

Terms of Business

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1.0 Introduction

- 1.1 Our aim is to foster a long-term business relationship with you built on mutual trust and satisfaction. We shall perform the services with the skill, care and diligence reasonably to be expected of a professional person experienced in the provision of like services.
- 1.2 While our first priority is as outlined in paragraph 1.1, we recognise the need for our relationship with you as our client to be formally documented. These are the terms of business that will apply to the services provided by us. These terms will be subject to the specific matters detailed in our document to you confirming your instructions (“the Proposal”). The terms of that document read with these terms of business will together form the contract between us (“the Contract”). Our obligations to each other will therefore be defined exclusively in the Contract, to the exclusion of any other communications between us and to the exclusion of any other terms or conditions.
- 1.3 We are a limited company with associated limited liability.
- 1.4 No amendment or variation to the Contract will be binding on us unless in writing signed by one of our directors.
- 1.5 Notwithstanding any other provision of the Contract, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

2.0 Our General Obligations

- 2.1 We agree to perform the services detailed in the Proposal (“the Services”) subject to and in accordance with these terms of business.
- 2.2 We shall co-operate with your representatives and any other professional advisers or contractors engaged by you. At the same time we shall be entitled to rely upon the information and/or advice given by you, those other professional advisers and contractors.
- 2.3 We shall advise you of the individual persons who will act on our behalf in the provision of the services.

3.0 Asbestos Health and Safety

- 3.1 All asbestos work will be carried out in accordance with Health, Safety and Asbestos legislation current as at commencement of the Services.
- 3.2 Where appropriate, work will be carried out in accordance with our UKAS accreditation and a copy of our accreditation is available upon request.
- 3.3 Detailed method statements are available upon request.

4.0 Your General Obligations

- 4.1 In order to enable us to perform the Services you shall within a reasonable time:
 - a) check that the quotation fully covers all the services required;
 - b) obtain and provide us with all necessary information (including reports and other relevant documentation) in your possession that relate to the Services or the project in relation to which the Services are being provided (“the Project”);
 - c) provide us timeously with all other information that we may reasonably request. Costs quoted are on the basis of continuity of work and so we reserve the right to make an additional charge or additional charges should continuity of work not be possible;
 - d) give us your decision as quickly as reasonably possible on all reports, recommendations and any other matters which are referred to you by us;
 - e) instruct your other professional advisers and contractors to provide us with all necessary information for and in relation to the Project;
 - f) agree with us a reasonable work programme. Failure to provide information to meet the programme will result in you being liable for all of our reasonable time and expense costs;
 - g) provide us with sole and unrestricted access to the working area and fees will have been provided on this basis unless otherwise specified. If this is not possible and our programme is affected, additional costs may apply;
 - h) understand that fees are given on the basis that scaffolding/safe working platforms are to be supplied by others for our use and at no cost to ourselves. If this is not the case, this will be charged for at cost plus 25%; and
 - i) if you require work to be carried out outside normal working hours additional costs will apply which will be expressly agreed between us.
- 4.2 Where applicable you will comply with the duties of the “client” under the Construction (Design and Management) Regulations 2007.

- 4.3 Our Directors, employees and associates are an important asset of our business. It is a condition of our engagement that you should not solicit our directors, employees and directly contracted associates, and, in the event that you do employ or otherwise engage any director, employee or associate who is or has been within the previous six months a director, employee or associate and who has been providing services to you on our behalf, you will pay to us the sum of £35,000 immediately upon the employment of that person. This includes but is not limited to you employing or engaging any director, employee or associate on a permanent, temporary, casual or self employed basis, either directly or via an agency or other third party.
- 4.4 Prior to visiting any property we require all clients to provide full details of any specific circumstances that might affect the Health and Safety of our staff and/or any residents. Typically this would include the following:
- Details of asbestos or other noxious compounds that may be present
 - If the resident has a history of violence requiring an accompanied visit
 - If the resident is vulnerable and special arrangements need to be made in respect of the visit, eg with a carer

If any, on attendance, our staff find that any of the above circumstances apply and they have not been notified they will not continue with the visit and a charge for an abortive visit will apply. Our staff will contact the Client to make arrangements for a re-visit or to visit an alternative property if that is feasible.

Pennington Choices Ltd is registered under the Data Protection Act (registration number Z9585211) and any information provided in respect of visits will be treated in accordance with the Act.

- 4.5 We are accredited with a number of bodies for regulatory or professional standing purposes. Where required by these bodies, you will co-operate with their reasonable requests for assistance to discharge their functions.

5.0 Interim Management

Interim managers supplied by us are deemed to be under the supervision, direction and control of the Client from the time they take up duties and for the duration of their assignment or the project. The Client will comply with Health and Safety At Work Act, by-laws, codes of practice and legal requirements to which the Client is ordinarily subject and take on full responsibility for Pennington staff for the duration of their work, including monitoring performance and all other management and supervisory obligations. Interim Managers will not take on the responsibility of duty holder or employer as defined within the Control of Asbestos Regulations 2012 or the Construction (Design and Management) Regulations 2007.

6.0 Additional Services

- 6.1 It is possible that it will become necessary for us to provide services that go beyond the Services as detailed in the Proposal. Such additional services may arise out of:

- a) changes in the scope or timing of the Project whether or not caused by changes of instructions by you or your other professional advisers; and/or
 - b) delay, defective performance or insolvency of your other professional advisers and contractors.
- 6.2 In the circumstances we shall be entitled to be paid such further fee as is detailed within our Proposal or, in the absence of such agreement, a fee calculated on a time basis in accordance with the hourly rates set out in the Proposal.

7.0 Our Liability

- 7.1 Nothing in the Contract shall restrict or exclude either party's liability for death or personal injury resulting from that party's negligence, and nothing in the Contract shall restrict or exclude either party's liability for fraud, fraudulent misrepresentation, wilful misconduct or wilful default.
- 7.2 You agree that we shall not be liable to you in any circumstances for:
- 7.2.1 consequential, special or indirect losses, or the following losses whether direct or indirect: loss of profits, loss of revenue, economic loss, loss of business or contracts, loss of anticipated savings or goodwill, or loss of data (or any losses arising from a claim by a third party for any of the aforesaid losses), whether arising under contract, statute, tort (including without limitation negligence) or otherwise;
 - 7.2.2 any failure to comply with the provisions of the Contract if such default is attributable to any extent to the acts or omissions of you and/or your employees, negotiators, principals, contractors, consultants or agents, including without limitation any failure of you to perform your obligations under the Contract;
 - 7.2.3 any consequences arising from us complying with your instructions or requirements; or
 - 7.2.4 any consequences arising from you failing to secure any necessary consents, licences or permissions.
- 7.3 As well as ourselves you may have appointed others (such as without limitation professional advisers or contractors) in connection with the Project. Our liability to you under or in any way in connection with the Contract shall be limited to the proportion of your loss and damage that it would be just and equitable to require us to pay, having regard to the extent of our responsibility for that loss and damage, on the assumptions that the others whom you have appointed have:
- (a) entered into an agreement with you containing a term no less onerous than clause 1.1 herein; and
 - (b) paid to you the proportion of your loss and damage that it would be just and equitable to require them to pay, having regard to the extent of their responsibility for that loss and damage.

- 7.4 Any claim for breach of contract, breach of duty or negligence or otherwise arising out of or in connection with the Contract shall be brought against us within six years of the act or omission alleged to have caused the loss in question, provided always that a condition precedent to bringing any such claim is that you have notified us in writing of such claim (such notification consisting of your description of the event or circumstance allegedly giving rise to such claim) within 28 calendar days of you becoming aware (or, if earlier, when you should have become aware) of the alleged grounds for such claim. You expressly agree that should you fail to notify us within 28 calendar days you waive any right to bring such claim.
- 7.5 Subject to clauses 7.1 to 7.4 herein (inclusive) you agree that our aggregate liability arising out of or in connection with the Contract shall be limited in total to the lesser of (i) £500,000 or (ii) a sum equivalent to ten times the remuneration payable to us as specified in the Proposal or (iii) the amount recoverable under our professional indemnity insurance policy. The limit shall apply however that liability arises, including, without limitation, a liability arising by breach of contract, arising by tort (including, without limitation, the tort of negligence) or arising by breach of statutory duty.
- 7.6 You agree that the provisions of this clause 7 shall not be affected by any termination of our appointment (whether or not pursuant to clause 9) and that the provisions of this clause 7 shall continue in full force and effect notwithstanding any such termination.
- 7.7 We will not take on responsibility of duty holder or employer as defined by the Control of Asbestos Regulations 2012.
- 7.8 Unless otherwise expressly agreed in writing, we shall not be responsible for any aspect of the design of the Project, including without limitation the selection of materials to be used.

8.0 Remuneration

- 8.1 Our fees, which are given for normal working hours and on week days only unless otherwise specified, both in total and payable on an interim basis, are defined in the Proposal and we shall be entitled to render invoices monthly unless otherwise agreed, such invoices including any additional fees payable under clause 6 above. Each invoice is to be paid within 14 calendar days of its date of issue.
- 8.2 For the avoidance of doubt our fee is exclusive of Value Added Tax. You agree to pay the total amount of Value Added Tax properly due thereon.
- 8.3 The Fee shall be deemed to be payment for the Services inclusive or exclusive of all expenses and disbursements as stipulated in the Proposal. You shall reimburse us in respect of expenses properly and reasonably incurred by us in connection with the Services. You agree that we have your consent to incur expenses on your behalf as we deem appropriate to the Project.

- 8.4 If in good faith you dispute that any item set out in any invoice is due, you shall give notice in writing within 5 calendar days of the date stated on such invoice stating the reason for such dispute, leaving the balance of the invoice to be paid in accordance with clause 8.1. We shall both immediately use our best endeavours to agree the amount of any disputed item, but failing agreement the matter may be referred to adjudication and/or arbitration in accordance with clauses 13 and 14.
- 8.5 Subject to clause 9.3 you shall pay all invoices without deduction, set-off, abatement or counter-claim. No allowance has been made for a Main Contractor Discount or retention unless specified.
- 8.6 We shall be entitled to be paid interest on invoices or any part thereof due and payable but remaining unpaid 14 days after the date of the invoice, interest shall be applied at 4% over our base rate, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 provided that, in the case of items correctly disputed by you, interest shall run only from the date when the amount of such item is agreed or settled by adjudication or arbitration. We will also apply compensation amounts for late payment in accordance with our Better Payment Practice Policy and you agree that you have read and understood the same.

9.0 Termination and/or Suspension

- 9.1 Both you and we shall be entitled to terminate the performance of the Services upon serving written notice on the other to that effect, if the other being in breach of its obligations hereunder in any material respect has failed within 14 days of the service of such notice to remedy such breach or breaches.
- 9.2 Both you and we shall be entitled to terminate the Contract immediately in the event that: distress or execution is levied or threatened upon any of the other's property; any judgement against the other remains unsatisfied for more than 14 days; you (being an individual) become bankrupt or unable to pay your debts or seek an arrangement with your creditors; you (being a company) have an administrator appointed or a receiver or manager or administrative receiver is appointed of you or any of your assets or you enter into liquidation or propose or make any voluntary arrangement with your creditors; any petition is presented or any resolution passed or any steps or proceedings taken which may lead to any of the foregoing occurrences; the other is or is deemed to be insolvent or unable to pay its debts; the other ceases to carry on business.
- 9.3 We shall be entitled to suspend performance of the Services in the event that you fail to pay any invoice within 14 days in accordance with clause 7.1 (or in the case of items disputed in good faith within 14 days after the date when we agree with you the amount of such item or the amount is settled by adjudication or arbitration).
- 9.4 Termination of our appointment under the Contract, however it may arise, shall not affect the rights and remedies of either of us in relation to any default of the other prior to such termination.

- 9.5 If the performance of the Services has been suspended or terminated, then
- a) we shall be entitled to be paid (and we shall invoice you accordingly) for all outstanding fees due to us for the performance of the Services, whether performed or not, all expenses and other disbursements incurred and VAT due.
 - b) you shall compensate us for all subsequent and consequential expenses and disbursements incurred or properly to be incurred in consequence of suspension or termination (including but not limited to the cost of engaging, re-deploying or dismissing staff).
- 9.6 If the performance of the Services has been suspended or terminated by you under clauses 9.1 or 9.2, then we shall give to you copies of any drawings or documents for and in relation to the Project prepared by us or on our behalf or in our possession as necessary to minimise any disturbance to the Project.

10.0 Intellectual Property Rights

- 10.1 The copyright in all information provided by us in connection with the Services belongs to us. However, subject to payment of our fees, we will allow you to use them by granting to you an irrevocable, non-exclusive, royalty free licence to copy and use the documents for all purposes related to the Project. We shall not be liable for any use of such documents for any purpose other than that for which they were prepared.
- 10.2 You agree not to provide to any third party any material provided to you by us as part of the Services, without our specific consent.

11.0 Assignment and Sub-Contracting

Neither you nor we may assign or transfer all or any part of the Contract without the written consent of the other. We reserve the right to engage appropriate human resources to undertake this Project, whether directly employed or not.

12.0 Communications

Any notices to be given under the Contract shall be given in writing and delivered by receipted hand delivery or recorded delivery post or email to the address of the party as stated in the Proposal.

13.0 Resolving Problems and Complaints

- 13.1 It is our policy to investigate complaints in relation to our conduct of a matter fully and promptly and to this end we operate a client complaint procedure. We will use all reasonable endeavours to resolve complaints in good faith by negotiation or other non-adversarial means such as mediation at our discretion, subject to the statutory right to have a qualifying dispute resolved by adjudication pursuant to clause 14 below.

13.2 In this regard we will correspond with you whether it would be appropriate to refer the dispute to the Arbitration Scheme operated by the Chartered Institute of Arbitrators, save that arbitration shall not apply unless both parties agree that it should.

14.0 Adjudication

14.1 If the Housing Grants Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 applies to the Contract, the Scheme for Construction Contracts (England and Wales) Regulations 1998 shall also apply save for the following amendments:

- a) The final date for payment of any sum that becomes due under the Contract shall be 14 days from the date of our invoice.
- b) The adjudicator nominating body shall be the Royal Institution of Chartered Surveyors.
- c) Any notice of adjudication to be served upon us shall be served on:

Managing Director
Pennington Choices Ltd
Charter House
Victoria Road
Runcorn
WA7 5SS

15.0 Governing Law

The Contract and these terms of business are governed by English Law.

16.0 Acceptance of Terms

Each party confirms that they have received independent legal advice as to the terms and effect of the Contract (or, in the alternative, that they have declined to obtain such independent legal advice notwithstanding that it may be prudent to do so) and each party confirms that they fully understand and accept the terms and effect of the Contract and each party expressly agrees that the terms of the Contract including but not limited to the limitation of liability provisions are reasonable.