



DATED _____

(1) ABLE CANOPIES LTD

(2) <<Insert name of Client>>

**TERMS AND CONDITIONS OF BUSINESS 2022
SUPPLY AND INSTALL**

Specification of Services:	
Quotation No:	
Total Value:	



Certificate Number 0513
BS EN 1090



THIS AGREEMENT is made the day of 20XX

BETWEEN:

- (1) **ABLE CANOPIES LTD**, a company registered in **England** under number **05391477** whose registered office is at **9 -10 Faraday Close, Gorse Lane Industrial Estate, Clacton-on-Sea, Essex CO15 4TR** ("**the Service Provider**", "**Us**", "**We**" "**Our**") and
- (2) <<Name of Client>>, a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of] <<insert Address>> ("**You**", "**You**", "**Yours**")

WHEREAS:

You wish to engage Us to provide the services set out in this Agreement, subject to the terms and conditions of this Agreement
We agree to provide the services to You.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Business Day"	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England;
"Commencement Date"	means the date on which provision of the Services will commence;
"Confidential Information"	means, in relation to either Party, information which is disclosed to a Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
"Data Protection Legislation"	means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;
"Fees"	means all sums due under this Agreement from You to Us, as specified in Schedule 2;
"Goods"	means all items to be supplied and as specified in the Purchase Order;
"Purchase Order"	means Your purchase order which specifies that this Agreement applies to it;
"Services"	means the services to be provided by Us to You in accordance with Clause 2, as fully defined in Schedule 1, and subject to the terms and conditions of this Agreement;
"Term"	means the term of this Agreement as set out in Clause 8.

1.2 Unless the context otherwise requires, each reference in this Agreement to:

- 1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means.
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time.
- 1.2.3 "this Agreement" is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time.

- 1.2.4 a Schedule is a schedule to this Agreement.
- 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.
- 1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.

1.3 The headings used in this Agreement are for convenience only and will have no effect upon the interpretation of this Agreement.

1.4 Words imparting the singular will include the plural and vice versa.

1.5 References to any gender will include the other gender.

1.6 References to persons will include corporations.

2. **Provision of the Services**

2.1 With effect from the Commencement Date, We will, throughout the Term of this Agreement, provide the Goods and Services to You, with reasonable skill and care.

2.2 We will act in accordance with all reasonable instructions given to Us by You provided such instructions are compatible with the specification of Services provided in Schedule 1.

2.3 We will be responsible for ensuring that We comply with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.

2.4 We may, in relation to certain specified matters related to the Services, act on Your behalf. Such matters will not be set out in this Agreement but will be agreed between the Parties as they arise from time to time.

2.5 We will use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by You, subject to Your acceptance of any related reasonable changes to the Fees that may be due because of such changes.

3. **Client's Obligations**

3.1 You will use all reasonable endeavours to provide all pertinent information to Us that is necessary for Us to provide the Services.

3.2 You may, from time to time, issue reasonable instructions to Us in relation to the provision of the Services. Any such instructions should be compatible with the specification of the Services provided in Schedule 1.

3.3 In the event that We require the decision, approval, consent or any other communication from You in order to continue with the provision of the Services or any part thereof at any time, You will provide the same in a reasonable and timely manner.

3.4 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it is Your responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).

3.5 The nature of the Services requires Us to have access to Your premises or any other location, access to which is lawfully controlled by You. You will ensure that We have access to the same at the times to be agreed between us as required.

3.6 Any delay in the provision of the Services resulting from Your failure or delay in complying with any of the provisions of this Clause 3 will not be Our responsibility or fault. We make every effort to adhere to lead times quoted at the point of receipt of order. No liability can be accepted for any loss resulting from delays or non-completion of contract caused by circumstances beyond Our control. Lead times quoted previously on surveys may be subject to change and are for guidance purposes only.

3.7 We only accept orders subject to written confirmation from You. You must complete, sign and date Our Purchase Order form which includes reference to Our quotation/s and any suggested installation dates.

4. **Fees, Payment and Records**

4.1 You will pay the Fees to Us in accordance with the provisions of Schedule 2 and this Clause 4. Unless otherwise stated in writing by Us, we require payment in full upon completion of work.

4.2 Our canopies are completed, and payment becomes due as stated on your order. Ancillary items that are provided free of charge, such as post pads, if not delivered at the completion date is not an acceptable reason for a delay in payment.

4.3 We will invoice You for Fees due in accordance with the provisions of Schedule 2.

4.4 We reserve the right to re-price any quotation or estimate upon order, subject to installation lead times. This is due to the currently volatile price fluctuations and availability of materials. Our steel suppliers fix prices for 24 hours only and these constraints may affect the final quotation of estimate.

4.5 If Your building control, planning officer or structural engineer requires additional foundation mass or rainwater drainage over and above what has been quoted for, this will be at an additional cost to you.

4.6 Whilst every care is taken when excavating post holes, We will not accept responsibility for any damage to underground drains, water pipes, electrical cables or any other buried services unless their position is clearly indicated before any excavation begins.

4.7 All payments required to be made pursuant to this Agreement by either Party will be made in UK pounds sterling in cleared funds to such bank in England as We may from time to time nominate, without any set-off, withholding or deduction.

4.8 Where any payment pursuant to this Agreement is required to be made on a day that is not a Business Day, it must be made on the next following Business Day.

4.9 Any sums which remain unpaid following the expiry of the period set out in Schedule 2 will incur interest daily at 0.5% above the base rate of Bank of England from time to time until payment is received in full. We reserve the right to add administration costs, and legal expenses, if applicable, to overdue accounts.

4.10 If You or Your agent delays installation for any reason after a signed order has been placed, You must pay Us half of the total order value no later than 14 days after the original agreed installation date so as to offset Our material and labour costs incurred during manufacture of the bespoke goods. In return for payment, We agree to store the bespoke goods for up to 30 days at no cost to You, after which time the full payment balance will become due plus all future storage costs.

4.11 We will ensure that We always have in place suitable and valid insurance that will include public liability insurance.

4.12 In the event that We fail to perform the Services with reasonable care and skill We will carry out any and all necessary remedial action at no additional cost to You.

4.13 We will not be liable for any loss or damage suffered by You that results from Your failure to adhere to any instructions given by Us.

4.14 Nothing in this Agreement will limit or exclude Our liability for death or personal injury.

4.15 You will indemnify Us against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by Us) caused by You or Your agents or employees.

4.16 Neither Party will be liable to the other party or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

4.17 All goods will remain Our Property until You have paid for them in full.

5. Guarantee

5.1 We warrant the product of all Services provided to be free from any and all defects on completion of the Services.

5.2 Provided the goods have been correctly maintained in accordance with the manufacturers guidelines given within your after-sales pack, if any defects in the product of the Services appear during the guarantee period set out in sub-Clause 5.1, We will rectify any and all such defects at no cost to You.

6. Confidentiality

6.1 Each Party undertakes that, except as provided by sub-Clause 6.2 or as authorised in writing by the other Party, it will, at all times during the continuance of this Agreement and for 3 years after its termination:

- 6.1.1 keep confidential all Confidential Information;
- 6.1.2 not disclose any Confidential Information to any other party;
- 6.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;
- 6.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
- 6.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of these provisions.

6.2 Either Party may:

- 6.2.1 disclose any Confidential Information to:
 - 6.2.1.1 any relevant sub-contractor or supplier of that Party;
 - 6.2.1.2 any governmental or other authority or regulatory body if ordered to do so;
 - 6.2.1.3 any relevant employee or officer of that Party or of any of the aforementioned persons, parties or bodies;
 to such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party will first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly practicable in the terms of this Clause 6, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
- 6.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.

6.3 The provisions of this Clause 6 will continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

7. Force Majeure

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

7.2 In the event that a Party to this Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 6 calendar months, the other Party may at its discretion terminate this Agreement by written notice at the end of that period. In the event of such termination, We will agree a fair and reasonable payment for all Services provided up to the date of termination. Such payment will take into account any prior contractual commitments entered into in reliance on the performance of this Agreement.

8. Term, Termination and Cancellations

8.1 This Agreement will come into force stated on your Order Form and will continue for the Term specified in schedule, subject to the provisions of this Clause 8.

8.2 Upon receipt of a signed purchase order, a cancellation will only be accepted in writing and acknowledged in writing by Us with the following terms:

8.2.1 Cancellation over 21 days of installation date - No charge

8.2.2 Cancellation over 14 days but under 21 days of installation date - 50% of the purchase order total

8.2.3 Cancellation within 14 days of installation date - 100% of purchase order total

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

8.3.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid upon full completion of work, unless otherwise agreed by the parties in writing;

8.3.2 the other Party commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 14 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;

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

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

8.3.5 the other Party, being an individual or firm, has a bankruptcy order made against it or being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);

8.3.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;

8.3.7 that other Party ceases, or threatens to cease, to carry on business;

8.3.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 8, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

The rights to terminate this Agreement given by this Clause 8 will not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

9. Effects of Termination

Upon the termination of this Agreement for any reason:

9.1 any sum owing by either Party to the other under any of the provisions of this Agreement will become immediately due and payable;

9.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement will remain in full force and effect;

9.3 termination will not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination;

9.4 subject as provided in this Clause 9 and except in respect of any accrued rights neither Party will be under any further obligation to the other;

9.5 each Party shall immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

10. Data Protection

We will only use Your personal information as set out in Our Privacy Policy available from <https://www.ablecanopies.co.uk/privacy-policy.html>

11. Data Processing

11.1 In this Clause 11, “personal data”, “data subject”, “data controller”, “data processor”, and “personal data breach” will have the meaning defined in the Data Protection Legislation.

11.2 The Parties hereby agree that they will comply with all applicable data protection requirements set out in the Data Protection Legislation. This Clause 11 will not relieve either Party of any obligations set out in the Data Protection Legislation and does not remove or replace any of those obligations.

11.3 For the purposes of the Data Protection Legislation and for this Clause 11, We are the “Data Processor” and You are the “Data Controller”.

11.4 The Data Controller will ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Data Processor for the purposes described in this Agreement.

11.5 The Data Processor will, with respect to any personal data processed by it in relation to its performance of any of its obligations under this Agreement:

- 11.5.1 Process the personal data only on the written instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by law. The Data Processor will promptly notify the Data Controller of such processing unless prohibited from doing so by law;
- 11.5.2 Ensure that it has in place suitable technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage or destruction. Such measures will be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures.
- 11.5.3 Ensure that any and all staff with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential;
- 11.5.4 Not transfer any personal data outside of the UK without the prior written consent of the Data Controller and only if the following conditions are satisfied:
 - 11.5.4.1 The Data Controller and/or the Data Processor has/have provided suitable safeguards for the transfer of personal data;
 - 11.5.4.2 Affected data subjects have enforceable rights and effective legal remedies;
 - 11.5.4.3 The Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and
 - 11.5.4.4 The Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of the personal data.
- 11.5.5 Assist the Data Controller at the Data Controller’s cost, in responding to any and all requests from data subjects and in ensuring its compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner’s Office);
- 11.5.6 Notify the Data Controller without undue delay of a personal data breach;
- 11.5.7 On the Data Controller’s written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination of this Agreement unless it is required to retain any of the personal data by law; and
- 11.5.8 Maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with this Clause 11 and to allow for audits by the Data Controller and/or any party designated by the Data Controller.

11.7 The Data Processor will not sub-contract any of its obligations to a sub-contractor with respect to the processing of personal data under this Clause 11 without the prior written consent of the Data Controller (such consent not to be unreasonably withheld). In the event that the Data Processor appoints a sub-contractor, the Data Processor will:

- 11.7.1 Enter into a written agreement with the sub-contractor, which will impose upon the sub-contractor the same obligations as are imposed upon the Data Processor by this Clause 11 and which will permit both the Data Processor and the Data Controller to enforce those obligations; and
- 11.7.2 Ensure that the sub-contractor complies fully with its obligations under that agreement and the Data Protection Legislation.

11.8 Either Party may, at any time, and on at least 12 calendar days’ notice, alter this Clause 11, replacing it with any applicable data processing clauses or similar terms that form part of an applicable certification scheme. Such terms will apply when replaced by attachment to this Agreement.

12. **No Waiver**

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

13. **Further Assurance**

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

14. **Costs**

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

15. **Set-Off**

Neither Party will be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this Agreement at any time.

16. **Assignment and Sub-Contracting**

16.1 We will be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission by another member or sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of the Service Provider.

17. **Time**

17.1 The Parties agree that the times and dates referred to in this Agreement are for guidance only and are not of the essence of this Agreement and may be varied by mutual agreement between the Parties.

18. **Relationship of the Parties**

Nothing in this Agreement will constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

19. **Third Party Rights**

19.1 No part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 will not apply to this Agreement.

19.2 Subject to this Clause 19 this Agreement will continue and be binding on the transferee, successors and assigns of either Party as required.

20. **Notices**

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

20.2 Notices will be deemed to have been duly given:

- 20.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- 20.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or
- 20.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- 20.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

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

21. **Entire Agreement**

21.1 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except in writing and when signed by the duly authorised representatives of the Parties.

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

22. **Severance**

In the event that any provisions of this Agreement are found to be unlawful, invalid or otherwise unenforceable, those provisions will be deemed severed from the remainder of this Agreement. The remainder of this Agreement will be valid and enforceable.

23. **Dispute Resolution**

23.1 The Parties will attempt to resolve any dispute arising out of or relating to this Agreement through negotiation between their appointed representatives who have the authority to settle such disputes.

23.2 If negotiations under sub-Clause 23.1 do not resolve the dispute within 3 calendar months of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.

23.3 Nothing in this Clause 23 will prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

23.4 The Parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 25 will not be final and binding on both Parties.

24. Law and Jurisdiction

24.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) will be governed by, and construed in accordance with, the laws of England and Wales.

24.2 Subject to the provisions of Clause 23, any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) will fall within the jurisdiction of the courts of England and Wales.

This Agreement has been duly executed the day and year first before written

SIGNED by

<<Name and Title of person signing for Service Provider>>
for and on behalf of **Able Canopies Ltd**

SIGNED by

<<Name and Title of person signing for Client>>
for and on behalf of <<Client's Name>>

SCHEDULE 1**Specification of Services**

SAMPLE

SCHEDULE 2

Quote, Fees and Payment

SAMPLE