

TERMS & CONDITIONS

These are the Terms & Conditions of Hurley & Davies Ltd (the “**Consultant**”).

In any agreement entered into by any Client of the Consultant, these Terms & Conditions shall have the following meaning and effect:

Definitions

“**Additional Services**” means any services that are not identified as Basic Services in the services listed in the Appointment Particulars.

“**Appointment Particulars**” means letter of engagement, fee agreement or other notification of employment and fees given by the Consultant to the Client from time to time.

“**Basic Charges**” means the Consultant’s charges for all provision of and/or in connection with the Basic Service carried out at the Client’s request in accordance with the Consultant’s charging rates set out in the Appointment Particulars.

“**Basic Services**” means all surveying, reporting, drafting or other building surveying / architectural services including all planning, administration and the provision of information or updates, record and data collection or analysis and related services of a kind normally given by a firm of building surveyors and architectural consultants provided by the Consultant on the Client’s behalf as set out more particularly in the Appointment Particulars.

“**Building Contract**” means the contract or contracts between the Client and the Contractor (or any other relevant third party) for the Project a copy of which (or the relevant sections) the Client has provided to the Consultant.

“**Client**” means the contracting party under the Appointment Particulars party to who these Terms and Conditions have been provided and apply.

“**Confidential Information**” shall mean all information disclosed by one party to the other including without limitation in any written document disclosed to or obtained by one party from the other or a third party and shall include but shall not be limited to information of any products, prices, charges, Appointment Particulars, these Terms & Conditions of Business, financial matters, prices or rates and any document appended thereto and all information relating to the parties’ operations, processes, plans, intentions, products, information, know-how, designs, trade secrets, software, market opportunities, customers and business affairs.

“**Contractor**” means the contractor or contractors the Client appoints under the Building Contract.

“**Fee**” means the amount payable in accordance with Appointment Particulars by the Client to the Consultant for the basic Services and includes any adjustment of the fee under this appointment.

“**Intellectual Property Rights**” means all copyright or other intellectual property rights howsoever arising in whatever media whether or not registered including without limitation any patents, trademarks, service marks, trade names, registered designs and any applications for the protection or registration of those rights and all renewals and all extensions thereof.

“**Lien**” means the Consultant’s right to keep all papers, documents in whatever format or medium, money or other property held or produced on the Client’s behalf until such time as all monies due under this Agreement or any Fee Agreement are paid in full. A Lien may be applied after any Agreement ends.

“**Payment Terms**” means the payment terms set out in the Appointment Particulars.

“**Price**” means the price of the provision of the Basic Services and/or other products or Additional Services provided by the Consultant to the Client at the rates set out in the Appointment Particulars.

“**Professional Team**” means the consultant and any other professionals engaged by the Client from time to time in relation to the Project and which the Client notifies to the Consultant.

“**Project**” means the design and/or construction of the works, or any part thereof, as such is included in the Building Contract.

“**Reimbursable Expenses**” means the payment by the Consultant on the Client’s behalf including without prejudice to the generality of the foregoing all out of pocket expenses, travelling fees, stationery costs, costs of consumable items, costs of HM Land Registry or Local Authority searches, Site Location Plans, Planning Enquiries or any other relevant payments whatsoever made on the Client’s behalf.

“**Services**” means the Basic Services and any Additional Services together.

1 Appointment

- 1.1 The Client appoints the Consultant to provide the Services and the Consultant accepts such appointment upon and subject to these Terms and Conditions (the “**Appointment**”). The Appointment takes effect on the date when the Consultant first commenced performance of the Services, irrespective of the date of this Appointment.
- 1.2 The Consultant shall regularly liaise and consult as necessary with the Contractor and other members of the Professional Team set out in the Appointment Particulars.

2 The Services

- 2.1 The Consultant agrees to undertake and use their reasonable endeavours to carry out the specific instructions of the Client as are contained in the Appointment Particulars and thereafter as may be particularly set out in writing by the Client to the Consultant from time to time.
- 2.2 The Consultant shall take all reasonable steps to complete the Services within the time scales intimated by the Consultant to the Client, however, time shall not be of the essence in respect of any Agreement nor any part of the Services provided by the Consultant and the Consultant shall not be liable for any losses of whatever nature either directly or indirectly attributable from the result of the late production of any part of the Services requested by the Client.
- 2.3 The Client shall be solely responsible for proof-reading all documentation, plans, surveys, reports, drafts, or other documentation produced by the Consultant and ascertaining and confirming that it complies with their requirements, is correct in all respects and shall notify the Consultant in writing of any errors or alterations to any such documentation or accounts produced by the Consultant within seven days of receipt of the same.

3 Additional Services

If at any time the Client requires the Consultant to perform any Additional Services, the Client pays the Consultant for such Additional Services at the rates set out in the Appointment Particulars unless otherwise agreed. If the Client requires any Additional Services, the Consultant informs the Client of the likely additional fee to be charged. Unless otherwise agreed, the additional fee is payable after performance of the relevant Additional Service.

4 Fee

As consideration for the performance of the Basic Services, the Client pays the Consultant the Fee and the Reimbursable Expenses. The Fee is adjusted if the performance of the Basic Services is materially delayed and/or disrupted for any cause outside the Consultant's reasonable control. The parties agree the adjustment to the Fee and the timing of its payment. If not agreed, such adjustment is based on the rates set out for the Basic Services and, if no rates are set out, on the rates set out for the Additional Services. The Fee is then the Fee as adjusted.

5 Client's Obligations

- 5.1 The Client shall:
 - 5.1.1 make available to the Consultant full instructions to allow the Services to be carried out correctly and in accordance with this Agreement.
 - 5.1.2 not ask the Consultant to work in an improper or unreasonable manner.
 - 5.1.3 not deliberately mislead the Consultant in any way with regard to the products or services to be provided and will provide full information and documentation when requested by the Consultant.
 - 5.1.4 co-operate with the Consultant fully and do all necessary things and execute all such documents to allow the Services to be carried out in a timely and conscientious manner.
 - 5.1.4 ensure that an appropriate representative of the Client is available as may be required by the Consultant for clarification of any matters arising during the course of carrying out the Services.

- 5.1.5 the Client gives, and procures (so far as reasonably practicable), that the other members of the Professional Team give, such assistance to the Consultant as is reasonably required by the Consultant for the performance of the Services.
- 5.1.6 The Client appoints the Professional Team and the Contractor in sufficient time and on terms that allow the Project to be successfully delivered and so as to secure compliance with all relevant Statutory Requirements (including the CDM Regulations).

6 Standard of Care

The Consultant, when performing the Services, exercises the reasonable skill and care to be expected of an appropriately qualified professional consultant of the same discipline as the Consultant holding itself out as having the competence and resources to perform the Services.

7 Statutory Requirements

When performing the Services, the Consultant complies with the requirements of all statutes and legislation relevant to the Project. In particular, the Consultant complies with the Construction (Design and Management) Regulations 2007, to the extent they apply to the Project.

8 Prohibited Materials

The Consultant, exercising the required standard of care:

- 8.1 does not specify for use in connection with the Project any materials which by their nature or application contravene any British Standard or EU equivalent current at the time of specification or which are otherwise generally known within the construction and engineering industry at the time of specification to be harmful to health and safety or to the durability of works in the particular circumstances in which they are specified for use; and
- 8.2 insofar as reasonably practicable and having regard to the nature and extent of the Services, sees that such materials are not used in the construction of those parts of the Project to which the Services relate.

9 Payment of Remuneration and Reimbursable Expenses

- 9.1 Payment of the Fee, any additional fee payable for Additional Services and the Reimbursable Expenses is due on receipt by the Client of a VAT invoice from the Consultant. Invoices are submitted on each instalment date or on completion of each activity or work stage set out in the Appointment Particulars and are accompanied by such supporting documents, records and receipts reasonably necessary for checking each invoice.
- 9.2 Not later than 5 days after the payment is due, the Client gives notice in writing to the Consultant specifying the amount it proposes to pay and the basis on which such amount is calculated.

10 Final Date for Payment and Withholdings

- 10.1 The Client pays all sums properly due under this Appointment to the Consultant not later than 14 days after the date on which the Client receives the Consultant's VAT invoice (the "**final date for payment**").
- 10.2 The Client does not withhold payment of any sum due after the final date for payment unless it has given prior notice in writing to the Consultant of its intention to withhold payment. Such notice must be given not less than 7 days before the final date for payment and specify the amount which the Client proposes to withhold and the ground for making the withholding. If there is more than one ground, the notice must specify each ground and the amount attributable to it. Provided that this Clause does not apply where the Client is a residential occupier under the Housing Grants, Construction and Regeneration Act 1996.
- 10.3 Where Clause 10.2 applies, a notice under Clause 9.2 will suffice as a notice of intention to withhold payment if it complies with the requirements of Clause 10.2.

11 Default, Interest and Suspension

If the Client fails to pay any sum due and payable to the Consultant under this Appointment in full by the final date for payment and, where Clause 10.2 applies, no effective notice of intention to withhold payment has been given which complies with Clause 10.2:

- 11.1 the Client pays the Consultant simple interest on the unpaid amount for the period from the final date for payment until the date of actual payment, calculated on a daily basis at the rate of 4% above the base rate set from time to time by the Bank of England's Monetary Policy Committee (or any successor to it).
- 11.2 where such failure continues for 7 days after the Consultant has given the Client notice in writing of its intention to suspend performance of the Services and the ground or grounds on which it intends to suspend performance, the Consultant may suspend such performance until such amount is paid, and/or
- 11.3 the Consultant may by notice in writing to the Client suspend the copyright licence under Clause 18 until such amount is paid.

12 Limitations of Liability

- 12.1 Except for liability for death or personal injury, the maximum aggregate liability of the Consultant to the Client under or in connection with this Appointment (whether in contract or tort (including negligence) or for breach of statutory duty) is limited to the amount specified in the Appointment Particulars. If no such amount is specified, such liability is limited to the amount of the Consultant's professional indemnity insurance specified in Clause 13.1.
- 12.2 Without prejudice to the above limitation or any other exclusion or limitation of liability available to the Consultant, the Consultant's liability for loss or damage suffered by the Client in the event of any breach of this Appointment is limited to the proportion of such loss or damage that it would be just and equitable to require the Consultant to pay having regard to the extent of responsibility of the Consultant for the same and on the assumptions that:
 - 12.2.1 all contractors and sub-contractors and other members of the Professional Team have provided contractual undertakings to the Client on terms no less onerous than those set out in this Appointment in respect of the carrying out of their obligations in connection with the Project.
 - 12.2.2 there are no exclusions or limitations of liability nor joint insurance or co-insurance provisions between the Client and any such persons; and
 - 12.2.3 all such persons have paid to the Client such sums as it is just and equitable for them to pay having regard to the extent of their responsibility for such loss or damage. Provided always that the Consultant does not assert that it has no or a reduced liability to the Client under this Appointment solely by reason of the fact that the Contractor accepts responsibility for the design of the Project, to the extent that such design is undertaken by the Consultant.
- 12.3 No action or proceedings for any breach of this Appointment may be commenced against the Consultant after the expiry of 6 years from practical completion of the Project.

13 Insurance

- 13.1 The Consultant maintains professional indemnity insurance in the sum specified in the Appointment Particulars, subject to such insurance being available in the insurance market on reasonable terms and rates.
- 13.2 The Consultant produces written evidence that this insurance is being maintained whenever reasonably requested to do so by the Client but no more than once in any term of any insurance policy.

14 Term, Suspension & Termination

This Agreement and these Terms & Conditions of Business shall continue in force until completion of the Services unless the Agreement is terminated in accordance with any of the provisions of this Clause 16 or any other clause of this Agreement.

15 Suspension of the Services

- 15.1 The Client may at any time give notice in writing to the Consultant requiring it to suspend all or part of the Services.
- 15.2 The Consultant shall resume performance of the Services which have been suspended as soon as reasonably practicable after it receives written notice to do so from the Client.
- 15.3 If the suspension continues for more than 3 months, either party may give notice in writing to the other terminating the Consultant's engagement under this Appointment.

16 Termination of Engagement

- 16.1 The Client may terminate the Consultant's engagement under this Appointment at any time by giving the Consultant 14 days' prior notice in writing.
- 16.2 If a party is in material breach of its obligations under this Appointment and fails to remedy such breach within 7 days after the other party gives it written notice to do so, the party which gave such notice may immediately thereafter terminate the Consultant's engagement under this Appointment by giving written notice to that effect to the party in breach.
- 16.3 If a party becomes insolvent or bankrupt (that is, for a company is deemed unable to pay its debts under Sections 123 or 268 of the Insolvency Act 1986, or for an individual any steps are taken in connection with a voluntary arrangement or any other compromise or arrangement for the benefit of a creditor), then the other party may immediately terminate the Consultant's engagement under this Appointment by giving written notice to the insolvent party.

17 Payment upon Suspension or Termination

- 17.1 Upon any suspension or termination, the Client pays the Consultant in accordance with Clauses 9 and 10 (without prejudice to any rights the Client has in respect of any breach by the Consultant of its obligations under this Appointment):
 - 17.1.2 that part of the Fee, the Additional Services Fee (if any) and any other sums which have accrued due up to the date of suspension or termination (as the case may be) and a fair and reasonable proportion of the next instalment of the Fee and any additional fee payable for Additional Services commensurate with the Services performed, less any amounts previously paid to the Consultant; and
 - 17.1.3 (save where such suspension or termination is due to the Consultant being in breach) all reasonable costs, disbursements and expenses properly and necessarily incurred by the Consultant (including any costs incurred in suspending and/or resuming performance of the Services) as a direct result of such suspension or termination.
- 17.2 Upon payment of the amount due under Clause 17.1, the Consultant hands over to the Client the Documents (as described in clause 18), subject to the terms of the copyright licence under Clause 18 and payment of the Consultant's reasonable copying charges save that the Consultant's Lien in respect of such matters for any unpaid fees or charges arising under these Terms & Conditions or any Fee Agreement of whatever nature shall remain in place and such property shall remain in the possession of the Consultant until such time as payment is made in full.
- 17.3 Termination of the Consultant's engagement under this Appointment does not affect the accrued rights and remedies of the parties.

18 Copyright

- 18.1 Copyright in all drawings, plans, details, specifications, bills of quantities, schedules, reports, records, calculations, and all other documents including computer software and revisions of the same ("**Documents**") prepared by the Consultant for the purposes of the Project remains the property of the Consultant. Subject to Clause 11.3, the Consultant grants to the Client a royalty-free, irrevocable, non-exclusive licence to use and reproduce the Documents and any designs contained in them for any purpose relating to the Project including the construction, completion, maintenance, operation, letting, sale, reinstatement, mortgaging, refurbishment, and repair of the Project (but not for any extension of the Project without the Consultant's written consent).

- 18.2 The Consultant is not liable for any use of the Documents for any purpose other than that for which they were originally prepared.

19 Confidentiality

- 19.1 Each party will take all proper steps to keep confidential all Confidential Information of the other which is disclosed to or obtained by it pursuant to these Terms & Conditions and/or any Appointment Particulars and will not divulge the same to any third party except to the extent that such confidential information becomes public through no fault of that party.
- 19.2 Notwithstanding the termination or expiry of this Agreement for whatever reason these obligations and restrictions shall continue after termination of the said Agreement.
- 19.3 Each party agrees to keep the existence of and the nature of any Fee Agreement and the provisions of these Terms & Conditions confidential and not to use the same with any other party in any publicity, advertisement or other disclosure with regard to this Agreement or these Terms without the prior written consent of the other party.
- 19.4 Nothing in this Clause shall prevent the Consultant from exploiting any inventions or software or other product or service that it develops during the term of the Agreement with the Client.
- 19.5 Documentation collected or obtained by the Consultant on the Client's behalf during the course of provision of the Services if not collected or obtained or requested by the Client within seven years of the retainer with the Consultant would ordinarily be destroyed and the Client consents to the destruction of the documents in the absence of such formal request within seven years of the termination of the retainer with the Consultant.

20 Interpretation

- 20.1 The Client shall indemnify the Consultant fully against any losses, liabilities, costs or expenses which the Consultant may incur as a result of any work done in accordance with the Client's specific specifications which involves or results in any infringement of any Intellectual Property Rights, breach of any statute, bye-law or which in any other respect causes the Consultant to be liable to any third party or any government authority in respect of any breach of statutory duty, tort or breach of contract or such other claim incurred as a result of information or requests made by the Client to the Consultant.
- 20.2 The Client undertakes that it will indemnify the Consultant in respect of all proceedings, costs, expenses, liabilities, or damage arising out of the breach or negligent performance or failing of performance by the Client of the terms of these Terms & Conditions or any Appointment Particulars or any letter of engagement or in respect of any act or omission of the Client, its officers, employees, agents or sub-contractors.
- 20.3 No provision in these Terms & Conditions shall operate so as to exclude any liability of any of the parties in respect of a fraudulent misrepresentation made by that party to the other or to restrict or exclude any remedy which the other party may have in respect of such misrepresentation.

21 Agency Partnership

This Agreement shall not constitute or imply any partnership, joint venture, agency or fiduciary relationship or other relationship between the parties other than a contractual relationship expressly provided for in these Terms & Conditions.

22 Entire Agreement

These Terms & Conditions supersede all prior agreements, arrangements and undertakings between the parties and constitutes the entire Agreement between the parties relating to the subject matter of this Agreement and supersede or will replace any matters that conflict with these Terms & Conditions in any Appointment Particulars.

23 Force Majeure

- 23.1 Notwithstanding anything else contained in this Agreement, the Consultant shall not be liable for any delay in performing its obligations under this Agreement nor for any losses in respect thereof if such delay is caused by circumstances beyond its reasonable control.
- 23.2 Without prejudice to the previous Clause, causes beyond the reasonable control of the Consultant will include (but are not limited to):
- 23.2.1 acts of God, explosion, flood, lightening, tempest, fire, pandemic, or accident;
 - 23.2.2 war, hostilities, invasion, act of foreign enemies;
 - 23.2.3 rebellion, revolution, insurrection, military or usurped power or civil war;
 - 23.2.4 riots, civil commotion, or disorder;
 - 23.2.5 acts, restrictions, regulations, byelaws, refusals to grant licences or permissions, prohibitions, or measures of any kind on the part of any governmental authority;
 - 23.2.6 import or export regulations or embargoes;
 - 23.2.7 strike, lockouts or other industrial actions or trade disputes of whatever nature whether or not involving employees of the Consultant or any third party;
 - 23.2.8 default of suppliers or sub-contractors for any reason whatsoever where such delay is beyond the reasonable control of the Consultant;
 - 23.2.9 incompleteness or inaccuracies of any technical, financial, or other information or other information or obligations which are the responsibility of the Client;
 - 23.2.10 any failure, default, delay or non-performance of any act or omission of any nature whatsoever on the part of the Client, its employees, agents, suppliers, or sub-contractors.

24 Notices

- 24.1 Any notice under this Appointment is deemed to be given if it is in writing and delivered by hand or sent by pre-paid, recorded, or special delivery post to the Client or the Consultant (as the case may be) at the address set out for each party in the Appointment Particulars or any other address notified by one party to the other in writing in accordance with this Clause.
- 24.2 Any notice sent by hand is deemed received upon actual receipt by the party to whom it is addressed.
- 24.3 Any notice sent by a postal method described in Clause 24.1 is deemed received 48 hours after it was posted.

25 Severance

- 25.1 If any provision of these Terms & Conditions is prohibited by law or adjudged by a Court of competent jurisdiction to be illegal, unlawful, void or unenforceable in whole or in part then the provision shall to the extent required be severed from these Terms & Conditions and be rendered ineffective as far as possible without modifying the remaining provisions of these Terms & Conditions and shall not in any way affect any of the circumstances of or the validity of or the enforcement of the other Terms & Conditions contained herein.
- 25.2 The Client and the Consultant agree that should any provision of these Terms & Conditions be invalid or unenforceable then they shall forthwith enter into in good faith negotiations to amend such provision in such a way that as amended it is valid and legal and to the maximum extent possible carries out the original intent of the parties as to the point(s) in question.

26 Waiver

No delay, neglect, or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under these Terms & Conditions.

27 Time

The Consultant will use its reasonable endeavours to achieve completion of the Services in accordance with the time specified in any agreement, letter or otherwise sent to the client but each date appearing in any such agreement, letter or schedule is to be treated as an estimate only and time shall not be of the essence in respect of any aspect of the Services.

28 Assignment and Sub-Contracting

- 28.1 The Consultant does not assign or sub-contract any of its rights or obligations under this Appointment without the prior consent in writing of the Client (which consent is not to be unreasonably withheld or delayed).
- 28.2 The benefit of this Appointment may be assigned by the Client by way of an absolute legal assignment to any person providing finance or re-finance to the Client in connection with the Project or to any person (A1) acquiring the Client's interest in the Project and by A1 to another person (A2) acquiring A1's interest in the Project. No further or other assignment is permitted and, in particular, A2 is not entitled to assign this Appointment.
- 28.3 Where the Appointment is transferred to a third party in accordance with this Clause, the rights set out in the agreement shall vest in that beneficiary on the date of receipt by the Consultant of the Client's notice to that effect stating the name of the beneficiary and their communication information including address, telephone number and full name.

29 Disputes

- 29.1 Notwithstanding any other provision of this Appointment, either party may at any time refer any dispute under it to adjudication under the Scheme for Construction Contracts (England and Wales) Regulations 1998, Part 1.
- 29.2 The Adjudicator's decision is binding until the dispute or difference is finally determined by litigation. The Client and the Consultant attempt to agree the identity of the Adjudicator. If the parties fail to reach such agreement within 5 days after one party notifies the other that it wishes to agree the identity of the Adjudicator, the Adjudicator is appointed by the President or Vice-President for the time being of RICS. Any dispute or difference in connection with the enforcement of a decision of the Adjudicator is referred to the Courts.

30 Third Parties

Except where expressly set out in these Terms & Conditions, the parties confer any rights to any third parties by virtue of these Terms & Conditions or any agreement and accordingly to that extent the Contract (Rights of Third Parties) Act (1999) shall not apply to this Agreement.

31 Law & Jurisdiction

This Agreement and any disputes in respect of the same shall be governed and construed in accordance with the laws of England and Wales.

32 General

In this Agreement, unless the context otherwise requires:

- 32.1 words importing the singular number includes the plural number and vice versa;
- 32.2 words importing persons include firms, companies, corporations and vice versa;
- 32.3 references to numbered clauses and schedules are reference to the relevant clause or schedule to these Terms & Conditions;
- 32.4 the headings of any clause and paragraph in these Terms & Conditions shall not affect their interpretation;
- 32.5 any reference to a statute or statutory provision is construed as a reference to that statute or provision as amended, consolidated, supplemented, or re-enacted (with or without modifications) from time to time;

- 32.6 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done.
- 32.7 any party who agrees to do something shall be deemed to fulfil that obligation if that party procures that it is done;
- 32.8 nothing in these Conditions shall exclude or restrict the statutory rights of the Client who deals as a consumer within the meaning of the Unfair Contract Terms Act 1977 as amended;
- 32.9 no change, alteration or modification to these Terms & Conditions or any Agreement shall be valid unless in writing and signed by duly authorised representatives of both parties;
- 32.10 this Appointment supersedes any previous agreements or arrangements between the parties in respect of the Project;
- 32.11 where any Clause requires an act to be done within a specified period after or from a specified date, the period begins immediately after that date, where the period includes Christmas Day, Good Friday, or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in England and Wales, that day is excluded.