

Services Agreement / Terms and Conditions of Service

PARTIES

- (1) Costplan Services (South East) Ltd incorporated and registered in England with company number 08842649 whose registered office is at Unit 15, The Oak Trees Business Park, Ashford, Kent, TN24 0SY (the "Supplier").
- (3) Client Name address as stated on the Client Authorised Fee Proposal (the "Customer").

BACKGROUND

- (A) The Supplier is a provider of Quantity Surveying services relating to the project detailed on the Client Authorised Fee Proposal and as set out in the schedule of services.
- (B) The Customer wishes to engage the Supplier to provide such services, upon and subject to the terms and conditions set out in this agreement.

AGREED TERMS

1. Interpretation

- 1.1 The following definitions apply in this agreement:
 - "Client Approved Fee Proposal" means the Costplan Services (South East) Ltd Fee proposal accepted by the customer.
 - "Deliverables" means all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including all documents, Bill of Quantities, reports, instructions, data and specifications (including drafts).
 - "Document" includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.
 - "In-put Material" means all Documents, information and materials provided by the Customer relating to the Services, including all documents, Bill of Quantities, reports, instructions, data and specifications (including drafts).
 - "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
 - "Pre-existing Materials" means all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this agreement, including all documents, Bill of Quantities, reports, instructions, data and specifications (including drafts).
 - "Services" means the services to be provided by the Supplier under this agreement as set out in the Client Authorised Fee Proposal.
 - "VAT" means value added tax chargeable for the time being.
- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules and background form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules and background.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to writing or written includes faxes but not e-mail.
- 1.8 Where the words "include(s)", "including" or "in particular" are used in this agreement, they are deemed to have the words "without limitation" following them. Where the context permits, the words "other" and "otherwise" are illustrative and shall not limit the sense of the words preceding them.
- 1.9 Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement.
- 1.11 All Bills of Quantities / measurements supplied are deemed approximate and the Supplier is not deemed liable for errors / inconsistencies.

2. Commencement and duration

- 2.1 The Supplier shall provide the Services to the Customer on the terms and conditions of this agreement.
- 2.2 The Supplier shall provide the Services to the Customer from receipt of the Client Authorised Fee Proposal or date agreed in writing between the parties.
- 2.3 The Services supplied under this agreement shall continue to be supplied for the period stated in the Client Authorised Fee Proposal or as so varied in agreement in writing by the parties.

3. Supplier's obligations

- 3.1 The Supplier shall use reasonable endeavors to provide the Services, and to deliver the Deliverables to the Customer, in accordance with the Client Authorised Fee Proposal in all material respects.
- 3.2 The Supplier shall use reasonable endeavors to meet any performance dates specified in Client Authorised Fee Proposal, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.

4. Customer's obligations

- 4.1 The Customer shall:
 - (a) supply the Supplier without charge all matters and things necessary for the performance of the Services by the Supplier and also where necessary, to provide facilities and approvals to the Supplier all at such times as not to delay the Supplier in the provision of the Services;
 - (c) provide in a timely manner, such In-put Material and other information as the Supplier may reasonably require, and ensure that it is accurate in all material respects;
 - (d) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;
 - (e) obtain and maintain all necessary licenses and consents and comply with all relevant legislation in relation to the Services, the installation of the Supplier's Equipment, the use of In-put Material and the use of the Customer's Equipment in relation to the Supplier's Equipment, in all cases before the date on which the Services are to start;
- 4.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 4.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 4.4 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of TWELVE months after the termination of this agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.
- 4.5 Any consent given by the Supplier in accordance with clause 4.4 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.
- 4.6 The Customer is deemed to have satisfied themselves of any measurements provided and to have queried any items that remain unclear.

5. Change control

- 5.1 The Customer's Manager and the Supplier's Manager shall meet periodically to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 5.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- the likely time required to implement the change;
 - any necessary variations to the Supplier's charges arising from the change; and
 - any other impact of the change on this agreement.
- 5.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services, and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 13.
- 5.4 Notwithstanding clause 13, the Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. In addition the Supplier may, from time to time and subject to Customer's prior written consent (which shall not be unreasonably withheld or delayed) change the Services, provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Customer at least ONE months' notice of any change.
- 5.5 The Supplier may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with clause 5.2.

6. Charges and payment

- 6.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in Client Authorised Fee Proposal, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Clause 6.2 shall apply if the Supplier provides Services on a time and materials basis, and clause 6.3 shall apply if the Supplier provides Services for a fixed price. The remainder of this clause 6 shall apply in either case.
- 6.2 Where Services are provided on a time and materials basis:
- the charges payable for the Services shall be calculated in accordance with the Supplier's rates, as set out in the Client Authorised Fee Proposal;
 - all charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate;
 - the Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice; and
 - the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 6.2 and clause 6.4. [Each invoice shall set out the time spent by each individual whom it engages on the Services and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts]. *Delete if not appropriate.
- 6.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Authorised Fee Proposal as amended from time to time and agreed in writing. The Customer shall pay the total price to the Supplier (without deduction or set-off) on completion of the services.
- 6.4 Any fixed price and daily rate contained in the Client Authorised Fee Proposal excludes:
- the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier; and
 - VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 6.5 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within FOURTEEN days of receipt to a bank account nominated in writing by the Supplier.
- 6.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- charge interest on such sum from the due date for payment at the annual rate of 5% above the base, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand; and
 - suspend all Services until payment has been made in full.
- 6.7 All sums payable to the Supplier under this agreement shall become due immediately on its termination, despite any other provision. This clause 6.8 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.
- 6.8 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

7. Intellectual Property Rights

- 7.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to clause 7.2, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If this agreement is terminated, this license will automatically terminate.
- 7.2 The Customer acknowledges that, where the Supplier does not own any of the Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written license (or sub-license) from the relevant licensor(s) on such terms as will entitle the Supplier to license such rights to the Customer.

8. Confidentiality and the Supplier's property

- 8.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.
- 8.2 The Customer may disclose such information:
- to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under this agreement; and
 - as may be required by law, court order or any governmental or regulatory authority.
- 8.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 8.
- 8.4 The Customer shall not use any such information for any purpose other than to perform its obligations under this agreement.
- 8.5 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

9. Limitation of liability - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 9.1 Nothing in this agreement limits or excludes the Supplier's liability for:
- death or personal injury caused by its negligence;
 - fraud or fraudulent misrepresentation; or
 - breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 9.2 The Supplier undertakes to exercise reasonable skill and care in performing the Services, and shall be liable only for negligent failure in performing the Services.
- 9.3 Subject to clause 9.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:
- loss of profits;

- (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of or damage to goodwill;
 - (f) loss of use or corruption of software, data or information;
 - (g) any indirect or consequential loss.
- 9.4 Subject to clause 9.1 and clause 9.3, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to:
- (a) no more than the equivalent value of the fee for the services provided;
 - (b) the Supplier can not be held responsible for inconsistencies and/or errors in pricing.
- 10. Data Protection**
The Customer acknowledges and agrees that personal data will be processed by and on behalf of the Supplier in connection with the Services.
- 11. Termination**
- 11.1 Subject to clauses 11.3 and 11.4, this agreement shall terminate automatically on completion of the Services.
- 11.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement without liability to the other on giving the other not less than ONE months' written notice or immediately on giving notice to the other if:
- (a) the either party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than FOURTEEN days after being notified in writing to make such payment; or
 - (b) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within FOURTEEN days of that party being notified in writing of the breach; or
 - (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or
 - (d) the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts, or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (e) the other party commences negotiations with all, or any class of, its creditors with a view to any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or
 - (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or
 - (g) an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
 - (h) a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
 - (i) a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
 - (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within FOURTEEN days; or
 - (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(d) to clause 11.2(h) (inclusive); or
 - (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - (m) there is a change of control of the other party
- 11.3 On termination of this agreement for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
 - (b) the Customer shall return all of the Supplier's Equipment, Pre-existing Materials and Deliverables. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
 - (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 12. Force majeure**
- 12.1 Provided that it has complied with the provisions of clause 12.3, a party shall not be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement (and, subject to clause 12.4, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("Force Majeure Event"), including but not limited to any of the following:
- (a) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
 - (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - (c) terrorist attack, civil war, civil commotion or riots;
 - (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) voluntary or mandatory compliance with any law (including a failure to grant any license or consent needed or any change in the law or interpretation of the law);
 - (f) fire, explosion or accidental damage;
 - (g) loss at sea;
 - (h) extreme adverse weather conditions;
 - (i) collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
 - (j) any labour dispute, including but not limited to strikes, industrial action or lockouts;
 - (k) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
 - (l) interruption or failure of utility service, including but not limited to electric power, gas or water.
- 12.2 The corresponding obligations of the other party will be suspended to the same extent.
- 12.3 Any party that is subject to a Force Majeure Event shall not be in breach of this agreement provided that:
- (a) it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - (b) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
 - (c) it has used all reasonable endeavors to mitigate the effect of the Force Majeure Event, to carry out its obligations under this agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 12.4 If the Force Majeure Event prevails for a continuous period of more than 1 month, either party may terminate this agreement by giving 14 days' written notice to all the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.