

TERMS OF APPOINTMENT

1. Introduction

1.1 The Quantity Surveyor shall provide the services with reasonable skill, care and diligence.

2. Client's obligations.

2.1 The Client shall supply such information to the Quantity Surveyor at such times as is reasonably required for the performance of the services.

2.2 The Client shall notify the Quantity Surveyor in writing of any agent appointed to act on behalf of the Client and of any change or dismissal of the agent.

2.3 The Client shall notify the Quantity Surveyor in writing of any instruction to vary the services.

3. Assignment and subcontracting

3.1 Neither the Client nor the Quantity Surveyor shall assign the whole or any part of this Agreement without the consent of the other in writing. Such consent shall not be unreasonably withheld.

3.2 The Quantity Surveyor shall not subcontract any part of the services without the consent of the Client in writing.

4. Payment

4.1 The Client shall pay the Quantity Surveyor for the performance of the services the fees and charges in such instalments as are set out in the Fee Offer. All fees and charges under the Agreement are exclusive of Value Added Tax which, if due, shall be paid concurrently in addition. The 'due date for payment' shall be 14 days (see Clause 14.3 below) after the date of the issue of the invoice. The Quantity Surveyor when submitting his invoice shall on each invoice confirm the basis on which the stated amount is calculated. .

4.2 The 'final date for payment' shall be 30 days after the due date for payment. Payment shall be made no later than the final date for payment. Thereafter, interest may be charged at current banking rates.

4.3 The Client must, not later than 5 days after the due date for payment, give to the Quantity Surveyor written notice stating the amount which the Client proposes to pay and the basis on which that amount is calculated. Where no such notice is given the amount to be paid is that stated in the invoice.

4.4 Where the Client intends to withhold payment of any amount either stated in the Quantity Surveyor's invoice or in a written notice given by the Client under Clause 4.3 above, the Client must give written notice to the Quantity Surveyor not later than 5 days before the final date for payment, stating the amount to be withheld and the grounds for withholding payment.

4.5 Any amounts due to the Quantity Surveyor under this Agreement which remain unpaid by the Client after the final date for payment shall bear interest at the rate stated in Clause 5 of the Fee Offer.

4.6 In the event that the Client is in default over payment of amounts at the final date for payment and no notice of intention to withhold payment from such amount has been given under Clause 4.4 above, the Quantity Surveyor may suspend performance of any or all of the services. This right is subject to the Quantity Surveyor first giving the Client not less than 7 days' written notice of such intention and stating the grounds for suspension. The right to suspend performance shall cease when the Client makes payment of the amount due. Any such period of suspension shall be disregarded for the purposes of contractual time limits previously agreed for the completion of the services. Such suspension shall not be treated as a suspension under Clause 8 below.

4.7 The Quantity Surveyor shall notify the Client in writing as soon as it becomes reasonably apparent that any work additional to the subject of this Agreement will be required.

4.8 Where the Quantity Surveyor is involved in additional work because of: changes in the scope of the works, and/or

- changes in the programme of the works, and/or
- changes instructed to the services, and/or
- the commencement of adjudication, arbitration or litigation

the Client shall pay to the Quantity Surveyor additional fees calculated (unless otherwise agreed) on the time charge basis as noted in the Fee Offer.

5. Professional indemnity insurance

5.1 The Quantity Surveyor is required to comply with the regulations of the Royal Institution of Chartered Surveyors in respect of the maintenance of professional indemnity insurance. He shall use reasonable endeavours to take out and maintain such professional indemnity insurance above RICS limits, provided that it is available at commercially reasonable rates, as defined by reference to an amount and for a period in Clause 8 of the Form of Enquiry. Such insurance shall be with an insurer who is listed for this purpose by the RICS.

5.2 The Quantity Surveyor shall on the written request of the Client provide evidence that the insurance is properly maintained.



5.3 The Quantity Surveyor shall immediately inform the Client if the insurance referred to in Clause 5.1 above ceases to be available at commercially reasonable rates in order that the best means of protecting the respective positions of the Client and the Quantity Surveyor can be implemented.

6. Copyright

6.1 The copyright in all documents prepared by the Quantity Surveyor in providing the services shall remain the property of the Quantity Surveyor. Subject to payment by the Client of the fees properly due to the Quantity Surveyor under this Agreement the Quantity Surveyor grants to the Client an irrevocable non-exclusive royalty-free licence to copy and use the documents for any purpose related to the project.

6.2 The Quantity Surveyor shall not be liable for any use of the documents for any purpose other than that for which they were prepared and provided by the Quantity Surveyor.

7. Warranties

7.1 If requested by the Client, the Quantity Surveyor will only enter into a collateral warranty provided insurance cover is available in accordance with Clause 5 above. The Quantity Surveyor reserves the right to decline to enter into such warranty without recourse.

8. Suspension and termination

8.1 The Client may suspend performance by the Quantity Surveyor of all or any of the services by giving 7 days' written notice to the Quantity Surveyor. If the services have been suspended for a period of more than 12 months either party may terminate the Agreement, by giving written notice to that effect.

8.2 The Client may terminate the appointment of the Quantity Surveyor under this Agreement by giving 7 days' written notice to the Quantity Surveyor.

8.3 Where the services have been suspended by the Client and the Agreement has not been terminated, the Client may, by giving reasonable written notice to the Quantity Surveyor, require the Quantity Surveyor to resume the performance of the services.

8.4 If the Client materially breaches its obligations under this Agreement the Quantity Surveyor may serve on the Client a notice specifying the breach and requiring its remedy within 28 days, and if the Client thereafter fails to remedy that breach within that period the Quantity Surveyor may terminate this Agreement by giving written notice to the Client.

8.5 If either party:

- commits an act of bankruptcy or has a receiving or administrative order made against it, and/or
- goes into liquidation, and/or
- becomes insolvent, and/or
- makes any arrangement with its creditors

the other may suspend performance of the services or may terminate the appointment by giving written notice to the Client.

8.6 These rights are in addition to those granted to the Quantity Surveyor under Clause 4 above.

9. Consequences of suspension and termination

9.1 If performance of the services has been suspended under Clause 4 or Clause 8 above or the Agreement has been terminated pursuant to the provisions of Clause 8 above:

a) the Client shall pay the Quantity Surveyor any instalments of the fees due to the Quantity Surveyor up to the date of suspension or termination together with a fair and reasonable proportion of the next following instalment commensurate with the services performed by the Quantity Surveyor

b) unless the Agreement has been terminated by the Client because of a material breach by the Quantity Surveyor the Client shall pay the Quantity Surveyor within 28 days of written demand the consequential costs necessarily incurred as a result of the suspension or termination.

9.2 Termination of the Agreement shall be without prejudice to the rights and remedies of the parties.

10. Complaints

10.1 In the event that the Client has a complaint in respect of the performance of the Quantity Surveyor's services under this Agreement, without prejudice to any other remedy available under the Agreement, he shall be entitled to have access to the complaints handling procedure maintained by the Quantity Surveyor, written copies of which should be available on request from the Quantity Surveyor.

11. Disputes

11.1 If a dispute arises out of this Agreement the Client and the Quantity Surveyor shall attempt to agree a settlement in good faith. The internal complaints procedure mentioned in Clause 8.1 of Selection and Appointment Advice should facilitate this for disputes less than £50,000.

11.2 If the dispute is not thus resolved either the Client or the Quantity Surveyor may at any time give notice to the other in writing that he wishes to refer the dispute to an adjudicator, provided the contract is in writing and/or is not with a residential occupier. The person who is to act as the adjudicator shall be agreed between



the Client and Quantity Surveyor within 2 days of such notice having been given or, failing agreement, be a person appointed by the President or Vice-President of the Chartered Institute of Arbitrators within 5 days of such notice having been given. The referring party shall refer the dispute in writing to the adjudicator within 7 days of such notice having been given.

11.3 The adjudication shall be conducted in accordance with the Construction Industry Council Model Adjudication Procedures current at the time of entering into this Agreement. Clause 30 of the Construction Industry Council Model Adjudication Procedures shall be amended to add the following sentence:

"No party shall be entitled to raise any right of set-off, counterclaim and/or abatement in connection with any enforcement proceedings".

11.4 The adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law.

11.5 The adjudicator shall reach a decision:

- a) within 28 days of the referral of the dispute to the adjudicator, or
- b) within 42 days of the referral of the dispute to the adjudicator if the referring party so consents, or
- c) in a period exceeding 28 days from referral of the dispute to the adjudicator as the Client and the Quantity Surveyor may agree after such referral.

11.6 The adjudicator is not liable for anything he does or omits to do in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith. Any employee or agent of the adjudicator shall be similarly protected from liability.

11.7 The decision of the adjudicator shall, subject to the provisions of Clauses 11.8 and 11.9 below, be binding until the dispute is finally determined by arbitration either under the contract or as part of the Quantity Surveyor's internal complaints procedure for disputes less than £50,000.

11.8 The Client and the Quantity Surveyor may agree to accept the decision of the adjudicator as finally determining the dispute.

11.9 If the Client or the Quantity Surveyor is dissatisfied with the decision of the adjudicator then:

- a) the dispute may be determined by agreement between the parties, or
- b) the dispute may be referred at the instance of either of the parties to be determined by an arbitrator in accordance with Clause 12 below.

12. Arbitration

12.1 Any dispute arising under this Agreement, including those for more than £50,000 and/or those where adjudication would not apply, may be referred at the instance of either of the parties to be determined by an arbitrator. The person who is to act as an arbitrator shall be agreed between the parties within 28 days of the one giving written notice of his wish to refer the decision to an arbitrator or, failing agreement at the end of that period, shall be a person appointed by the President or Vice-President of the Chartered Institute of Arbitrators at the instance of either party. The arbitration shall be conducted in accordance with the Construction Industry Model Arbitration Rules current at the time of entering into this Agreement.

13. Liability

13.1 The liability of the Quantity Surveyor shall be limited to such sum as it would be just and equitable for the Quantity Surveyor to pay having regard to the extent of the responsibility of the Quantity Surveyor for the loss or damage suffered on the basis that all other consultants, the contractor and any subcontractors who have a liability shall be deemed to have provided contractual undertakings to the Client on terms no less onerous than those applying in the case of this Agreement and shall be deemed to have paid to the Client such sums as it would be just and equitable for them to pay having regard to the extent of their responsibility for such loss or damage.

13.2 The liability of the Quantity Surveyor shall be limited to the amount of the professional indemnity insurance required by virtue of Clause 5.1 above.

13.3 No action or proceedings for any breach of this Agreement shall be commenced by either party after the expiry of the period of limitation (specified in Clause 9 of the Form of Enquiry).

14. Notice

14.1 Any notice to be given under this Agreement shall be in writing and delivered by hand or sent by recorded delivery post to the party at the address shown in this Agreement or to such an address as the other party may have specified from time to time by written notice to the other.

14.2 Such notice shall be deemed to have been received on the day of delivery if delivered by hand and otherwise on the next working day.

14.3 Where under this Agreement an act is required to be completed within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday that day shall be excluded.

