

Terms and Conditions for Robust Details Plot Registrations

1. INTRODUCTION AND SCOPE

- 1.1 The purpose of this Agreement is to enable RDL to permit the use of Robust Details for the purpose of satisfying Requirement E1 in Schedule 1 of the Building Regulations in relation to new, attached homes built in England and Wales.
- 1.2 The following is excluded from the scope of this Agreement: 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).
- 1.3 As used herein the term “**Agreement**” shall mean, collectively, the Terms and Conditions and the Form and all exhibits and schedules attached hereto as any of the same shall be amended from time to time in accordance herewith with:-
- 1.4 By submitting an Application, you agree to comply with the Terms and Conditions.
- 1.5 This Agreement shall be effective as of the date set forth on the Form.

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 Builder for a plot registration (certification) by RDL or for the cancellation or amendment or renewal of the same.
 - '**Approved Document B**' means "Approved Document B: Fire Safety", pursuant to the Building Regulations.
 - '**Approved Document E**' means "Approved Document E: Resistance to the Passage of Sound", pursuant to Regulation 20A of the Building Regulations.
 - '**Builder**', '**you**' and '**your**' mean the company or person who is responsible for carrying out the work proposed in any application under the Building Regulations that relates to the Application and/or anyone employed by him/it or acting for him/it.
 - '**Building Regulations**' means the Building Regulations 2000 (SI 2000 No 2531).
 - '**Business Day**' means any day other than: a Saturday or a Sunday or a public holiday in England.
 - '**Force Majeure**' is as defined in Clause 15.6.
 - '**Form**' means the RDL plot registration Application form as completed by the Builder.
 - '**Information**' is as defined in Clause 21.1.1.

- **'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)).
- **'Robust Detail'** is as defined in the Schedule hereto.
- **"Terms and Conditions"** means these written terms and conditions.
- **'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;

2.3 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;

2.3.1 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;

2.4 **"loss"** includes destruction; **"month"** means calendar month unless otherwise defined; and **"personal injury"** includes sickness and death.

3. REGISTRATION OF PLOTS

3.1 Following receipt of a completed Form and appropriate fee we will give you a Purchase Statement and Compliance Certificate(s). In registering plots which allow you to use Robust Details, you agree to the Terms and Conditions. You must promptly notify RDL of any subsequent change to the details of your Application for a plot registration (certification) (e.g. type of Robust Detail to be used, change of plot number, change of contact details, etc).

4. CANCELLATION OR AMENDMENT APPLICATION

4.1 You agree to notify us of any change that you propose to make to any of your plot registrations (certification) by submitting to us a completed cancellation or amendment Application form as applicable available at www.robustdetails.com together with an administration fee if applicable.

4.2 You agree to notify the relevant building control body of any change that you propose to make to any of your plot registrations.

- 4.3 You acknowledge that all amendments to and cancellations of any of your plot registrations are at your own risk and you are advised to consult your building control body to check for any implications before sending your request to RDL.
- 4.4 You will return to us the original registration documents or produce evidence that you have notified the relevant building control body before we process any Application by you for a cancellation or amendment to any of your plot registrations.
- 4.5 We will not amend or cancel plot registrations unless (without limitation) this Agreement is satisfied and doing so would not contravene any other requirements of the Robust Details scheme.

5. REFUND POLICY

- 5.1 If you request the cancellation of a plot registration, our policy with regard to the refund (if any) of fees that you have previously paid is as follows:-
- 5.1.1 Refunds are calculated on an individual plot by plot basis.
- 5.1.2 Plots where construction work has started: no refund is payable.
- 5.1.3 **Plots where construction work has not started:** for cancellations notified to RDL within 3 (three) months after plot registration date, a full refund less an administration fee is payable on request. For cancellations notified to RDL more than 3 (three) months after plot registration date, a 50% (fifty per centum) refund is payable on request. The registration date is the date shown on the Purchase Statement.

6. BUILDING CONTROL SUBMISSION

- 6.1 You agree to submit your Robust Details Purchase Statement to the building control body, wherever possible, with your building control application but in any case you will submit the Robust Details Purchase Statement before the start of work on the registered plot(s). You must promptly notify the building control body of any subsequent change to the details of your Application (e.g. type of robustdetail to be used, change of plot number, change of contact details, etc).

7. DESIGN AND CONSTRUCTION

- 7.1 You agree to design and construct the separating walls and floors strictly in accordance with the relevant parts of the Robust Details Handbook in force from time to time and in accordance with all relevant Building Regulations and other statutory requirements in force from time to time. On completion of each dwelling you will complete the associated checklist, sign the associated Compliance Certificate and make them available to the building control body upon its request.

8. PERFORMANCE MONITORING

- 8.1 You acknowledge that the purpose of our performance monitoring (sample inspection and testing) is to enable us to evaluate whether built Robust Details are achieving the performance standards set out in Approved Document E as intended, and that it is **not** for Building Regulation enforcement purposes. However, in the event that (a) we identify during inspection, a deviation from the relevant Robust Detail specification(s) that could adversely affect acoustic performance and/or represent a risk to compliance and/or (b) a Robust Detail, when tested, fails to meet the minimum performance standards set down in Approved Document E, we will notify you and the relevant building control authority. You may then need to agree any necessary steps with the building control authority in order to ensure compliance with Requirement E1 of the Building Regulations.
- 8.2 You agree to us (or our nominated agent) undertaking sample sound testing and/or visual inspections of separating walls and floors on plots registered with us. You agree to provide us promptly with adequate information relating to progress on site to enable us to identify suitable plots for sample sound testing and/or visual inspections of separating floors and to arrange and undertake the sample sound testing and/or visual inspections of separating walls and floors. On request, once a suitable plot has been identified, you will cease work in order to provide a suitable environment to allow sound testing and you accept the liability, time and cost implications, if any, of the sample sound testing and/or visual inspections.

9. PUBLICITY AND PROMOTION

- 9.1 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.
- 9.2 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.

10. FEES AND CHARGES

- 10.1 You undertake to pay the fees applicable to each Application at the time thereof and as published on our website from time to time.
- 10.2 Without prejudice to any other right or remedy that it may have, if you fail to pay any sum due to RDL hereunder on the due date, RDL may:
- 10.2.1 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
- 10.2.2 suspend all or any services hereunder until payment has been made in full.

10.3 All sums payable to RDL under the Agreement shall become due immediately on its termination, despite any other provision. This Clause 10.3 is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.

11. OWNERSHIP OF PURCHASE STATEMENTS

11.1 You may not sell or otherwise transfer the unique Plot Registration number(s) or Purchase Statement to a third party without our prior written consent.

12. EXPIRY

12.1 Plot Registrations may, by notice from RDL, expire after a period of 3 (three) years from the date of this Agreement if building work on the relevant superstructure has not been started within the said period.

12.2 RDL may at its discretion renew expired plot registrations upon written Application and on payment of the applicable fee.

13. TERMINATION

13.1 Without prejudice to any other rights or remedies which it may have, RDL may terminate the Agreement without liability to you immediately on giving notice to you if you commit a material breach of any of your obligations, warranties or representations expressed or implied herein or (if such a breach is remediable) you fail to remedy it within 30 (thirty) days of your being notified of the breach and being required to remedy it, and reserves the right to notify the building control body of your non-compliance.

14. CONSEQUENCES OF TERMINATION

14.1 With effect from and including the date of termination of the Agreement RDL shall cease to perform any service thereunder and may inform the relevant building control authority thereof.

14.2 Upon termination of plot registration(s) (certification), you agree to discontinue the use of any advertising matter that contains any reference thereto and to return any registration (certification) documents if requested by RDL.

14.3 All unpaid fees charged by RDL hereunder shall become due and payable immediately on termination.

14.4 There shall survive the termination of this Agreement Clauses 2, 9, 10, 14, 15, 16, 17, 19, 20, 21 and 23 and any other provision of it whose terms or context requires its survival.

15. LIMITATION OF LIABILITY

15.1 This Clause 15 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 Builder in respect of the following:

15.1.1 any breach of the Agreement;

15.1.2 any use made by the Builder 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 Builder as a result of fraud or fraudulent misrepresentation by RDL.
- 15.3 Subject to Clause 15.2, 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 15.2 the entire liability of RDL in respect of any claim against it by the Builder 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 Builder 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 15.2 RDL expressly excludes liability to the Builder 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 Builder 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.
- 15.7 The Builder acknowledges and accepts that Robust Details Limited is not liable for any consequences of the Builder failing to satisfy the conditions of this Agreement. It is the Builder's responsibility to ensure that each dwelling achieves the performance standards required by the Building Regulations and the Builder accepts that Robust Details Limited is not liable if any dwelling fails to achieve the required performance standards.

16. WARRANTY AND INDEMNITY

- 16.1 You warrant and undertake to us that:
- 16.1.1 you will comply in full with the relevant Robust Detail specification(s) and checklist provided to you in respect of each Robust Detail;
- 16.1.2 any Application that you submit to us hereunder shall be fully, properly and accurately completed, and that the information that it contains is valid and correct; and

16.1.3 that 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.

17. COMPLAINTS, DISPUTES AND APPEALS

17.1 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).

17.2 In the event you receive a complaint about the performance of a Robust Detail separating wall and/or floor that you have built or for which you are responsible, you agree to take prompt and reasonable steps to investigate and resolve the complaint, and to notify 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:

17.2.1 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**

17.2.2 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**

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

18. ASSIGNMENT AND SUB-CONTRACTING

18.1 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 plot registration (certification) Applications.

18.2 The Builder 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.

19. NOTICES

19.1 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:-

19.1.1 given in writing in the English language;

19.1.2 be authenticated by signature or by such other method as agreed between the parties; and

19.1.3 be marked for the attention of the appropriate department or officer.

19.2 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).

19.3 Notices shall be deemed to have been received:

- 19.3.1 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;
- 19.3.2 if sent by prepaid post, on the 5th (fifth) Business Day after the day of posting;
- 19.3.3 if sent by facsimile or other electronic means:
 - 19.3.3.1 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
 - 19.3.3.2 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.
- 19.4 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.

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 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.
- 20.2 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 any Application made by you to us hereunder. 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.

21. CONFIDENTIAL INFORMATION

- 21.1 Save as may be required by operation of law or the rules of any Stock Exchange or by any authority of competent jurisdiction, the Builder:-
 - 21.1.1 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**");
 - 21.1.2 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
 - 21.1.3 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 Builder 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 Builder.
- 21.2 The Builder shall forthwith notify to RDL any actual, suspected or threatened use or disclosure of RDL's Information in contravention of this Clause 21 of which it becomes aware and shall render such assistance to restrain such use as RDL may request.

- 21.3 The Builder acknowledges and agrees that, in the event of a breach or threatened breach of this Clause 21, RDL may have no adequate remedy in money or damages and accordingly may be entitled to preliminary, permanent and/or other injunctive relief.
- 21.4 Notwithstanding the foregoing the Builder will have no obligation in connection with specific Information to the extent, but only to the extent, that:-
- 21.4.1 it is in the public domain at the time it is received, obtained or learned by it;
- 21.4.2 it subsequently becomes part of the public domain through no wrongful act by it; or
- 21.4.3 it is received by the Builder from a third party who is lawfully authorised to disclose the same without breach of the Agreement and/or of any obligation to the Builder.

22. VARIATION

- 22.1 Notwithstanding anything herein to the contrary, RDL shall be entitled (subject only to the service of notice thereof on the Builder) to qualify any permission herein to the Builder to use any Robust Detail as a result of any defective performance of the latter.
- 22.2 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.

23. GOVERNING LAW AND JURISDICTION

- 23.1 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.
- 23.2 Subject only to Clause 17.1 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 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.