

## TERMS OF BUSINESS

### 1. DEFINITIONS

In this Agreement:

**Offer** means the offer letter(s) and all of its appendices and/or attachments (if any) issued by the Consultant to the Client.

**Agreement** means the Offer and these Terms of Business and the Client's acceptance thereof.

**Client** means the person to whom the Consultant sends the Offer provided that where such person acts as an agent, the Client shall be the principal.

**Consultant** means the person who issued the Offer to the Client.

**Services** means all the work and services (including advice provided whether or not in writing) carried out or to be carried out for the Client by the Consultant.

### 2. PERFORMANCE

2.1. The Consultant shall exercise reasonable skill, care and diligence in performing the Services. Notwithstanding any responsibilities and obligations which the Client may have under any other contract or at law, nothing in this Agreement or in any proposal, report or other document is to be construed as a warranty or guarantee by the Consultant other than to use (or to have used) reasonable skill care and diligence.

2.2. The Consultant shall use all reasonable endeavours to perform the Services to the programme, if any, set out in the Agreement but shall not be liable if it is unable to perform the Services as a result of any cause beyond its reasonable control.

2.3. The Client shall supply to the Consultant in a timely fashion so as not to disrupt the performance of the Services and without charge all the information and things in the possession of the Client or any of the Client's agents consultants or contractors and any instructions decisions consents approval or access to property and use of facilities as described in (or reasonably to be inferred from) this Agreement as necessary for the performance of the Services by the Consultant.

### 3. PAYMENT

3.1. The Client shall pay the Consultant the fees set out in the Agreement. Interim invoices, if any, and the final invoice shall become due for payment on the date of the submission of the Consultant's invoice and the final date for payment shall be 30 days thereafter or as otherwise stated in the Agreement. The Client may not withhold any payment after the final date for payment of any sum due under this Agreement unless he gives not later than 14 days before such final date a notice specifying the amount proposed to be withheld and the ground for withholding payment or if there is more than one ground, each ground and the amount attributable to it. The Client shall pay interest on all amounts remaining unpaid after the final date for payment at the statutory rate pursuant to the Late Payment of Commercial Debts (Interest) Act 1998. The Client shall pay all debt collection fees (including legal fees) and costs whatsoever incurred by the Consultant in collecting the fees. All sums due under this Agreement are exclusive of Value Added Tax, the amount of which shall, if applicable, be paid by the Client to the Consultant at the rate and in the manner prescribed by law.

3.2. Payments due under this Agreement shall not be contingent upon the occurrence of any event (other than the provision of the Services), including but not limited to the failure of the Project to proceed.

#### **4. ADDITIONAL WORK**

4.1. If the Consultant is instructed by or on behalf of the Client to carry out additional work to that stated in the Offer or such work is necessary in the circumstances and/or suffers delay or disruption in the performance of the Services for reasons beyond the Consultant's reasonable control the Client shall make additional payment to the Consultant in respect of the additional work carried out and the additional resources employed and/or the delay or disruption suffered. The additional payment shall be calculated on the basis of the method of assessing payment under the Agreement, or where no such method is set out in the Agreement, payment shall be such sum as is reasonable in the circumstance.

#### **5. INTELLECTUAL PROPERTY, CONFIDENTIALITY & PUBLICITY**

5.1. The copyright in all drawings reports and other documents (including material in electronic form) prepared by the Consultant in the performance of this Agreement shall remain vested in the Consultant. Any of the Consultant's know-how, techniques, or processes used in the course of carrying out the Services are confidential to the Consultant. The Client shall not without the prior written consent of the Consultant divulge to any party details of any confidential information disclosed by the Consultant in the performance of the Services.

5.2. The Client shall have a licence to copy and use only the final drawings and other documents provided by the Consultant and only for the purposes and for the same project for which they were prepared or compiled. The Consultant shall not be liable for the use of such drawings or documents other than for the purposes for which they were provided by the Consultant. The Consultant may on giving not less than seven days written notice revoke this licence if the Client fails to pay in accordance with this Agreement any fees or other amounts due under this Agreement.

5.3. The Client shall not without the Consultant's prior written agreement provide to any third party or publish on any website the whole or any part any drawing report or other document prepared by the Consultant in the performance of this Agreement.

5.4. The Consultant may reproduce for reasonable publicity purposes any photographs taken and drawings prepared by it in the performance of the Services. The Client will consult with the Consultant when issuing publicity which concerns the Services. The Consultant shall not use any information that the Client has stated in writing to be confidential.

#### **6. THE CONSULTANT'S LIABILITY**

6.1. Notwithstanding anything to the contrary in this Agreement the total liability of the Consultant (other than for personal injury or death resulting from negligence) under or in connection with this Agreement howsoever arising whether in contract or in tort, in negligence, for breach of statutory duty or otherwise shall be limited to and not exceed in aggregate the amount stated in the Offer or ten times our fee (whichever is greater).

6.2. Subject to the foregoing clause which may operate to extinguish or reduce the liability of the Consultant under this clause the Consultant's liability under or in connection with this Agreement in respect of any claim or series of claims arising out of one occurrence or series of occurrences whether

in contract or in tort, in negligence, for breach of statutory duty or otherwise shall be limited to the least of the following amounts:

a) the greater of (a) the reasonable direct cost incurred by the Client to carry out corrective works of demolition reconstruction and repair of physical damage or clean-up works directly resulting from defective performance of the Services (excluding for the avoidance of doubt any of the following losses incurred by the Client whether direct or indirect: lost profits, wasted management time, cost of delay, increased supervision costs, professional fees, contractor and other third party costs and claims, diminution in value, financing charges, or financial loss) together with the Consultant's fee for performing the defective part or parts of the Services; and (b) five times the Consultant's fee for performing the defective part or parts of the Services.

b) the amount if any recoverable by the Consultant by way of indemnity against the claim or claims in question under any professional indemnity insurance taken out by the Consultant and in force at the time that the claim or claims or (if earlier) circumstances that may give rise to the claim or claims is or are reported to the insurers in question. This limitation shall not apply if no such amount is recoverable due to the Consultant having been in breach of his obligation under clause 6 or of the terms of any insurance maintained in accordance therewith or having failed in due time to report the claim or such circumstances to the insurers in question.

c) the amount of the Consultant's "Net Contribution" if applicable, being the amount that is determined on the basis that the Consultant's liability is limited to that proportion of the Client's losses which it would be just and equitable for the Consultant to pay having regard to the extent of the Consultant's responsibility for the same and on the assumption that:

c.1) all other consultants, contractors, sub-contractors, project managers or advisers engaged in connection with the same project shall have provided to the Client contractual undertakings on terms no less onerous than those set out in clause 2.1 in respect of the carrying out of their obligations in connection with the project;

c.2) that there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party referred to in this clause and any such other party who is responsible to any extent for the Client's losses is contractually liable to the Client for the same; and

c.3) that all such other consultants, contractors, sub-contractors, project managers or advisers have paid to the Client such sum as it would be just and equitable for them to pay having regard to the extent of their responsibility.

6.3. No action or proceedings under or arising out of or in connection with this Agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise shall be commenced by a party (a) after the expiry of six years after the completion of the Services or such earlier date as may be prescribed by law (b) at any time against any current or former employee officer or director of the Consultant (save in respect of death or personal injury resulting from negligence).

## 7. INSURANCE

7.1. Provided always that such insurance is available at commercially reasonable rates, and subject to all exceptions, exclusions and limitations to the scope of cover that are commonly included in such insurance at the time it is taken out or renewed as the case may be, the Consultant shall maintain professional indemnity and public liability insurance. When reasonably requested to do so the Consultant shall provide a brokers' certificate as evidence that insurance is being maintained.

## **8. TERRORISM**

8.1. The Consultant is not responsible under this Agreement or otherwise for designing or advising on or otherwise taking measures to prevent or mitigate the effect of any act of terrorism or any action that may be taken in controlling, preventing, suppressing or in any way relating to an act of terrorism (herein called "terrorism matters") and the liability if any of the Consultant under or in connection with this Agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim which may arise out of or in connection with terrorism matters is excluded.

## **9. POLLUTION, CONTAMINATION & ASBESTOS**

9.1. Unless included in the Services the Consultant is not responsible under this Agreement or otherwise for advising on matters which wholly, partly, directly or indirectly arise out of or result from asbestos (including without limitation the costs of testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any asbestos or product or waste that contains asbestos) or pollution and contamination (including without limitation by naturally occurring or man-made substances, forces or organisms or any combination of them whether permanent or transitory and however occurring (herein called "asbestos and pollution and contamination matters") and the liability if any of the Consultant under or in connection with this Agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim which may arise out of or in connection with asbestos and pollution and contamination matters is excluded.

## **10. INDEMNITY**

10.1. The Client shall indemnify and keep indemnified the Consultant from and against any and all claims (other than for personal injury or death resulting from negligence), demands, proceedings, damages, costs, charges and expenses arising out of or in connection with this Agreement in excess of the total liability of the Consultant determined in accordance with clause 6.1 and/or as the case may be the liability of the Consultant determined in accordance with clause 6.2 and/or arising out of or in connection with terrorism matters and/or asbestos and pollution and contamination matters where clause 9 applies and/or which may be in respect of events occurring after the expiry of the period referred to in clause 6.3.

## **11. SITE**

11.1. In the event of any visit to site by the Consultant's personnel they shall be regarded for all purposes as being the Client's visitors and the Consultant shall not be deemed to have assumed the role of occupier, or otherwise to have assumed control of or responsibility for the site or any persons on it.

11.2. Unless specifically stated otherwise in the Offer, The Consultant accepts no responsibility for ensuring the works are in accordance with the design and no liability in connection therewith. The presence of the Consultant on site shall in no way relieve other parties of responsibilities and liabilities in this regard.

11.3. Where inspections of specific items are carried out by the Consultant the opinion of the Consultant on compliance of the item with the design is restricted to the item in question only and wider compliance of the works shall in no way be implied.

11.4. To the extent the Services include reporting on ground conditions, the Consultant's work shall be based solely on the soil and groundwater conditions revealed in boreholes and excavations supplemented by site and laboratory test results. Records of water levels shall not be taken as equilibrium conditions unless specifically noted and an absence of water level observations does not necessarily indicate that water is not present.

## **12. SUSPENSION AND TERMINATION**

12.1. If the Client shall fail to pay the Consultant in full any amount properly due and payable under this Agreement by the final date for payment the Consultant may (without prejudice to its other rights and remedies) after giving the Client not less than seven (7) days' notice in writing of the same specifying the grounds for so doing, suspend its performance of this Agreement until payment in full of the amount due. Any period during which the Consultant exercises its right to suspend its performance shall be disregarded in computing for the purposes of any contractual time limit the time taken by the Consultant, or any of the Consultants' sub-contractors, to complete any Services directly or indirectly affected by the exercise of such right.

12.2. Either party may terminate performance of this Agreement (a) at any time by giving not less than one month's written notice to the other (b) in the event of a material breach of this Agreement by the other or in the event of the insolvency of the other by giving not less than two weeks' written notice. In this Agreement "insolvency" shall mean becoming bankrupt going into liquidation (either voluntary or compulsory except as part of a bona fide scheme of reconstruction or amalgamation) being dissolved compounding with its creditors or having a receiver administrative receiver or administrator appointed of the whole or part of its assets.

12.3. If circumstances arise for which the Consultant is not responsible and which the Consultant considers make it irresponsible for the Consultant to perform all or any part of the Services the Consultant shall be entitled to terminate the appointment or discontinue performance of any part by giving not less than two weeks' written notice.

12.4. Termination of the Consultant's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either party.

## **13. DISPUTES**

13.1. The Parties shall attempt, in good faith, to resolve any dispute or difference that may arise, referring the matter to the most senior person within the respective Client and Consultant organisations. Each party shall have the right to refer any dispute to adjudication in accordance with the Construction Industry Council Model Adjudication Procedure current at the time of referral.

## **14. GENERAL**

14.1. The Client shall not, without the written consent of the Consultant assign or transfer any benefit or obligation under this Agreement.

14.2. The Consultant shall be free to sub-let performance of part or all of the Services. For the avoidance of doubt agency staff seconded to or engaged by the Consultant shall not be deemed to be sub-consultants.

14.3. Scottish law shall govern the application and interpretation of this Agreement, and each party submits to the jurisdiction of the courts of Scotland.

14.4. Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement. In particular any advice provided by the Consultant is for the sole benefit of the Client and may not be used or relied upon by third parties.

14.5. Nothing in this Agreement excludes or restricts the Consultant's liability for death or personal injury resulting from its negligence.

14.6. Other than any variation set out in the Offer, no variation to these Terms of Business may be made without the written agreement of the Client and the Consultant.