

Terms and Conditions

1. DEFINITIONS

- 1.1. In these conditions the following meanings shall apply:
 - 1.1.1. “Agreement” means the contract for the provision of Consultancy Services specified in the Schedule incorporating these conditions and made between the Client and the Consultant to the exclusion of any other terms and conditions; In the event of conflict of terms the provisions of the Schedule shall prevail over the conditions
 - 1.1.2. “Client” means the individual or organisation particulars of whom are set out in the Schedule;
 - 1.1.3. “Consultant” means the individual or firm providing the Consultancy Services particulars of whom are set out in the Schedule;
 - 1.1.4. “Consultancy Services” means the services to be provided to the Client by the Consultant particulars of which are set out in the Schedule.
 - 1.1.5. “Consultancy Charges” means the charges (together with VAT at the prevailing rate) specified in the Schedule together with any additions or deductions which may be agreed in writing; and
 - 1.1.6. “Variation” means any reasonable alteration, omission or addition required by the Client the impact on time, cost and practicality of such to be advised by the Consultant to the Client in writing and only proceeded with upon the Client's written acceptance.

2. CONSULTANT'S OBLIGATIONS

- 2.1. The Consultant in consideration of the Consultancy Charges shall exercise all reasonable skill and care and diligence in providing the Consultancy Services and any agreed Variations.
- 2.2. If specified in the Schedule the Consultant shall effect and maintain professional indemnity insurance in the sum specified in the Schedule and shall if required by the Client provide evidence of such cover.
- 2.3. The Consultant shall not subcontract any part of the Consultancy Services save with the prior written consent of the Client (not to be unreasonably withheld).
- 2.4. The Consultant acknowledges that the Consultancy Services are provided by the Consultant as an independent contractor and no relationship of employee/ employer or agency arises with the Client.
- 2.5. The Consultant undertakes to maintain records of the Consultancy Services provided for a period of two years from completion of the Consultancy Services and provide copies on request to the client upon reimbursement of reasonable copying charges.

- 2.6. The Consultant acknowledges that as a member of the Arboricultural Association s/he is bound by the
- 2.7. Association's codes of conduct and codes of ethics for the time being in force in performing the Consultancy Services.

3. CHARGES AND TERMS OF PAYMENT

- 3.1. The Consultancy Charges plus VAT shall (unless otherwise provided in the Schedule) be paid within 30 days of an invoice being submitted in accordance with the provisions of the Schedule.
- 3.2. If additional costs or delay is directly caused by discrepancies, errors or omissions in information supplied by the Client the Client shall pay to the Consultant any such additional costs so incurred and allow a reasonable extension of time for the performance of the Consultancy Services.
- 3.3. If the payment of any sum due is delayed the Consultant shall be entitled to charge interest at the rate of 4% above the base rate of the Bank of England for the time being in force on the overdue amount and/or suspend further performance of the Consultancy Services provided that the Consultant shall not suspend performance unless it shall have given to the Client written notice requiring payment of the overdue sum within 7 days and the Client shall have failed to comply with such notice.
- 3.4. If any part of an invoice is disputed or queried by the Client the Client shall notify the Consultant of the details of such dispute or query not less than 10 days prior to the due date of payment and of its intention to withhold payment. The payment of any undisputed part of the invoice shall not be delayed.

4. LIMIT OF CONSULTANT'S LIABILITY

- 4.1. If any part of the Consultancy Services are performed negligently or in breach of the provisions of this Agreement then at the request of the Client (if the request is made within six months of the date of completion of the Consultancy Services) the Consultant will re-perform the relevant part of the Consultancy Services subject to clauses 4.2 and 4.3 below.
- 4.2. Except in the case of death or personal injury caused by the Consultant's negligence the Consultant's liability under or in connection with this agreement whether arising in contract delict breach of statutory duty or otherwise shall not exceed the greater of the Consultant's Charges or the amount recoverable under the Consultant's professional indemnity policy (if applicable).
- 4.3. The Consultant shall not be liable for any loss or damage or expenses of any nature incurred or suffered by the Client of an indirect or consequential nature including without limitation any economic loss, loss of profits turnover, business or goodwill.

5. FACILITIES AND ACCESS

- 5.1. The Client shall arrange for or grant the Consultant access at all reasonable times to such premises as may be necessary for the provision of the Consultancy Services and shall provide the Consultant with such facilities (if any) as may be specified in the Schedule.

6. TERMINATION

- 6.1. If either party is in breach of its obligations and fails to remedy such breach (if capable of remedy) within 14 days of receiving written notice to remedy the breach then the Agreement may be terminated forthwith by the party not in default without prejudice to the accrued rights of the parties.
- 6.2. If either party shall become insolvent or bankrupt or have a receiving or administration order made against it or compound with its creditors or commence winding up (save for solvent amalgamation or reconstruction) the other party shall be at liberty by written notice to terminate the Agreement forthwith.

7. CONFIDENTIALITY

- 7.1. The Consultant and the Client shall keep confidential all information of the other party whether marked as confidential or not, obtained under or in connection with the provision of the Consultancy Services and shall not divulge the same to any third party save with the prior written consent of the other party. The provisions of this clause shall survive termination of the Agreement and continue to apply for a period of two years post termination.
- 7.2. The provisions of clause 7.1 shall not apply to information in the public domain (otherwise than by breach of this clause); or information obtained from a third party who is free to divulge the same or such confidential information is required to be divulged by law.
- 7.3. Both parties shall only divulge confidential information to such employees who have a need to know and are bound by similar obligations of confidentiality as set out in this clause 7.

8. INTELLECTUAL PROPERTY

- 8.1. Unless otherwise agreed in writing all intellectual property rights arising out of the provision of the Consultancy Services shall vest in the Consultant. Subject to the Consultant having been paid all sums due under the Agreement the Consultant shall grant to the Client a worldwide non-exclusive non-transferable royalty free licence to use and have used the intellectual property for any purpose.

9. FORCE MAJEURE

- 9.1. Neither party shall have any liability for delay or failure in performance which result from circumstances beyond the reasonable control of that party. The party affected by such circumstance shall notify the other party if such circumstance occurs. If

such circumstance continues for a period of more than three months either party may terminate this Agreement by written notice.

10. DISPUTE RESOLUTION

10.1. Any dispute or difference which cannot be amicably resolved by the parties shall:

10.1.1. where the Client complains of unethical or unprofessional conduct on the part of a Consultant who is a member of the Arboricultural Association such complaint shall be referred to and resolved under the provisions of the Arboricultural Association Code of Conduct; and

10.1.2. all other disputes or differences shall be referred to the non exclusive jurisdiction of the courts of Scotland.

10.2. A copy of the Consultant's Complaints Procedure may be requested at any time.

11. THIRD PARTY RIGHTS

11.1. No term of this Agreement is intended for the benefit of any third party, and the parties do not intend that any term of this contract shall be enforceable by a third party.

12. GOVERNING LAW

12.1. This contract shall be governed by and construed under Scottish law

13. CANCELLATION RIGHTS

13.1. The Client may cancel the work within 14 days starting the day after the day on which the contract was made. This does not apply to any work under the value of £42.