

CONTRACTSPERT TERMS AND CONDITIONS

The supply of ContractsXpert is subject to and on these Terms and Conditions (**Terms**), and any of our other terms and conditions in relation to ContractsXpert as agreed between you and House Builder XL Limited (**HBXL, us, our, we**). In these Terms **You** means you, our customer (being an individual, company, partnership or other incorporated or unincorporated person or organisation) and **your** and **yourself** shall be interpreted accordingly.

By clicking 'Accept' and pressing 'Next' during installation and registration of ContractsXpert, you confirm that you have read, understood, accept and agree to these Terms and (if you are an individual) that you are at least 18 years old. If you do not accept these Terms or (being an individual) you are not at least 18 years old, you must not use ContractsXpert.

The intended user of this software is an owner or employee of a small to medium sized building company. Our software solutions are designed for use by owners and employees of such firms as an ancillary tool for their main focus of construction work. Our software provides these users with the software solution which allows them to carry out their work. By using this software, you confirm that you fall into this category of user. Any other users or companies (such as, but not limited to, designers and architects or builders merchants) are not authorised to use this software under the standard licence, and must contact HBXL to receive the necessary licence. If in doubt, please contact us at sales@hbxl.co.uk.

YOUR ATTENTION IS ESPECIALLY DRAWN TO CLAUSES 3.1.5, 6.5 AND 6.8. ALL DOCUMENTS PROVIDED ON CONTRACTSPERT ARE PRECEDENT DOCUMENTS ONLY. YOU MUST TAILOR ALL SUCH PRECEDENT DOCUMENTS TO EACH PARTICULAR BUILDING OR CONSTRUCTION PROJECT. HBXL GIVES NO WARRANTIES, PROMISES OR ASSURANCES THAT USE OF PRECEDENT DOCUMENTS WILL ENSURE THAT YOU AVOID OR MINIMISE ANY PARTICULAR LIABILITY RISKS. YOU MUST ENSURE THAT ANY PRECEDENT DOCUMENTS WHICH YOU USE ARE APPROPRIATE FOR YOUR PARTICULAR NEEDS. IF IN DOUBT, SEEK INDEPENDENT LEGAL ADVICE. TO THE EXTENT PERMITTED BY LAW, HBXL ACCEPTS NO LIABILITY FOR INCORRECT USE OF ANY PRECEDENT DOCUMENTS (SUCH AS, BUT NOT LIMITED TO, INCORRECT INFORMATION BEING INSERTED INTO PRECEDENT DOCUMENTS, OR INCORRECT PRECEDENT CLAUSES BEING SELECTED).

1. DEFINITIONS & INTERPETATION

1.1. In these Terms the following definitions and rules of interpretation shall apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Claims: all liabilities, claims, actions and proceedings, losses, damages, expenses and costs (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and all other legal and other professional costs and expenses).

Documentation: any documents or information in relation to ContractsXpert made available to you by or on behalf of us (including precedent contractual documents which are offered as part of ContractsXpert).

ContractsXpert: our software application (including all versions and releases and any and all updates, patches, fixes, improvements and/or enhancements thereof) which provides the Documentation, and which is supplied to you under the name 'ContractsXpert' in accordance with these Terms.

Indemnify: indemnify and keep fully and effectively indemnified.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights in computer software, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, including the right to sue for and recover damages for past infringements.

Subscription Terms & Conditions: our Subscription Terms & Conditions as may be varied from time to time.

Support & Update Terms: our Support & Update Terms as may be varied from time to time.

Your Default: any act or omission by you or failure by you to perform any relevant obligation under these Terms.

1.2. Where you have purchased a subscription to ContractsXpert pursuant to our Subscription Terms & Conditions:

- 1.2.1. the rules of interpretation in those Subscription Terms & Conditions shall apply in these Terms; and
- 1.2.2. in the event of any ambiguity or inconsistency between these Terms and such Subscription Terms & Conditions, such Subscription Terms & Conditions shall prevail, but in the event of any ambiguity or inconsistency between these Terms and any of our other terms and conditions in relation to supply of ContractsXpert, the provisions of these Terms shall prevail.
- 1.3. Where any statement is qualified by the expression **so far as you are aware**, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.4. References to **clauses** are to clauses of these Terms.
- 1.5. Unless the context indicates otherwise, where **you** comprises two or more persons, the liability of such persons under these Terms shall be joint and several and **you** shall refer to each and all of them.
- 1.6. any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.7. Any obligation on a party not to do a thing shall include an obligation to not allow that thing to be done.

2. LICENCE

- 2.1. We hereby grant you a non-exclusive, non-transferable, royalty-free, revocable licence without the right to grant sub-licences to:
 - 2.1.1. install ContractsXpert on one laptop or desktop computer in accordance with our written instructions (if any) given from time to time;
 - 2.1.2. use ContractsXpert with or without our other software applications in accordance with these Terms to produce contractual documentation for and in relation to residential new-build buildings, extensions renovation works or loft conversions to existing buildings for yourself or for your actual and prospective customers during the ordinary course of your business.
- 2.2. You shall not, during the course of your use of ContractsXpert:
 - 2.2.1. access, store, distribute or transmit any viruses or any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or in a manner that is otherwise illegal or causes damage or injury to any person or property;
 - 2.2.2. without our prior written consent, use ContractsXpert (whether with or without our other software applications) in any manner inconsistent with the licence we grant to you under clause 2.1;
 - 2.2.3. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of ContractsXpert;
 - 2.2.4. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of ContractsXpert;
 - 2.2.5. without entering into a separate written agreement with us, use ContractsXpert as the basis to establish or carry on a contracts precedent document service as a separate commercial activity and where such activity is more than an ancillary part of the services which you primarily provide to your customers;
 - 2.2.6. attempt to build a product or service which competes with ContractsXpert;
 - 2.2.7. use ContractsXpert to provide services to any third party, except that (if you are a builder) you may use ContractsXpert as a part of your provision of ancillary services to your customers where the main focus of your primary services is the construction or renovation of residential properties, and if (i) you do not provide such ancillary services to the mass market to persons other than your customers to whom you are providing your primary services, and/or (ii) the services which you offer to your customers do not (whether directly or indirectly) compete with the services provided by ContractsXpert;
 - 2.2.8. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make ContractsXpert available to any third party;

- 2.2.9. attempt to obtain, or assist third parties in obtaining, access to ContractsXpert;
- 2.3. You shall use best endeavours to prevent any unauthorised access to, or use of, ContractsXpert and promptly inform us if you become aware of any such unauthorised access or use.
- 2.4. We reserve the right without notice to you to suspend your access to ContractsXpert and/or any of our other software applications if you commit any of breach these Terms.

3. YOUR OTHER OBLIGATIONS

- 3.1. You shall:
 - 3.1.1. ensure the latest version of ContractsXpert made available by us is installed on your desktop or laptop computer (as the case may be);
 - 3.1.2. promptly install any and all new versions, releases, patches, fixes, enhancements or modifications of ContractsXpert made notified to you by us and comply with all our reasonable instructions in relation to the same;
 - 3.1.3. ensure ContractsXpert is only used by professionals working within in the building industry;
 - 3.1.4. provide all information, follow all instructions and do all things required for precedent documents to be generated by ContractsXpert;
 - 3.1.5. review all Documentation and outputs of ContractsXpert using your professional skill and judgment and the features of ContractsXpert to ensure all such Documentation and outputs meet your requirements and your customers' requirements as a professional user; and
 - 3.1.6. promptly enter into an agreement with us incorporating our Support & Update Terms or, if you have already entered into such an agreement, continue performing your obligations under that agreement; or
 - 3.1.7. if you have purchased a subscription to ContractsXpert from us, continue performing your obligations under your agreement with us incorporating our Subscription Terms & Conditions.
- 3.2. If our performance of any of our obligations under these Terms is prevented or delayed by Your Default, then without prejudice to our other rights and remedies:
 - 3.2.1. we shall be entitled to rely on Your Default to relieve us from performance of our obligations under these Terms to the extent the Your Default prevents or delays us from performing such of our obligations;
 - 3.2.2. we shall not be liable for any costs, charges, expenses, or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of such of our obligations, as set out in this clause; and
 - 3.2.3. you shall reimburse us on written demand for any costs, charges, expenses or losses sustained or incurred by us arising directly or indirectly from Your Default.

4. INTELLECTUAL PROPERTY RIGHTS

- 4.1. You acknowledge and agree that we own all Intellectual Property Rights subsisting in ContractsXpert and the Documentation.
- 4.2. Save for the licence granted to you in these Terms, you acknowledge and agree that you have no other rights in and to ContractsXpert.
- 4.3. We warrant to you we have all rights in relation to ContractsXpert which are necessary to grant all rights we purport to grant to you under and in accordance with these Terms.
- 4.4. You shall promptly inform us if you become aware of any actual or alleged infringement of our Intellectual Property Rights subsisting in ContractsXpert and/or the Documentation or reasonably suspect a third party is or may be infringing such Intellectual Property Rights, and, at our cost and expense, provide us with all co-operation and assistance reasonably requested by us in relation to such infringement.

5. INDEMNITIES

- 5.1. You shall Indemnify us against all Claims arising out of or in connection with any claim made against us for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with your use of ContractsXpert;

- 5.2. Subject to clause 6.8, we shall Indemnify you against all Claims arising out of or in connection with any breach of our warranty given in clause 4.3.
- 5.3. As the indemnity in clause 5.2 is an indemnity for breach of contract, nothing in these Terms restricts or excludes your general obligation at law as the indemnified party to take reasonable steps to mitigate any losses you claim under such indemnity.

6. LIMITATIONS AND EXCLUSIONS OF LIABILITY

- 6.1. Nothing in these Terms excludes or limits our liability for:
 - 6.1.1. death or personal injury caused by our negligence;
 - 6.1.2. fraud or fraudulent misrepresentation; or
 - 6.1.3. any other liability which cannot be excluded or restricted at law.
- 6.2. In this clause 6, unless expressly stated otherwise, a reference to **our liability** or similar wording means our liability whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise.
- 6.3. ContractsXpert is a software product in a range of software products available from us and whilst we make every reasonable effort to ensure that our software products are compatible and will interface with each other, we give no assurance, warranty, representation or guarantee in this respect.
- 6.4. Subject to clause 6.1 and notwithstanding anything else contained in these Terms, we shall not be liable to you for any loss or damage whatsoever and howsoever arising suffered or incurred by you arising from or in connection with your breach of clauses 3.1.1, 3.1.2 or clauses 3.1.6 or 3.1.7 (as the case may be) of these Terms.
- 6.5. Given the nature of ContractsXpert, you assume sole responsibility for all results obtained from the use of ContractsXpert and for all conclusions drawn from such use. Subject to clause 6.1, we shall not be liable to you for any loss or damage whatsoever and howsoever arising suffered or incurred by you arising from or in connection with any Documentation or outputs of ContractsXpert or by errors or omissions in any documents, information or instructions provided by you in connection with ContractsXpert unless such errors or omissions are caused by our breach of these Terms. **You expressly acknowledge and agree that (on the basis that ContractsXpert provides only suggested precedent documentation which must be tailored to each individual project) you are responsible for ensuring that any contracts used are appropriate for any particular building or construction projects. Subject to clause 6.1, HBXL accepts no liability for incorrect use of any Documentation or for any liability resulting from such use (such as, but not limited to, the wrong inputs being inserted into precedents, the wrong precedents being used, or the wrong clause options being selected within precedents).**
- 6.6. All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms and ContractsXpert is provided to you on an "as is" basis.
- 6.7. Subject to clause 6.1 and notwithstanding anything else contained in these Terms, we shall not be liable to you whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any of the following (whether direct, indirect or consequential): loss of profits, loss of business, loss of agreements or contracts; loss of revenue; loss of anticipated savings; loss of or damage to goodwill and/or similar losses; loss of or damage to data or information; pure economic loss; or for any other indirect or consequential loss, costs, damages, charges or expenses howsoever arising.
- 6.8. Subject to clause 6.1 and clauses 6.2 to 6.7 (inclusive) our total aggregate liability to you in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising for all other loss or damage suffered or incurred by you arising out of or in connection with these Terms, including under the indemnity given by us in clause 5.2, shall be limited to an amount equal to:
 - 6.8.1. the total subscription fees paid for the relevant user subscriptions for ContractsXpert during the 12 months immediately preceding the date on which the claim arose (if you have purchased a subscription to ContractsXpert from us); or
 - 6.8.2. the total cost of the ContractsXpert software purchase (if you have purchased ContractsXpert outright from us).

7. REGISTRATION

- 7.1. You shall register ContractsXpert online with www.hbxl.co.uk as indicated on loading ContractsXpert on your desktop computer or laptop.
- 7.2. We shall be under no obligation under these Terms or any of our other terms and conditions in relation to supply of ContractsXpert to provide support to you unless and until ContractsXpert has been properly registered in accordance with clause 7.1 and a valid support subscription is in place.

8. SUPPORT CONTACT DETAILS

- 8.1. Support shall be provided in accordance with the terms of the relevant support subscription and our Support Policy (see <https://hbxl.co.uk/support-service-policy/>):

House Builder XL Limited
Future Space, North Gate (UWE), Filton Road, Stoke Gifford, Bristol, BS34 8RB
support@hbxl.co.uk
0117 916 7899
(available between the hours of 9am and 5.00 pm Monday to Friday, excluding bank and other public holidays)

- 8.2. These details may be updated from time to time, see our website www.hbxl.co.uk for further information.

9. TERM AND TERMINATION

- 9.1. These Terms shall commence on the date you click 'Accept' and press 'Next' during installation and registration of ContractsXpert in accordance with these Terms and shall continue in full force and effect until terminated in accordance with this clause.

- 9.2. We may terminate these Terms with immediate effect by giving notice to you if you:

9.2.1. commit a material breach of any other term of these Terms which breach is irremediable or (if such breach is remediable) fail to remedy that breach within a period of 30 days after being notified in writing to do so;

9.2.2. suspend, or threaten to suspend, payment of its debts or is unable to pay your debts as they fall due or admits inability to pay your debts or you (being a company or limited liability partnership) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or you (being a partnership) have any partner to whom any of the foregoing apply;

9.2.3. commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enters into any compromise or arrangement with your creditors other than for the sole purpose of a scheme for a solvent amalgamation of you with one or more other companies or the solvent reconstruction of you;

9.2.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of you (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of you with one or more other companies or the solvent reconstruction of you;

9.2.5. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over you (being a company);

9.2.6. the holder of a qualifying floating charge over the assets of you (being a company) has become entitled to appoint or has appointed an administrative receiver;

9.2.7. you (being an individual) are the subject of a bankruptcy petition or order;

9.2.8. you apply to court for, or obtain, a moratorium under Part A1 of the Insolvency Act 1986

9.2.9. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause to clause 9.2.2 to 9.2.8 (inclusive);

9.2.10. your financial position deteriorates so far as to reasonably justify our opinion that your ability to give effect to these Terms is in jeopardy; or

9.2.11. you suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of your business.

- 9.3. On termination of these Terms:

9.3.1. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced;

9.3.2. all licences granted to you shall automatically terminate;

9.3.3. you shall make no further use of the Documentation; and

9.3.4. if you have purchased a subscription to ContractsXpert and none of our other software products pursuant to our Subscription Terms & Conditions, that contract between you and us shall terminate with immediate effect; or, if pursuant to such a contract you have purchased a subscription to ContractsXpert with one or more of our other software products, then with

effect from the termination date of these Terms we shall be relieved of performing our obligations under that contract in respect of ContractsXpert, but otherwise that contract shall continue in full force and effect until terminated in accordance with its terms.

10. GENERAL

- 10.1. **Force majeure:** We will have no liability to you under these Terms if we are prevented from or delayed in performing our obligations under these Terms, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, including strikes or other industrial disputes (whether involving our workforce or any third party), failure of a utility service or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of our suppliers and/or sub-contractors, provided that we notify you of such an event and its expected duration.
- 10.2. **Notices.** Any notice given by a party under or in connection with these Terms shall be in writing and shall be: sent by e-mail to the e-mail address you supply to us (in the case of notice given to us) or to support@hbxl.co.uk (in the case of notice given by you); or sent by first-class post or other pre-paid next day delivery service to our registered office address (in the case of notice given by you) or your registered office address or principal address (as the case may be). Any notice given pursuant to the foregoing in this clause shall be deemed to have been received and shall take effect: if sent by e-mail, 24 hours after the time of sending shown on a print-out obtained by the sender; or, if sent by first-class post or other pre-paid next day delivery service, at 9.00am on the second Business Day after posting. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 10.3. **Variation:** We may vary these Terms at any time by giving prior notice to you to that effect (**Variation Notice**). You shall be deemed to have accepted these Terms as so varied if you do not notify us to the contrary within 5 Business Days of the date you receive such Variation Notice. If you do so notify us to the contrary within such 5 Business Day period then these Terms shall automatically terminate with effect from the date we receive such notice from you.
- 10.4. **Waiver:** No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.5. **Rights and remedies:** Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.
- 10.6. **Severance:** If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 10.7. **Entire agreement:** These Terms and: if you have purchased a subscription to ContractsXpert, our Subscription Terms & Conditions; or, if you have purchased ContractsXpert outright, our Support & Update Terms & Conditions, constitute the entire agreement between the parties and supersede any previous promise, undertaking, statement, assurance, warranty, representation, arrangement, understanding or agreement between them relating to the subject matter they cover.
- 10.8. **Non-reliance:** Each of the parties acknowledges and agrees that in entering into these Terms it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these Terms or not) relating to the subject matter of these Terms, other than as expressly set out in these Terms.
- 10.9. **Assignment:** You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.
- 10.10 **No partnership or agency:** Nothing in these Terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 10.11 **Third party rights:** These Terms does not confer any rights on any person or party (other than the parties to these Terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 10.12 **Governing law:** These Terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

10.13 **Jurisdiction:** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms or its subject matter or formation (including non-contractual disputes or claims).