. EXPIRY

12.1 Once approved and published, a Type-specification will remain in place until such time that we deem that approval is no longer valid. For example, we may withdraw a Type-specification for reasons including the following:

- Consistent failure of the relevant Robust Detail type structures to achieve the required performance as measured by our own Testing of samples selected from the market.
- Continuation of Type-specification being precluded or rendered redundant by Force Majeure.
- Insufficient availability of the necessary materials and components.
- Proprietary Robust Detail made redundant due to the development of a replacement 'generic' Robust Detail, following the minimum period specified in Clause 5.2.
- Any other situation where, in RDL's sole judgement, continuing approval would bring the RDL scheme and/or its approval activities into disrepute.

13. CANCELLATION OF THE APPLICATION

13.1 RDL reserves the right to reject or suspend your Application if you fail to comply with any of your obligations under this Agreement.

13.2 You may cancel your Application at any time by notifying us. If you cancel your Application, we will review any fees paid by you to us and the value of any work that we have carried out to date and decide at our sole discretion whether to refund all, part or none of the fees paid. Subject to our rights of set-off, which are expressly reserved, we will give a full refund of any instalment fee that you have paid provided that we have not started work on the relevant instalment.

13.3 If you cancel your Application, you agree to remove any published information within your control which is capable of being interpreted in such a way that could misrepresent the true position in relation to your Application.

14. COMPLAINTS AND APPEALS

14.1 We maintain a complaints, disputes and appeal procedure which is available to you for use in the event that you are not satisfied with any aspect of our service (details are published on our website at www.robustdetails.com).

14.2 If you receive a complaint in relation to any Type-specification that you originally proposed (including changes to existing Type-specifications), you agree to take prompt and appropriate action, record the details and inform us thereof. In the event that you decide to undertake a sound test as a result of the said complaint you agree to engage a measurement contractor who is:

14.2.1 accredited by the United Kingdom Accreditation Service (UKAS) with a scope of accreditation which includes pre-completion sound testing for Building Regulations Approved Document E, **or**

14.2.2 is registered, for the purpose of carrying out pre-completion sound testing for Building Regulations Approved Document E, with the Association of Noise Consultants, **or**

14.2.3 who is accredited by or registered with another professional body whose relevant criteria are at least as high as those of the aforesaid bodies.

15. LIMITATION OF LIABILITY

15.1 This Clause 16 sets out the entire financial liability of RDL (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Proposer in respect of the following:

15.1.1 any breach of the Agreement;

15.1.2 any use made by the Proposer of any service provided hereunder; and

15.1.3 any representation, statement or tortious act or omission (including negligence and breach of statutory duty) arising under or in connection with the Agreement.

15.2 Notwithstanding anything to the contrary herein, nothing in the Agreement limits or excludes the liability of RDL:-

15.2.1 for death or personal injury caused by RDL's negligence or that of its employees, agents or subcontractors as applicable; or

15.2.2 for any damage or liability incurred by the Proposer as a result of fraud or fraudulent misrepresentation by RDL.

15.3 RDL will endeavour to take reasonable steps to ensure that subject to Clause 16.2 all warranties, representations, guarantees, conditions and other terms, whether implied by legislation or common law are, to the fullest extent permitted by law, disclaimed and excluded by RDL from the Agreement, including (without prejudice to the generality of the foregoing) any implied warranty as to satisfactory quality or fitness for purpose.

- 15.4 Subject to Clause 16.2 the entire liability of RDL in respect of any claim against it by the Proposer arising under or in relation to this Agreement shall in no event exceed an amount equal to the aggregate of the fees paid by the Proposer to RDL pursuant to the Agreement in the 12 (twelve) months preceding the circumstance giving rise to the said claim, and RDL's liability shall be further limited to losses sustained as a direct result of the said circumstance.
- 15.5 Subject to Clause 16.2 RDL expressly excludes liability to the Proposer for any loss or damage (whether direct or indirect, and whether or not foreseeable) that is or can be characterised as a claim for (or arising from):
- 15.5.1 loss of revenue or profits;
 - 15.5.2 loss of business opportunity or loss of contracts;
 - 15.5.3 loss of goodwill or injury to reputation;
 - 15.5.4 direct, indirect, consequential or special loss or damage; or
 - 15.5.5 anticipated savings.
- 15.6 RDL shall have no liability to the Proposer hereunder to the extent that it is prevented from or delayed in performing any of its obligations hereunder by Force Majeure. For the purposes of the Agreement "**Force Majeure**" shall mean acts, events, omissions or accidents beyond the reasonable control of RDL, including strikes, lock-outs or other industrial disputes (whether involving the workforce of RDL or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, terrorism, malicious damage, compliance with any legal requirement, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

16. TERMINATION

- 16.1 RDL may terminate the Agreement by the service on the Proposer of no less than 1 (one) month's prior notice.
- 16.2 Without prejudice to any other rights or remedies which it may have, RDL may terminate the Agreement without liability to the Proposer immediately on giving notice to it if it commits a material breach of any of its obligations, warranties or representations expressed or implied herein or (if such a breach is remediable) fails to remedy that breach within 30 (thirty) days of it being notified in writing of the breach and being required to remedy it.

17. CONSEQUENCES OF TERMINATION

- 17.1 With effect from and including the date of termination of the Agreement:
- 17.1.1 RDL shall cease to perform any service thereunder; and
 - 17.1.2 you will discontinue the use of any advertising matter that contains any reference to RDL.
- 17.2 All unpaid fees charged by RDL hereunder shall become due and payable immediately on termination.
- 17.3 There shall survive the termination of the Agreement Clauses 2, 9, 10, 11, 12, 15, 16, 18, 19, 20, 21 and 23 and any other provision of it whose terms or context requires its survival.

18. WARRANTY AND INDEMNITY

- 18.1 You warrant and undertake to us that:-

- 18.1.1 any Application that you submit to us hereunder shall be fully, properly and accurately completed, and that the information that it contains shall be valid and correct; and
- 18.1.2 you will at all times (both during and after the term of this Agreement) fully and effectively indemnify us from and against any and all losses, damages, liabilities, penalties, fees, costs and expenses (including legal and other fees and disbursements and any damages or compensation paid to compromise any settlement or claim) which we may sustain or incur arising directly or indirectly from any actual or alleged breach by you or on your behalf of any of your obligations, warranties or representations herein, express or implied and or any act of negligence or default on your part.

19. ASSIGNMENT AND SUB-CONTRACTING

- 19.1 RDL may assign, transfer, charge or sub-contract any of its rights or obligations under the Agreement to any person, firm or company except for any right or obligation to decide on the outcome of any Application for Assessment of a Type-specification.
- 19.2 The Proposer shall not be entitled to assign, transfer, charge or sub-contract any of its rights or obligations under the Agreement without the prior written consent of RDL.

20. NOTICES

- 20.1 All notices, orders, claims, demands or other forms of communication required or entitled to be given by either party under or in connection with the Agreement (together "**notices**") shall:-
 - 20.1.1 given in writing in the English language;
 - 20.1.2 be authenticated by signature or by such other method as agreed between the parties; and
 - 20.1.3 be marked for the attention of the appropriate department or officer.
- 20.2 Notices shall be served by hand, prepaid post, facsimile, or electronic mail (where such a means of communication has been agreed between the parties in writing for the purposes of the Agreement).
- 20.3 Notices shall be deemed to have been received:
 - 20.3.1 if delivered by hand, on the day of delivery if it is a Business Day and otherwise on the 1st (first) Business Day immediately following the day of delivery;
 - 20.3.2 if sent by prepaid post, on the 5th (fifth) Business Day after the day of posting;
 - 20.3.3 if sent by facsimile or other electronic means:
 - 20.3.3.1 if transmitted between 0900 and 1700 hours on a Business Day, on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - 20.3.3.2 if transmitted at any other time, at 0900 on the 1st (first) Business Day following the completion of receipt by the sender of verification of the transmission from the receiving instrument.
- 20.4 The addresses (including electronic addresses) of each party to which all notices shall be sent are those specified in the Agreement, or such other address as either party may by notice specify to the other for the purpose of this Clause.

21. VARIATION

21.1 Notwithstanding anything herein to the contrary, RDL shall be entitled (subject only to the service of notice thereof on the Proposer) to qualify any permission herein to the Proposer to use any Robust Detail as a result of any defective performance of the latter.

21.2 Subject only to Clause 22.1, this Agreement may not be amended or modified in whole or in part at any time except by an agreement in writing executed in the same manner as this Agreement and signed by a duly authorised representative of each party.

22. GOVERNING LAW AND JURISDICTION

22.1 The Agreement shall be considered as a contract made in England, and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by, and construed in accordance with, the law of England and Wales.

22.2 Subject only to Clause 15.1 the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the agreement or its subject matter.

THE SCHEDULE

Robust Details

1 Generic Robust Details

- 1.1 A generic Robust Detail is a separating wall or floor structure that has completed its type approval Assessment successfully, and where the range of components used in the test structures were such that, in the judgment of RDL, the structure could be specified without reference to any "named or branded system or unique product" of a specific manufacturer.
- 1.2 Generic Robust Details may incorporate an option to substitute one or more of the generic components for a Proprietary component which has been assessed and approved by RDL for the purpose.

2 Proprietary Robust Details

- 2.1 RDL reserves the right to make a Proprietary Robust Detail 'generic'. Circumstances in which this may happen include the following:
- A number of Applications are active at the same time which look, and perform under test, very similar to each other.
 - The same or a different Proposer may apply to undertake further type approval Assessments on an existing Proprietary Robust Detail using different components in the test structure. If such further Assessment(s) would then enable the Proprietary Robust Detail to be specified generically, RDL reserves the right, after a minimum period of 12 (twelve) months from the publication of the Proprietary Robust Detail, to change it from a Proprietary to a generic Robust Detail.
 - RDL undertakes (subject to Force Majeure) not to publish a generic Robust Detail, identical in all respects to a Proprietary Robust Detail save for the substitution of a general product specification for named Proprietary component(s), within 12 (twelve) months of first publication of the Proprietary Robust Detail in question unless otherwise agreed in writing by RDL and the original Proposer.
- 2.2 A Proprietary Robust Detail is a separating wall or floor structure that has completed its type approval Assessment successfully, and where the range of components used in the test structures were such that, in the judgment of RDL, the structure could not be specified without reference to one or more "named or branded systems or unique products" of a specific manufacturer.