

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES OF CPR (CONSTRUCTION PLANS & REGULATIONS) LIMITED

The Client's attention is particularly drawn to the provisions of clause 8.

1. INTERPRETATION

- 1.1 Definitions. In these Conditions, the following definitions apply:
the Act: means the Building Act 1984, as amended from time to time.
Agent: any agent appointed by the Client to act on behalf of the Client.
Approved Inspector: shall mean a person as defined in the Code.
Building Control Surveyor: a surveyor employed by the Supplier.
Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Charges: the charges payable by the Client for the supply of the Services in accordance with clause 5.
the Code: means the Construction Industry Council's Code of Conduct for Approved Inspectors.
Commencement Date: has the meaning set out in clause 2.2.
Conditions: these terms and conditions as amended from time to time in accordance with clause 11.8.
Contract: the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions.
Client: the person or firm who purchases Services from the Supplier.
DCLG: means the Department of Communities and Local Government
Final Certificate: means a certificate given under section 51 of the Act after satisfactory completion of the building works at the Site.
Initial Notice: means a notice given under section 47 of the Act to be issued to the appropriate local authority and to the Client.
Order: the Client's written acceptance of a quotation for the Services by the Supplier.
Services: the provision, by the Supplier to the Client, of building control services, including the issuing of an Initial Notice, the allocation of a Building Control Surveyor for the works on the Site, carrying out statutory consultations, making periodic visits to the Site to advise the Client's contractor of compliance with building regulations and issues under the Act, and issuing Final Certificates, including the provision of fire risk assessments or condition surveys.
Site: the premises of the Client or on the Client's behalf where the Supplier's Services are required.
Specification: the description or specification of the Services provided in writing by the Supplier to the Client.
Supplier: CPR (Construction Plans & Regulations) Limited registered in England and Wales with company number 04588409 whose registered office is at 40 Omega Way, Trentham, Stoke on Trent Staffordshire ST4 8TF.

1.2 Construction. In these Conditions, the following rules apply:

- a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- a reference to a party includes its personal representatives, successors or permitted assigns;
- a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

- The Order constitutes an offer by the Client to purchase the Services in accordance with these Conditions.
- The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).
- The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 6 months from its date of issue.

3. SUPPLY OF SERVICES

- The Supplier shall supply the Services by an Approved Inspector and/or a Building Control Surveyor to the Client in accordance with the Specification in all material respects.
- The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.
- The Supplier warrants to the Client that the Services will be provided, where relevant by an Approved Inspector and/or a Building Control Surveyor, using reasonable care and skill and, where relevant, in accordance with the Code.
- The Supplier shall maintain professional indemnity insurance in accordance with the guidelines issued by DCLG.

4. CLIENT'S OBLIGATIONS

- 4.1 The Client shall:
- ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - co-operate with the Supplier in all matters relating to the Services and ensure that qualified and competent persons are employed to carry out design and construction works at the Site, failure of which shall entitle the Supplier to levy an additional charge of £100 plus VAT per Site visit which becomes necessary as a result of the Client's failure in failing to employ such qualified or competent persons;
 - provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's Site, and other facilities as reasonably required by the Supplier;
 - provide the Supplier with such information as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - prepare the Site for the supply of the Services;
 - obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
 - where relevant, inform the Supplier in writing of the name and contact details of its Agent and any substitute;
 - ensure that it complies with all and any laws and building regulations in force at the time the Initial Notice is signed;
 - where the Supplier withdraws the Initial Notice, the Supplier shall serve notice of such withdrawal to the appropriate local authority under section 52 of the Act and notify the Client accordingly;

- contact the Supplier within 6 months of the previous visit to the site by the Supplier, failure of which shall entitle the Supplier to charge an additional Site visit fee of £100 plus VAT per visit; and
 - commence the works within 3 years of the Initial Notice being accepted and completed within one year of such date, otherwise the Supplier shall be entitled to make additional Charges.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (Client Default):
- the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services, including withdrawing the Initial Notice and/or withholding issue of Final Certificate, until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
 - the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

5. CHARGES AND PAYMENT

- The Charges for the Services shall be as set out in the Contract.
- The Supplier reserves the right to increase its Charges in the event that the Supplier is required to carry out additional works over and above those stated in the Contract.
- The Supplier shall invoice the Client in stages as specified in the Contract.
- The Client shall pay each invoice submitted by the Supplier:
 - within 14 days of the date of each invoice, unless stated otherwise in the Contract; and
 - in full and in cleared funds to a bank account nominated in writing by the Supplier or as specified in the Contract, and time for payment shall be of the essence of the Contract.
- All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- Without limiting any other right or remedy of the Supplier, if the Client fails to make any payment due to the Supplier under the Contract by the due date for payment (Due Date), the Supplier shall have the right to charge interest on the overdue amount at the rate of 8 per cent per annum above the then current National Westminster Bank's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.

6. COPYRIGHT

- All copyright in any specifications drawing or plans drawn up by the Supplier or arising out of or in connection with the Services shall be owned by the Supplier and subject to the Supplier receiving all sums due to the Supplier under the Contract, the Supplier hereby grants to the Client a non-exclusive royalty-free licence to copy and use such documents and plans for its purpose.

7. CONFIDENTIALITY

- A party (Receiving Party) 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 Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 7 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 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).
- 8.2 Subject to clause 8.1:
- the Supplier shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - the Supplier's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount actually paid by the Client to the Supplier under the Contract.
- 8.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 This clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;
 - the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) 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;
 - a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) 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;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) 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 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (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;
- (j) 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 9.1(b) to clause 9.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 9.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 28 Business Days written notice.
- 9.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Client and the Supplier if the Client becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(l), or the Supplier reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.
- 10. CONSEQUENCES OF TERMINATION**
On termination of the Contract for any reason:
- (a) the Client 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 shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return all materials/drawings/plans to the Supplier;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 11. GENERAL**
- 11.1 Force majeure:**
- (a) For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) The Supplier shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than six weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.
- 11.2 Assignment and subcontracting:**
- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.3 Notices:**
- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall include e-mails and for the avoidance of doubt notice given under this Contract shall be validly served if sent by e-mail.
- 11.4 Waiver:**
- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 11.5 Severance:**
- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 11.6** No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 11.7** Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.8** Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.
- 11.9** Complaints: In the event that the Client has a complaint in respect of the performance of the Services under this Agreement, the Client shall follow the complaints handling procedure maintained by the Supplier, written copies of which are available from the Supplier.
- 11.10** Disputes: Any dispute arising out of or in connection with the Contract shall, at first instance, be referred to a mediator for resolution. The parties shall attempt to agree upon the appointment of a mediator, upon receipt, by either of them, of a written notice to concur in such appointment. Should the parties fail to agree within fourteen days, either party, upon giving written notice, may apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a mediator. Should the mediation fail, in whole or in part, either party may, upon giving written notice, and within twenty eight days thereof, apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless both parties have consented in writing. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Chartered Institute of Arbitrators (2000 Edition), or any amendments thereof, which Rules are deemed to be incorporated by reference into this clause. The seat of the arbitration shall be England and Wales.