

# TERMS OF BUSINESS

## 1 APPLICATION

- (1) In these Terms, unless the context otherwise requires:
  - "Agreement" means the agreement between the Client and the Company in respect of the supply of the Services.
  - "Client" means the person named overleaf to whom the Services are to be supplied and who is party to the Agreement.
  - "Company" means Norfolk FWAG (company registration no.07868028) of Honingham Thorpe, Colton, Norwich NR9 5BZ.
  - "Insurance Policy" means any public liability or professional indemnity insurance policy maintained by the Company.
  - "Intellectual Property Rights" means copyright, design rights, patent rights and any other intellectual or industrial property rights throughout the world.
  - "Pollution" means any pollution or contamination of any building or other structure or of water or land or the atmosphere caused by a sudden identifiable unintended and unexpected incident which takes place in its entirety at a specific time and place.
  - "Property Damage" means damage to or loss of any physical property but excluding Pollution.
  - "Services" means the services described overleaf and includes any or any part of them writing includes facsimile transmission person includes any body corporate or unincorporated Words donating the singular only include the plural or vice versa.
- These Terms, the terms specified overleaf and any other terms and conditions agreed to in writing by the Company and the Client ("Special Terms") constitute the entire agreement for the supply of the Services and supersede any term for representations referred to in the Company's business literature or elsewhere. If any terms or conditions specified overleaf and/or any Special Conditions conflict with these Terms, the former will prevail.

#### 2 SERVICES

- (1) Any acceptance of a quotation or any order by a Client will only be binding on the Company when such acceptance or order has been accepted in writing by the Company.
- (2) The company will provide the Services with reasonable skill and care and will use its reasonable endeavours to supply the Services by any time or date within any period specified in the Agreement for their supply but shall not be of the essence for their supply, or the completion of their supply.

## 3 CLIENT INFORMATION

- (1) The Client undertakes to the Company that the Client will:
  - (a) procure that all licenses, permissions and approvals as may be required to enable the Company to supply the Services in accordance with the Agreement have been obtained and will remain in full force during the continuance of the Agreement and that it will procure for the Company free of charge such access to such land and buildings and such use of the Client's facilities and provide to the Company such information as the Company may reasonably require for that purpose.
  - (b) provide the Company free of charge all information, data and materials to be provided by the Client under the Agreement, and will notify the Company of all instructions, decisions or consents required to be given or made by the client in respect of the agreement within sufficient time for the company to fulfil its obligations under the agreement.
- (2) The Client will indemnify the company against all loss, damage, proceedings, claims, liabilities, costs and expenses incurred by the Company in connection with any claim for infringement of any Intellectual Property Rights, or for unlawful use or disclosure of any confidential information, of any third party arising from the Company's use of any information or specification or any other material provide by or on behalf of the Client in relation to the Agreement.

## 4 FEES AND CHARGES

- (1) The fees and other charges payable by the Client in respect of the Services will be those set out overleaf as varied or supplemented by any Special Terms. All fee and other charges will be subject to any applicable Value Added Tax and other taxes or duties which will be payable as the same time as the fee or other charges to which they relate.
- (2) The Company may, in its discretion, invoice the Client following the end of each month in respect of the fees and other charges payable in respect of Services supplied during that month or upon completion of the Services. The Company's invoices will be payable thirty days after their date ("the due date"). The time for payment for any sun due to the Company in relation to the Agreement shall be of the essence.

- (3) If the Client fails to make any payment on the due date then, without prejudice to any of its other rights, the company may:
  - (a) terminate the Agreement forthwith by written notice to the Client or suspend the supply of any further Services.
  - (b) appropriate any payment by the Client to such of the Services as the Company decides despite any purported appropriation by the Company; and/or
  - (c) charge the Client interest on the amount for the time being unpaid at a rate equivalent to 3% above the base rate (or if it is replaced, its successor) from time to time of NatWest Bank Plc until payment in full is made. Such interest shall accrue on a daily basis and be payable both before and after judgement.
- (4) All sums payable shall be made in sterling without any deduction and regardless or any set-off, counterclaim, or other claim or right.
- (5) Any estimate or indication given or opinion expressed by any of the Company's officers, employees or other personnel of the cost of the Company or any other person supplying any services or goods not included in the Agreement will not be binding on the Company unless, in the case only of any services or goods to be supplied by the Company, a price for such supply is given in a written quotation issued by an authorised representative of the Company. It will often not be possible to gauge accurately the amount of time it will take the Company to complete the revision of Services in any particular case until after the Company has commenced prevision of Services.

Any estimate of cost will therefore not constitute a fixed price unless otherwise specified in writing by an authorised representative of the Company.

## 5 DOCUMENTS

- (1) Subject to paragraph 5(2), the Company and the Client will respectively retain ownership of the Intellectual Property Rights relating to any document or other thing provided by it to the other in relation to the Agreement, subject to any rights owned by any third party. Each party will only use any such document or thing provided by the other solely for the purposes of the Agreement and not otherwise unless the other party otherwise agrees in writing.
- (2) The intellectual Property Rights in all documents, drawings, specifications, computer programs and other things in any medium created, invented or originated by or on behalf of the Company under or in connection with the Agreement the ("Intellectual Property Materials") will belong to the Company absolutely. Subject to paragraph 10(2), the Client will have the non-exclusive, non transferable right to use the Intellectual Property Materials for the purposes of the Agreement or to implement, operate, produce or use any matter or thing the subject of any of the Services supplied but not otherwise.

## 6 SITE OPERATION

The Client will procure that each site at which any of the Services shall be supplied and the working conditions at any such site shall be safe and in compliance with all applicable legislation, rules and regulations.

#### 7 LIABILITY

- (1) The provision of paragraph 2(2) in these Terms will be in substitution of all other terms, warranties and conditions, express or implied, statutory or otherwise in relation to the supply of the Services which are hereby excluded to the fullest extent permitted by law.
- (2) The Company will not be liable in contract or in tort (including negligence) or in any other way for any consequential or other indirect loss, liability for damage nor any other claim for consequential compensation whatsoever (including loss of profit, costs or expenses or loss of data) arising howsoever from or in connection with the Agreement or any breach or non-performance of any provision of it by the Company or any fault in or supply of the Services or any act of omission on the part of the Company or any of its officers, employees or other personnel in connection with the Agreement.
- (3) Subject to paragraph 7(5), the Company's liability for all compensation for Property Damage or pollution resulting from any act of omission or negligence on behalf of the Company arising in connection with the Agreement shall be limited in aggregate to damages of an amount equal to:
  - (a) in all and any other cases for Property Damage, £5,000,000 in relation to any one occurrence or any or more occurrence of a series arising out of or attributable to one original cause occurring in any one period of the Company's insurance for such Property Damage under the Insurance Policy.
  - (b) in the case of all and any Pollution occurring during any period of the Company's insurance for Pollution under the Insurance Policy (including all loss or damage caused directly or indirectly by Pollution), £5,000,000 less the Company's total liabilities in relation to all other claims for pollution made in respect of that period and are covered by such insurance. The company shall have no other liability for any other pollution or contamination which may occur.
- (4) Excluding it's liabilities under paragraph 7(3), the Company's aggregate liability arising in contract or tort (including negligence) or otherwise howsoever for any loss, cost damage, injury or liability (whether consequential, indirect or otherwise) resulting from or in connection with the Agreement or the supply of the Services will be limited to damages equal to either, (i) £2,500,000 in respect of all liabilities to the Client arising during any period of insurance under the Insurance Policy relating the professional indemnity and which are covered by that insurance, less the Company's total liabilities in relation to all other claims made in respect of that period and which are covered by such insurance, or (ii) the total amount of the fees and other charges paid or payable to the Company in respect of the supply of the Services (less all value added tax), whichever is the higher.
- (5) The limits of the Company's liability in paragraph 7 (3) (a) and (b) and paragraph 7 (4) shall be inclusive of its legal liability to the Client for legal costs and expenses relating to the liability concerned.

- (6) The limitations on and exclusions from liability contained in these Terms should be subject to the provisions of section 2 (1) of the Unfair Contract Terms Act 1977 and shall not apply to any liability for fraud.
- (7) The Client undertakes to indemnify the Company from and against all claims and proceedings brought against the Company by any third party (including without limitation any subcontractor engaged by the Company in connection with the Agreement or any employee or other personnel of the Company or any such contractor) arising from any act or omission (including negligence) on the part of the Client (or any other person for whom it is vicariously) in relation to the Agreement or the support of the Services together with all expenses, costs (including legal costs on a full indemnity basis), damage, losses, and liabilities incurred by the Company in connection with any such claims or proceedings.
- (8) The Client agrees that it accepts the limitations on and exclusion from liability contained in these Terms as reasonable and that if they had not been included other fees and charges payable for the Services would have been materially increased.
- (9) The Client warrants that in contracting for the supply of the Services it is not dealing as a consumer (as defined in the Unfair Contract Terms Act 1977).

## 8 FORCE MAJEURE

The Company will not be deemed to be in breach of the Agreement or otherwise be liable to the Client in any delay in performing or any failure to perform any of its obligations under the Agreement by reason or any cause beyond the Company's reasonable control (including without limitation any strike or industrial dispute, shortage of materials of failure of or delay in receiving supplies). If any such delay or failure continues for more than 14 consecutive days the Company may terminate the Agreement forthwith by written notice to the Client. It that event, (without affecting its accrued rights) the Company will be entitled to be paid the price payable under the Agreement in respect of all Services supplied before the notice of termination is served.

## 9 CONFIDENTIALITY

Each party shall treat as secret and confidential and shall not (save as required by law or strictly in the performance of its obligations under the Agreement) at any time for any reason disclose to any person or use any trade secret of confidential or proprietary information belonging to the other party which may come of have come into the possession of the recipient as a result of or in connection with the Agreement. This obligation will not apply to any of the foregoing which:

- (a) the recipient can prove was already in its lawful possession and at its free disposal before the disclosure under the Agreement was made to the recipient; or
- (b) is disclosed to the recipient by a third party having a right so to do without any obligation of confidentiality in respect thereof; or
- (c) is at the time of disclosure of subsequently come in to the public domain other than by reason of any breach of this clause by the recipient; or
- (d) the recipient can prove had been independently developed by the recipient without reference, directly or indirectly, to any trade secret or confidential or proprietary information received from the other party as a result of the Agreement or previously from the other party without any breach by the recipient of this clause.

## 10 TERMINATION

- (1) If either party:-
  - (a) makes any arrangement or composition with its creditors generally or (being an individual) has an interim order (within the meaning of the Insolvency Act 1986) made against him or becomes bankrupt or (being a firm or body corporate or unincorporate enters in to compulsory liquidation or voluntary liquidation or the equivalent or shall be dissolved; or
  - (b) has a receiver and/or manager, administrative receiver, supervisor or administrator or any other person having similar powers or functions appointed over or in relation to it or any part or its assets or undertakings; or
  - (c) is unable to pays its debts within the meaning of sections 123 or 268 Insolvency Act 1986; or
  - (d) commits any breach of any of the provisions of the Agreement (other than paragraph 4(2) of these Terms) and, in the case of any breach capable of being remedied, fails to remedy it within 21 days of service on that party of notice from the other party giving reasonable particulars of the breach and requiring it to be remedied without prejudice to its other rights (including accrued rights) the other party may determine the Agreement or the balance of the Agreement or (if that party is the Company) suspend the supply of all or any Services forthwith by written notice to the first mentioned party without any liability whatsoever.
- (2) Within 7 days of the termination of the agreement each party will return all documents and other property belonging to the other party. If on termination of the agreement there is any sum due to the Company in relation to the Agreement but unpaid by the Client or the Client fails to pay on the due date any sum subsequently becoming due to the Company in relation to the Agreement, the right granted to the Client under paragraph 5(2) to use the intellectual property materials will be automatically revoked with immediate effect.
- (3) The Client will indemnify the Company against all claims, proceedings, loss, damage, liabilities, costs and expenses incurred by the Company arising out of or in connection with any breach by the Client of any provision of the Agreement or any act or omission on the part of the Client in relation to the Agreement.
- (4) The termination for any reason or expiry of the Agreement will not affect the accrued rights of either party nor obligation or either party which is expressed to be or is of a continuing nature and any such obligation shall continue in full force and effect.

## 11 GOVERNING LAW, ADJUDICATION AND ARBITRATION

The Agreement will be governed by the laws of England and all claims and proceedings arising in connection with it will be subject to the non-exclusive jurisdiction of the courts of England.

## 12 DATA PROTECTION

- (1) Data in relation to the Client and its business (including the address and map grid reference of its holding, a contact name, telephone and fax numbers, email addresses, the nature of the enterprise, the size of the holding and the habitats within it, the date and purpose of the Company's visits, how the Company came in to contact with the Client and the outcome of any application for the grant) is collated by or on behalf of the Company and used for its internal purposes.
- (2) By accepting these Terms, the Client consents to the processing or data and information as referred to in this clause 12.

## 13 MISCELLANEOUS

- (1) The provisions of the Agreement are severable, and if any provision or part of it is held to be invalid or unenforceable by any court or other body of competent jurisdiction that will not affect the other provisions or the remainder of the relevant provision.
- (2) Any variation of the Agreement of waiver of any breach by the Client must be agreed to in writing by the Company's authorised representative.
- (3) The Client may not assign, sub-contract or otherwise deal with any of its rights or obligations in relation to the Agreement without the Company's prior written consent but the Company will be free to do so.
- (4) Any time or indulgence given by any party to the other will not in any way prejudice any of the first party's rights in respect of the Agreement.
- (5) The Terms of Agreement, any Proposal and any Special Terms constitute the entire agreement between and supersede all prior Agreements and arrangements between the party's in relation to the subject matter of the Agreement. Neither party has relied upon any representation, undertaking, agreement, covenant or warranty except as set out in any such document. This sub paragraph will not affect either party's liability for fraud.
- (6) Any notice or claim under the Agreement shall be in writing and shall be effectively served if it is personally delivered or sent by pre-paid first class post or facsimile transmission to the addressee as its address set out in the Agreement or any other address for service in Great Britain notified to the other in accordance with this sub-paragraph.