

## AFL STANDARD TERMS AND CONDITIONS

### Terms and conditions:

Our offer is subject to our current Terms and Conditions of Engagement, a copy of which is noted below.

Should you wish our appointment to be based on any other terms, then these will be subject to review and acceptance by ourselves.

#### 1.0 Introduction

- 1.1 Our aim is to give you the highest care, skill and attention to your instructions with a view to fostering a long term business relationship with you built on mutual trust.
- 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 general terms of business which will apply to the services provided by us. These terms will be subject to the specific matters detailed in our letter to you confirming your instructions ("the engagement letter") The terms of that letter 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, which will therefore supersede all previous communications between us.
- 1.3 No amendment or variation to the contract will be binding on us unless made in writing signed by your duly authorised officer and one of our directors.
- 1.4 The services we provide are for your benefit only as specified in the engagement letter. Unless otherwise agreed, no third party shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract.

#### 2.0 Our General Obligations

- 2.1 We agree to perform the services detailed in the engagement letter ("the Services") subject to and in accordance with these terms of business.
- 2.2 We shall perform the Services with the reasonable skill care and diligence to be expected of a professional person experienced in the provision of like services.
- 2.3 We shall liaise, keep fully informed and co-operate fully 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.
- 2.4 We shall advise you of the individual persons who will act on our behalf in the provision of the services.
- 2.5 We shall not remove any such persons without your prior written approval, which shall not be unreasonably withheld. If you give such approval we shall be responsible for replacing such persons with a person who shall similarly have been previously approved by you in writing.

2.6 The individual persons referred to in Paragraph 2.4 have the necessary qualifications and experience to perform their duties in relation to the Services.

### 3.0 Your General Obligations

3.1 In order to enable us to perform the services you shall within a reasonable time:

1. obtain and provide us with all necessary information (including reports and other relevant documentation) in your possession which relate to the Services or the project in relation to which the Services are being provided ("the Project");
2. provide us timeously with all other information which we may reasonably request;
3. give us our decision as quickly as reasonably possible on all reports, recommendations and any other matters which are referred to by us; and
4. Instruct your other professional advisers and contractors to provide us with all necessary information for and, in relation to the Project.

3.2 Where applicable you will, in relation to health and safety issues, comply with the obligations of the "client" as detailed in the Construction (Design and Management) Regulations 1994 as amended from time to time.

3.3 Our directors and employees are an important asset of our business. In the circumstances, it is a condition of our engagement that you should not solicit our directors and employees, and, in the event that you do employ any director or member of staff who is or has been within the previous six months a directors or employee and who has been providing services to you on our behalf, you will pay to us the sum specified in the engagement letter immediately upon the employment by you of that person.

### 4.0 Additional Services

4.1 It is very likely that it will become necessary for us to provide services which go beyond the Services as detailed in the engagement letter. Such additional services may arise out of: -

- I. changes in the scope or timing of the Project whether caused by changes of instructions by you or your other professional advisers; and/or
- II. delay, defective performance or insolvency of your other professional advisers; and/or
- III. Delay, defective performance or insolvency of your other professional advisers and sub-contractors.

4.2 In the above circumstances, we shall be entitled to be paid such further fee as is then agreed or, in the absence of such agreement, a fee calculated on a time basis in accordance with the hourly rates set out in the engagement letter.

## 5.0 Our Liability

- 5.1 We have an interest in limiting the personal liability and exposure to litigation of employees, parties and consultants. You, therefore, agree that any claim of any kind arising out of or in connection with this appointment shall be brought only against ourselves (the firm of AFL Architects) and that no claims in respect of this appointment will be brought personally against any of the directors or employees of the firm of AFL Architects involved in the provision of the Services.
- 5.2 Further you agree that we shall not be liable for any direct or indirect consequential loss and that our maximum aggregate liability in respect of breach of contract or breach of duty or negligence or otherwise arising out of or in connection with this appointment shall be limited in total to the amount specified in the engagement letter.
- 5.3 As well as ourselves you may have appointed others (for example professional advisors or contractors) in connection with the Project. In these circumstances, our aggregate liability to you in respect of breach of contract or breach of duty or negligence or otherwise arising out of or in connection with this appointment shall be limited to that proportion of the loss or damage (including interest and costs) suffered by you which is attributable to us having regard to the contribution to such loss and damage by any other person. You agree that this will remain the position, even if you have agreed a limitation of liability with any of your other advisors so that consequently you may not be able to recover a part of any loss for which they might have otherwise been liable.
- 5.4 Any claim for breach of contract, breach of duty or negligence or otherwise arising out of or in connection with this appointment shall be brought against us within six years of the act or omission alleged to have caused the loss in question.
- 5.5 You agree that the provision of this paragraph 5 shall not be affected by the termination of our appointment (whether or not pursuant to paragraph 7) and that the provisions of this paragraph 5 shall continue in full force and effect notwithstanding any such termination.
- 5.6 This paragraph 5 shall not apply to limit or exclude any liability which we may have in relation to death or personal injury caused by our negligence.
- 5.7 Unless otherwise agreed, we shall not be responsible in any way for the design of the Project, including the selection of materials to be used.

## 6.0 Remuneration

- 6.1 Our fees, (together with expenses and disbursements) both in total and those payable on an interim basis, are defined in the engagement letter, and we shall be entitled to render invoices monthly unless we otherwise agree, such invoices to include any additional fees payable under Paragraph 4 above. Each invoice is to be paid within 28 days of its date of issue.
- 6.2 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 if applicable.
- 6.3 The Fee shall be deemed to be payment for the Services and to be exclusive of all expenses and disbursements. You shall reimburse us, against appropriate proof of

expenditure, in respect of expenses which shall have been properly and reasonably incurred by us in connection with the Services. Any single expense item, other than the cost of reproducing and printing documents and drawings, in excess of the amount specified in the engagement letter must be agreed in advance and in writing by you.

- 6.4 If in good faith you dispute that any item set out in any invoice is due, you shall give notice in writing within 5 days of the date of such invoice stating the reason for such dispute, leaving the balance of the invoice to be paid in accordance with Paragraph 6.1. We shall both immediately use our best endeavors to agree the amount of any disputed item, but failing agreement the matter may be referred to adjudication and/or arbitration in accordance with Paragraphs 13 and 14.
- 6.5 Subject to paragraph 6.4 you shall pay all invoices without deduction, set-off, abatement or counter-claim.
- 6.6 We shall be entitled to be paid 2% over base interest on invoices or any part thereof due and payable but remaining unpaid 28 days after the date of the invoice 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.

## 7.0 Termination and/or Suspension

- 7.1 You may by giving not less than 7 working days written notice require us to suspend the Services. You may, by giving not less than 7 working days written notice, require us to resume the Services at any time within a period of 6 months from the date of suspension. In those circumstances, we shall use all reasonable endeavors to resume performance of the Services as soon as possible. If you do not request us to resume performance within such period, then our appointment under this Agreement shall be deemed to have terminated, and the provisions of Paragraphs 7.5 and 7.6 shall apply.
- 7.2 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.
- 7.3 Both you and we shall be entitled to terminate the agreement immediately in the event that: distress or execution is levied or threatened upon any of the other's property; any judgment 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 to 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; or any other matter analogous with the matters or events referred to in this clause 7.3.
- 7.4 We shall be entitled to suspend performance of the Services in the event that you fail to pay any invoice within 28 days in accordance with Paragraph 6.1 (or in the case of items disputed in good faith within 28 days after the date when we agree with you the

amount of such item or the amount is settled by adjudication or arbitration), provided that we give to you 7 days' notice of intention to suspend performance of the Services.

- 7.5 Termination of our appointment under this Agreement, 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.
- 7.6 If the performance of the Services has been suspended or terminated under clauses 7.1, 7.2 or 7.3, or by us under clause 7.4 then:
1. We shall be entitled to be paid (and we shall invoice you accordingly) for all outstanding fees earned by us for the Services performed (whether wholly or in part) together with all expenses and other disbursements incurred and VAT due.
  2. You shall indemnify us and keep us indemnified 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, redeploying or dismissing staff).
- 7.7 If the performance of the Services has been suspended or terminated under clauses 7.1, 7.2, 7.3 or 7.4, 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.

## 8.0 Intellectual Property Rights

- 8.01 The copyright in all Documents 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 a revocable, 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.

## 9.0 Assignment and Sub-Contracting

- 9.1 Subject to Paragraph 9.2 neither you nor we may assign or transfer all or any part of the contract without the written consent of the other.
- 9.2 We shall not sub-contract any part of the Services under this Agreement except with your prior written consent such consent not to be unreasonably withheld or delayed.

## 10.0 Communication

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

## 11.0 Resolving Problems and Complaints

- 11.1 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 clients' complaints procedure, a copy of which is available upon request. We will use all reasonable endeavours to resolve complaints

by negotiation or other non-adversarial means such as mediation, this being subject to either side's statutory right to have any dispute resolved by adjudication in accordance with Paragraph 13 below.

## 12.0 Adjudication

12.1 If the Housing Grants Construction and Regeneration Act 1996 as amended from time to time applies to the contract, the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended from time to time shall also apply save for the following amendments:

- i. The final date for payment of any sum which becomes due under the contract shall be 28 days from the date of our invoice.
- ii. The adjudicator nominating body shall be the RIBA.
- iii. Any notice of adjudication to be served upon us shall be served on:

Mr. P Osborne  
Director  
AFL Architects  
1<sup>st</sup> Floor  
St. Georges House  
56 Peter Street  
Manchester  
M2 3NQ

## 13.0 Arbitration

If, despite both sides reasonable endeavours, any dispute cannot be resolved by negotiation, then such dispute will be referred to arbitration in accordance with the Arbitration Act 1996 as amended from time to time by a single Arbitrator to be agreed between us or, failing agreement within 14 days from the time when either party has given to the other a written request to concur in the appointment of an Arbitrator, nominated at the request of either party by the President of the Chartered Institute of Arbitrators.

In this regard, we will consider with you whether it would be appropriate to refer the dispute to the RIBA operated by the Chartered Institute of Arbitrators.

## 14.0 Governing Law

14.1 These terms of business and any contract between us are governed by the Laws of the UK and shall be communicated in English.

## 15.0 Limitation of Liability specific to Asbestos Claims (Asbestos Exclusion)

15.1 Further and notwithstanding anything to the contrary contained in (this Agreement) and without prejudice to any provision in (this Agreement) whereby liability is excluded or limited to a lesser amount, any liability 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 for loss or damage wholly, partly, directly or indirectly arising out of or

resulting from or associated in any way with asbestos or any product or waste that contains 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) shall not exceed the amount, if any, recoverable by (the Consultant) and in indemnity against the claim in question under professional indemnity insurance taken out by (the Consultant) and in force at the time the claim or (if earlier) circumstances that may give rise to the claim 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 obligations to maintain professional indemnity insurance under (this Agreement) or the terms of any insurance maintained in accordance therewith or having failed to report the claim or such circumstances to the insurers in question timeously.

## 16.0 Terrorism

We are not responsible under (this Contract) or otherwise for designing or advising on or otherwise taking measures to prevent or mitigate the effect of Terrorism or any action that may be taken in controlling preventing suppressing or in any way relating to Terrorism and (the Consultant) shall have no liability 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 arising out of any consequences whatsoever resulting directly or indirectly from or in connection with Terrorism or any such action (regardless of any other contributory cause or event) save to the extent that the claim is covered by professional indemnity insurance taken out by (the Consultant) and in force at the time that the claim or (if earlier) circumstances that may give rise to the claim is or are reported to the insurers in question.

### Terrorism

Any act or acts including but not limited to

(i) the use or threat of force and/or violence

and/or

(ii) harm or damage to life or to property (or the threat of such harm or damage) including but not limited to harm or damage by nuclear and/or chemical and/or biological and/or radiological means caused or occasioned by any person(s) or group(s) of persons or so claimed in whole or in part for political religious ideological or similar purposes.