

Terms and Conditions of Appointment

The Client acknowledges that in instructing 44 Construction Consultancy Limited (trading as “44 Consult”) to commence the services described in the proposal (the “Services”), the Client agrees to the proposal and application of the terms and conditions below (the “Appointment”) which together represent the entire agreement and understanding between the parties relating to the subject matter of this Appointment.

PARTIES' OBLIGATIONS

1. 44 Consult will exercise reasonable skill and care, in accordance with current professional standards in carrying out work for the Client.
2. Project instructions detailing the scope, nature, extent and programme of work shall be agreed in writing between the parties prior to starting work. Material revisions and additions to the scope of work and changes to the fee shall be agreed between the parties and recorded in writing.
3. 44 Consult will use reasonable endeavour to meet an agreed programme of work but does not accept responsibility for costs incurred as a result of delays outside of its control. 44 Consult is not responsible for delay caused by or contributed to by the Client acts or omissions or those of third parties.
4. The Client shall supply 44 Consult with all relevant data and information available to the Client in relation to the Services and shall give such assistance, decisions and access as may be reasonably required by 44 Consult and in sufficient time to enable the performance of the Services in accordance with any agreed programme.
5. The Client acknowledges that it has had an opportunity to negotiate the Appointment prior to commencement of the Services.
6. The Construction (Design and Management) Regulations 2015 (“CDM”) may apply to the works and the Client must be aware that the Client has responsibility under these regulations for the appointment of Designers, the CDM Coordinator and the Principal Contractor. The CDM Coordinator is responsible for the preparation and maintenance of the Pre-Construction Health and Safety Plan. 44 Consult do not act as Principal Contractor or Principal Designer in the full sense of CDM requirements
7. 44 Consult may place orders with third party consultants and contractors, for and on the Client's behalf, if the Client require us to do so. 44 Consult may recommend preferred contractors, however no such recommendations will be binding on the Client. A separate contractual relationship will be formed between the Client and the third party consultants and contractors and under no circumstances will 44 Consult be liable for payment to, the actions of or lack of actions of said other third parties. The Client will be required to hold all third parties responsible for the competence and delivery of their own relevant work or services. Any and all third party consultants and contractors appointed to the Project shall be required to cooperate fully with 44 Consult and to promptly provide any and all such information reasonably required by us to enable us to provide the Services. 44 Consult is not responsible in any way for 'design' or 'product selection'.
8. The Client must in all circumstances ensure that any third party consultants and contractors are responsible for site safety and the proper completion of the relevant works. Under no circumstances do 44 Consult bear responsibility. 44 Consult will act in accordance with all reasonable instructions given to us by the Client, provided such instructions are compatible with the specification of Services provided in the Agreement, RICS regulations and guidelines and UK Law. However, time will not be of the essence for performance of our Services
9. Any variation to the Services must be in writing before 44 Consult can proceed with those Services. Any price variation will become due for payment in accordance with the terms for payment as detailed below. If 44 Consult have to make any change in the arrangements relating to the provision of the Services, 44 Consult will notify the Client immediately. 44 Consult will endeavour to keep such changes to a minimum and will seek to offer the Client arrangements as close to the original as is reasonably possible in the circumstances.

COPYRIGHT

10. The copyright in all documents, drawings, reports, maps, photographs and other material prepared by 44 Consult shall remain vested in 44 Consult and 44 Consult asserts its moral rights under the Copyright, Designs and Patents Act 1988. The Client and other parties shall not reproduce any 44 Consult's copyright material without the express written consent of 44 Consult.

PAYMENT

11. Fees are charged in accordance with the Fee Proposal and are exclusive of VAT. Fee proposals remain valid for a period of 3 months from the date on which they are produced unless otherwise stated. Daily fee rates are based upon an assumed 8-hour working day.
12. The Client shall reimburse 44 Consult for all reasonably incurred disbursements, including but not limited to travel and printing.
13. Unless otherwise identified in a fee proposal, invoices will be raised on a monthly basis. The final date for payment shall be 14 days from the date of 44 Consult issuing an invoice to the Client. The Client shall pay interest on the amount due and unpaid from the final date for payment to the date of payment at 8% above the Bank of England base rate.
14. Other fees or expenses relating to the project from time to time are payable directly from the Client to the relevant Authority or Party. 44 Consult do not make third party payments on the Client's behalf.
15. Other Consultants or Contractors required as part of a professional team led by 44 Consult will be appointed and paid for directly by the Client.
16. 44 Consult reserves the right to terminate/suspend services to the Client if an invoice remains unpaid for more than 14 days. Suspension of services includes suspension of any services by 44 Consult being undertaken on the Client's behalf to meet their obligations in contracts, agreements or any other matters and 44 Consult will not be liable for any damages, charges or legal matters in association with the service being suspended or terminated due to lack of payment of fees due.
17. Hourly and daily fee rates may be reviewed and any changes to fee rates will be notified to the Client in writing 28 days prior to invoicing. It is the responsibility of the Client to raise any objections within 28 days from the date of the letter or email notifying the Client of any change to the fee rates; otherwise the changes shall be deemed to be accepted by the Client.
18. Invoices are payable within the terms as stated on the invoice. You must notify us within 7 days of receipt if you disagree with the invoice, after which you will be deemed to have accepted that the payment is due in full
19. Clients are to remit using online bank transfer. 44 Consult are unable to accept payments by cheque, debit or credit card unless under pre-agreed special circumstances.
20. Clients procuring services under SPVs or limited companies with no trading history will be requested to provide a payment deposit of 50% at instruction for the services instructed, and 50% prior to release of report or activity/service to be undertaken
21. 44 Consult will not accept 'pay when paid' clauses within any service and fee agreement. 44 Consult will not undertake work if the Client does not yet have the funds to carry out the services, for instance while awaiting bank funding, planning gain, sale or lease of property etc. 44 Consult work in good faith assuming all Client's have funds when carrying out the instructed service.
22. 44 Consult have a strict policy of any fees outstanding for more than 3 calendar months will be handled by legal debt collection.

TERMINATION

23. The Client may terminate the Appointment by giving 21 days' notice in writing (including email communication)
24. If either party terminates this Appointment all outstanding fees invoiced and/or incurred but not yet invoiced will become immediately payable.
25. Termination of this Appointment for any reason shall be without prejudice to the accrued rights or claims of either party in relation to any act or omission of the other prior to termination and the provisions of this Appointment shall continue to bind each insofar as and so long as may be necessary to give effect to their respective rights and obligations hereunder.

LIABILITY and LIMITATIONS

26. 44 Consult will not be held liable for the accuracy of data supplied by external sources. This includes inaccurate information supplied by the Client.
27. 44 Consult's liability under or in connection with this Appointment shall not exceed the lesser of (a) ten (10) times our aggregate fee for the Services or (b) Three Hundred Thousand pounds (£300,000.00) in the aggregate for all claims, whichever is less.
28. Without prejudice to Clauses contained herewith, 44 Consult's liability shall be further limited to such sums as 44 Consult ought reasonably to pay having regard to 44 Consult's responsibility for the loss and damage suffered on the assumptions that any other consultants, contractors and subcontractors who also have a liability to the Client shall be deemed to have provided the Client with contractual undertakings on terms no less onerous than those set out in Clause 1 and paid the Client such proportion of loss and damage which it would be just and equitable for them to pay having regard to the extent of their responsibility.
29. In the event that any claims demands or proceedings are advanced by any person against 44 Consult under or in connection with this Appointment which result in 44 Consult paying any amount in excess of the limit of our liability described, the Client shall indemnify and hold 44 Consult harmless in respect of any and all amounts in excess of the limit of our liability.
30. Save in respect of death or personal injury, the Client shall only look to 44 Consult (and not to any 44 Consult individual employee) for redress if the Client considers that there has been any breach of this Appointment. The Client agrees not to pursue any claims in contract, tort (including negligence), statute or otherwise against any individual employee of 44 Consult as a result of them carrying out the Services.

THIRD PARTY RIGHTS

31. A person who is not a party to this Appointment shall not have any rights under or in connection with it. This Appointment is personal to the Client and non-assignable. The provision of collateral warranties to third parties is excluded.
32. If any term of this Appointment is held to be invalid, illegal or unenforceable the remainder of this Appointment shall be given effect as if that term had been deleted.
33. Completion of services occurs on the issuing of a final fee invoice. No action or proceedings shall be brought against 44 Consult after the expiry of 6 years from the date of issue of the final fee invoice.

GOVERNING LAW AND DISPUTE RESOLUTION

34. If at any time a dispute arises under this Appointment, which cannot be first settled amicably between the parties, either party may refer the dispute to adjudication in accordance with the Construction Industry Council ("CIC") Model Adjudication Procedure current at the date the dispute arises. The parties shall agree a sole adjudicator or failing such agreement, the CIC will nominate a sole adjudicator. The adjudication shall be conducted under the laws of England and Wales. This Appointment shall be governed by and construed in accordance with the law of England and Wales.