

Terms & Conditions

These terms are between APK Architecture & Design Ltd. Company (No. 12417504) (**we, us**) and our client (**you, your**). The law applicable to this Agreement shall be the law of England.

Unless otherwise agreed, these terms of business apply to any instructions from **you**. **Your** continued instructions will amount to **your** acceptance of these terms and conditions of business.

Any fee proposal/quotations **we** provide **you** with shall remain open for a period of three months, after which **we** reserve the right to amend them to reflect current market conditions.

1.0 Architectural Services When instructed by **you** to carry out work **we** shall:

- 1) Exercise reasonable skill and care in performing the services for which **we** are engaged.
- 2) Retain a level of Professional Indemnity Insurance adequate to cover our maximum liability to **you** on an 'any one claim or series of claims' basis.
- 3) Provide advice on compliance with statutory requirements.
- 4) Cooperate with other persons appointed, coordinate and integrate their work, and pass relevant information to them.
- 5) Advise on progress in the performance of the Services and of any issue that may affect the programme, the cost, or quality of the project.

2.0 Target and Cost **We** cannot guarantee that any target, budget cost or timetable will be met - particularly where approvals from other parties, such as planning permission, building regulation approval, listed building and conservation consent are required - nor the performance, work or products of others.

3.0 Clients Responsibilities **You** as client shall:

- 1) Advise **us** of the requirements/brief and of any subsequent changes required.
- 2) Give decisions and all necessary instructions, consents or approvals necessary for the performance of the Services.
- 3) Sign off or approve all stage drawings prior to progression to the next stage.
- 4) Acknowledge that **we** shall not be liable for any delays to the services arising from any failure by **you** to comply with these obligations.
- 5) Appoint and pay any fees to third-party consultants, statutory authorities or contractors.
- 6) Understand that any delay in payment of fees to **us** or others can, and is likely to, result in a delay in the flow of information on projects. **We** reserve the right not to move onto a subsequent stage of a project where fees for previous work stages are outstanding, even where a previous invoice is not yet overdue.
- 7) Where **you** engage with **us** for Contract Administration services, **you** should not deal with the contractor or contractors directly or interfere with our duties or actions under any form of Building Contract.
- 8) Hold the contractor or contractors responsible for properly carrying out and completing construction works and for health and safety provisions on the site. It is expected that contractors/builders appointed will be competent members of their profession.

4.0 Copyright and licence

- 1) **We** shall retain the copyright in the drawings and documents (including material in electronic format) produced in the performance of the Services.
- 2) **You** shall have a licence to copy and use the drawings only for purposes related to this Project providing that all fees and/or other amounts due are paid in full.
- 3) Drawings shall only be used and valid for their intended purpose, ie. drawings prepared for a Planning Application would only be valid for this purpose and should not be used for construction.
- 4) Drawings produced for one Client are not transferable for use by another Client or third-party.
- 5) **We** shall not be liable for the use by any person of such drawings or other documents for any purpose other than that for which they were provided.
- 6) **We** retain a right to use drawings prepared for **you** for marketing, sales or promotion on an anonymised basis only.

5.0 Deleterious Materials **We** are not responsible under this agreement or otherwise for advising on matters wholly, partly, directly or indirectly which arise out of or result from asbestos or other deleterious material (including without limitation the costs of testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any products or waste that contain such deleterious materials).

6.0 Local Planning Authority Dealings

- 1) **We** cannot guarantee that Planning, Listed Building, Conservation Area Consent/ approval will be achieved on any project but will use our best endeavours to do so.
- 2) There are occasions where a client's specific requirements are at variance with local planning policies. This may lead to refusal, subsequent amendments being necessary, or a completely new application needing to be made. **We** will use our best endeavours to avoid this during the design stage and will try to advise when difficulties could be anticipated. **We** reserve the right to charge for our time amending or redrawing the proposal should it ultimately prove necessary.
- 3) **We** will prepare ourselves, or liaise with other consultants, to ensure that all *expected* supporting documentation is available at the time of submission of an application, but cannot be held responsible for the time and extent that gathering such information may entail. **You** should note that the Planning Authority will not register a planning application until all supporting documentation is received. Due to variances in the requirements of different Local Planning Authorities **you** shall not hold **us** liable for costs or delays incurred as a result of missing information which the LPA deems required.
- 4) Where it becomes necessary to appeal any planning decision **we** will advise **you** of the implications and the need to charge for the time to prepare forms, supporting documents and statements necessary to submit the Appeal. This may occasionally include recommending you appoint a Planning Consultant to deal with specific Planning Policy issues.

7.0 Building Regulation and other Statutory Approvals

- 1) **We** cannot guarantee that Building Regulation Approval will be achieved on any project. On complex projects it is possible that additional costs may be incurred. The Building Regulations and other Statutory regulations change from time-to-time and are open to interpretation by each officer. Policy and regulation changes can affect the final outcome of a project.
- 2) It should be noted that when dealing with the refurbishment, extension and alteration of existing buildings there can be many factors which can develop during the course of a project which would require additional detailing (or changes to the specification) than initially envisaged. **You** shall not hold **us** liable for the time or cost impact of hidden defects uncovered during construction. **We** reserve the right to propose further fees for additional design work arising.

8.0 Fees

- 1) Our fees will be calculated and charged as set out in the Fee Proposal against which **you** appoint **us**. By instructing **us** to proceed **you** agree to pay those fees, including expenses and disbursements accrued, for the performance of the services in accordance with the payment terms below.
- 2) Payment terms: Payment shall become due on submission of an invoice to **you** and the final date for payment shall be (a) clearly stated on the invoice as a number of whole (not working) days and (b) a minimum of 14 whole days.
- 3) **We** will not submit any form of application (Planning or Building Control) until the fee for that relevant stage has been paid in full. **We** may release drawings, reports, schedules or other documents to **you** as evidence of our performance but these will be marked as DRAFT.
- 4) **You** are responsible for the separate payment of Consultant, Specialist, Local Authority/Approved Inspector Building Control fees for each project. **We** reserve the right to suspend our performance on non-payment of any other party.
- 5) If payment is not received within the period stated on any invoice **we** reserve the right to charge **you** interest on the overdue amount. Interest will be applied at a rate of 4% above the Bank of England Base Rate at the time of default and calculated on a daily basis.
- 6) **We** reserve the right to place any debt into the hands of a debt recovery agency following failure to pay within the specified period.
- 7) **You** may not withhold payment of any sum unless **you** give (no later than 5 working days' before the final due date) a notice specifying the amount proposed to be withheld and the grounds for withholding payment including the amount attributed to each ground if more than one.
- 8) **We** reserve the right not to continue with Services for this project (or any other project commissioned by **you**) until the fee for a previous stage of this project has been paid.

Late Payment Interest

9.0 Additional Work

- 1) If it becomes apparent that **we** need to carry out additional work and/or suffer delay or disruption in the performance of the Services for reasons beyond our reasonable control, **we** may advise **you** that additional fees are appropriate. **You** shall make an additional payment to **us** in respect of the additional work and resources employed.
- 2) Additional Work is deemed to include changes in client brief, additional requirements not known or not stated at the time of the initial quote or where required by statutory or other third parties.
- 3) The amount of any additional payment shall be calculated on an equitable basis with reference to the original fee proposal agreed.

- 10.0 Invoicing** **We** will submit an invoice for the fees and any expenses and disbursements due monthly, or at completion of each work stage whichever is sooner.
- 11.0 Expenses**
- 1) **You** will reimburse all expenses and disbursements which are itemised on our invoices.
 - 2) Printing: Drawings are typically provided in PDF format. **We** include within our fee all reasonable A4 and A3 printing costs. Drawing plots above A3 size will be chargeable as follows:
A2 - £2.50 | A1 - £3.50 | A0 - £4.50 (per plot)
 - 3) Mileage: **We** include travelling costs up to a 20-mile radius of our trading office and on the basis of carrying out a 'reasonable' number of visits. When it becomes apparent that more visits than originally foreseeable are required mileage will be charged at a rate equal to HMRCs Approved Mileage Rates – currently 45p per mile.
 - 4) Any additional expenses incurred will be quoted at the time they are deemed required or raised.
- 12.0 Disbursements**
- 1) Our fee proposals exclude disbursements – payments made on your behalf to a third party.
 - 2) **We** do not include in our fee proposals the cost of:
 - a) Local Authority Submission/Inspection Fees
 - b) Fees for any consultants i.e. Structural Engineers, M&E Consultants, Quantity Surveyors, Planning Consultants etc. **We** will recommend their appointment at the appropriate stage in a project where these services are required.
 - c) Fees for any specialist advisers and reports i.e. arboricultural reports, protected species survey, energy efficiency calculations, EPC certificates, Pressure testing, SAP calculations, SBEM calculations and such like; which may be requested by the local authority during the application process. **We** will advise **you** of the requirements for these during the scheme design and detail design stages of the project.
 - 3) If **you** would like **us** to make any payment on **your** behalf they will be charged at net cost plus:
 - a) 0% for payments to a local authority in connection with planning and building control
 - b) 5% for all other payees
 - 4) **We** will obtain fee proposal quotes on **your** behalf and forward these to **you** for approval, when these are required. Regardless of whether **we** make a payment on **your** behalf **we** expect that the appointment of any consultant is an agreement between the Consultant and Client.
- 13.0 Records** **We** shall keep and make available on request records of any expenses and disbursements incurred. If **you** require time records to be kept on any projects, this needs to be advised at the outset of a project as data cannot be accurately provided retrospectively.
- 14.0 Email Policy** Unless **you** withdraw **your** consent **we** will conduct the majority of our communications by email. **We** cannot be responsible for the security of correspondence sent by these means and it is **your** responsibility to check that incoming email and attachments do not contain viruses.
- 15.0 Storage of Paper and Documents**
- 1) **We** operate a paperless policy and generally only keep electronic copies of drawings, documents and images. **We** will pass to **you** electronic copies of relevant documents as and when they are ready for issue.
 - 2) After completing **your** project **we** will return any papers and documents in our possession to **you** providing no payments are outstanding.
 - 3) **You** should keep any Planning, Listed Building and Building Regulation Approval documents and Completion certificates safely as these will be required as part of the sale of any property/land to which they relate.
 - 4) **We** will archive project documents for a period of 6 years after completion of our services where a contract is executed under standard terms, and 12 years where a contract is executed as a deed. After this period has expired **we** have the right to destroy them.
 - 5) **We** reserve the right to make a charge for accessing archived documents, as well as printing or copying them on **your** behalf.
- 16.0 Assignment of this Agreement**
- 1) Neither **we** nor **you** shall assign or transfer any benefits or obligation conferred by the Appointment of **us** without the prior written consent of the other. Such consent shall not be unreasonably withheld or delayed.
 - 2) Save in respect of the benefits or rights conferred on individuals pursuant to confer or any third party any benefit or any right enforce anything in these terms under the Contracts (Rights of Third Parties) Act 1999.
 - 3) Unless any part or all of the Agreement is transferred with consent to another person, nothing in this Agreement shall confer or purport to confer on any third party, and benefit or right to enforce any term of this Agreement.

17.0 Suspending or ending the Agreement: Termination

- 1) Either party can suspend or end performance of any or all of the Services by giving at least 7 days' written notice of the intention and stating the reason for doing so.
- 2) If the reason for the notice arises from a default and the recipient does not remedy the matter, the agreement will end on expiry of the notice period.
- 3) If at any stage **you** do not wish **us** to continue doing work or suspend working for a period of time, **you** must tell **us** clearly in writing.
- 4) Where Services are suspended by **you** and not resumed within 3 months **we** shall have the right to treat performance of the Services as ended.
- 5) Where there is money owing to **us** for fees and expenses, **we** will be entitled to keep any papers, drawings and other documents.
- 6) In the event of any termination by **you**, **you** agree to pay **us** a fair and reasonable amount for Services performed to the date of such termination together with any outstanding expenses.
- 7) Termination of our appointment shall not prejudice or affect either parties accrued rights or claims.

18.0 Complaints & Dispute Resolution

- 1) In the event of a dispute or difference arising under this Appointment, please refer to the separate Complaints Handling Procedure, available by request or on our website.
- 2) **You** may submit informal complaints verbally or in writing to **us**.
- 3) Formal complaints shall be submitted in writing.
- 4) The parties shall attempt in good faith to settle any dispute in accordance with the complaints handling procedure.

19.0 Collateral Warranties

No allowance has been made for the provision of Collateral Warranties under this appointment.

20.0 Privacy Policy

- 1) Privacy is important to **us**. This Privacy Policy covers what data **we** collect and how **we** use it, disclose, transfer and store **your** information.
- 2) Information We collect: **We** collect information about **you** if **you** make an enquiry as a potential client, or **we** do business with **you** as a Client, Consultant, contractor, sub-contractor, supplier or manufacturer
- 3) Use of Information: Any information **we** collect may be used to respond to **you** via **your** supplied contact details in relation to any potential project, active project, or to provide **you** with limited correspondence about our practice, news, or service information.
- 4) Personal Information We Use: For all our services **we** need **your** name, address, contact details, to allow **us** to locate **your** premises/land. For some services **we** might need additional information for example:-
 - a) Bank details for payments.
 - b) Proof of identity – for money laundering or other relevant purposes
 - c) Fraud prevention, and to meet legal obligations
 - d) Any other information that is relevant to be able to provide the contracted services to **you**, meet or enforce legal obligation or where it is fair and reasonable for **us** to do so.
 - e) On some projects **we** may ask for information relating to medical or disability conditions for instance where **we** are designing buildings that need to be tailored to suit those needs, and the needs of occupants and visitors to a building **we** are designing.
- 5) Storage of Information: Information is stored in secure private and cloud accounts with multiple security factors enabled. **We** do not gather any form of personal data from our website nor is any client information held in files on our website server.
- 6) Disclosure of Information: **We** do not sell, trade or otherwise transfer to other parties any personal information, except for enabling a trusted third-party to assist with the provision of our service. This may include other consultants or a contractor (or potential contractor) whom **we** are introducing to **you**. **We** will inform **you** when this is required.
- 7) Such trusted third parties may have access to personally identifiable information on a need to know basis and will be contractually obliged to keep **your** information confidential. **We** may also release **your** information when **we** believe it appropriate to comply with the law, or protect other rights, property or safety.
- 8) Consent and Legal Basis: By appointing this practice and the services **we** provide **you** are consenting to **us** contacting **you** and using the information **you** provide **us** to carry out the Services **you** are appointing **us** to carry out.
- 9) **You** may withdraw **your** consent at any time. If **you** have any active projects with **us** **you** accept the limitations that this places on the services we are able to provide to **you**.