

TERMS AND CONDITIONS FOR THE PROVISION OF DESIGN SERVICES

1. DEFINITIONS

1.1 “Contract” shall mean this agreement between the Client and the Company for the provision of the Services together with the Schedules.

1.2 “Charges” shall mean the charges specified in Schedule 1 together with any additions thereto or deductions therefrom agreed in writing.

1.3 “Services” shall mean the services set out in Schedule 2.

1.4 “Company” applies only to the specific business with which the contract is placed. Any other parent or associated company is completely removed and carries no interest or liability. For the avoidance of doubt ‘Ainscough Industrial Services Limited’ does not accept or engage in any contracts with any client at any time.

2. MISTAKES IN INFORMATION

2.1 If additional costs or delay are directly occasioned by any discrepancies, errors or omissions in the information and decisions supplied to the Company by the Client, the Client shall pay any such additional costs to the Company and shall allow an extension of any time specified in Schedule 2 to complete the Services.

3. PREMISES AND FACILITIES

3.1 The Client shall arrange for or grant the Company access at all reasonable times to premises as may be necessary for the provision of the Services and shall provide the Company with the facilities as set out in Schedule 3 – Facilities provided by the Client.

4. VARIATIONS

4.1 If the Client requires any reasonable alteration, addition or omission to the Services (hereinafter referred to as a “Variation”) the Company shall identify the impact of the Variation on the Services and the Charges in writing within a reasonable period of his/her receipt of the Client’s written request. The Contract shall remain unchanged unless and until the parties agree any Variation in writing.

4.2 Where the Company identifies the impact of a Variation on the Services and the Charges in writing any price or prices contained therein shall, unless otherwise stated, be valid for a period of 30 days and thereafter the Company shall retain the right to increase such price or prices to take into account any increased cost of materials, labour and/or plant that it may suffer or incur.

4.3 In the event that the Company identifies the impact of a Variation on the Services and the Charges in writing and the parties fail to agree any Variation in writing, the impact of the Variation on the Services and the Charges identified by the Company in writing shall be deemed for all purposes to be agreed between the parties.

5. COMPANY’S OBLIGATIONS

5.1 The Company shall exercise reasonable skill and care in the performance of the Services and agreed Variations.

5.2 The Nothing in this agreement will create any relationship of employer/employee. The Company is not the servant or agent of the Client.

5.3 This agreement, together with Schedules 1 to 3 shall constitute the entire agreement between the Client and the Company and no other representations made by either the Client or the Company shall be effectively incorporated in the agreement unless such representations are recorded in writing in a document signed by a Director of the Client and the Company.

6. ASSIGNMENT AND SUBCONTRACTING

6.1 Neither party shall assign any of its rights or obligations under the Contract without the prior written consent of the other party, which shall not be unreasonably withheld.

6.2 The Company shall not subcontract any part of the Services without the written consent of the Client, which shall not be unreasonably withheld.

7. INDEMNITY AND INSURANCE

7.1 No liability shall attach to the Company in respect of the performance of the Services and agreed Variations except for liability which is covered by its Professional Indemnity Insurance. The cover provided by the Company's Professional Indemnity Insurance is limited to £5,000,000 for any one occurrence or series of occurrences arising out of each and every event. Nothing in the Contract shall operate to exclude or limit the liability of the Company in respect of death or personal injury caused by the negligence of the Company.

7.2 No liability shall attach to the Company either in contract or in tort for loss, injury or damage sustained as a result of any act, omission or insolvency of any person other than the Company and the Company shall not be liable to or indemnify the Client in respect of any claim made against it for any such loss, injury or damage.

7.3 No liability shall attach to the Company in respect of consequential loss.

7.4 The Company's liability to the Client in respect of any loss, cost, expense and/or damage suffered and/or incurred as a result of any act (negligent or otherwise), omission, default or breach of contract by the Company shall be limited to that proportion of such loss, cost, expense and/or damage as it is just and equitable for the Company to bear having regard to the extent of the Company's contribution to such loss, cost, expense and/or damage and on the basis that all other persons who have contributed to such loss, cost, expense and/or damage shall be deemed to have borne such proportion as it is just and equitable for them to bear having regard to the extent of their contribution to such loss, cost, expense and/or damage.

7.5 Notwithstanding the above, the total liability owed by the Company to the Client shall not exceed the lower of £25,000 or the total of the Charges set out at Schedule 1. Any higher limit of indemnity shall be at the Company's absolute sole discretion and must be agreed between the parties in writing. Nothing in this Contract shall operate to exclude or limit the liability of the Company in respect of death or personal injury caused by the negligence of the Company.

7.6 The Company shall maintain professional indemnity insurance for the period of the Contract provided that such cover remains available on reasonable terms and at reasonable rates and when so required by the Client shall produce evidence of that cover.

8. CHARGES AND TERMS OF PAYMENT

8.1 The Company shall be entitled to render interim fee account invoices in respect of Services performed each calendar month. The due date for the payment of each invoice shall be the date of the invoice and the final date for payment of each invoice shall be 30 days after the invoice date. The Scheme for Construction Contracts (England and Wales) Regulations 1998 shall apply to all payments.

8.2 If the payment of any sum due under this Contract is not made by the final date for its payment, the Company shall be entitled to charge interest of 6% above the base rate for the time being in force. The parties agree that this is a substantial remedy for late payment of any sum due. In addition to its right to receive interest for late payment, the Company shall also be entitled to suspend performance of the Services provided that no such suspension may take place unless the Company shall have given written notice requiring payment on an overdue sum within 7 days and the Client shall have failed to comply with the notice.

8.3 If any part of an invoice is disputed or queried by the Client, the payment of the remainder of the invoice shall not be delayed.

8.4 VAT shall be added to all invoices at the prevailing rate.

9. DIVISIBILITY

9.1 The Contract is divisible. Each invoice submitted shall be deemed to arise from a separate contract; all invoices shall be payable in full, without reference to and notwithstanding any dispute concerning any other invoice. Any dispute will remain with the contracted company only and does not concern any other associated, related or subsidiary business.

10. EXTENSION OF TIME AND ADDITIONAL COST

10.1 The Company shall collaborate with the Client, and other companies as required, to establish a programme for the production of the Services that the Company has undertaken to carry out and comprised within Schedule 2. The Company shall use reasonable endeavours to carry out the Services within the established programme and the parties agree that time is not of the essence for the carrying out of the Services by the Company. For the sake of clarity, the parties agree that

a) the Client is not entitled to terminate this Contract in the event that the Services are not produced by the Company in strict accordance with any programme agreed for its production;

and

b) the Company will not be or become liable for the payment of any damages, consequential loss or other costs or losses for any delay, howsoever caused, whether this be as a result of the Company not producing the Services in accordance with any agreed programme, or otherwise.

10.2 If the Company is delayed or impeded in the performance of its obligations by:

a) any act or omission of the Client, its servants or agents,

or

b) by any circumstance that is specified in Schedule 2,

the Company shall be entitled to be paid any additional costs thereby incurred by it with an allowance for profit where specified in Schedule 2 and, where appropriate, be allowed an extension of any time specified in Schedule 2 in which to complete any outstanding Services.

11. INSOLVENCY AND BANKRUPTCY

11.1 If either party shall become insolvent or bankrupt, or have a receiving order or administration order made against it or compound with its creditors or, being a corporation, commence to be wound up (not being a members' voluntary winding up for the purpose of reconstruction or

amalgamation) or carry on its business under an administrator or administrative receiver for the benefit of its creditors or any of them, the other party shall be at liberty either

a) to terminate the Contract forthwith by notice in writing to the other or to the administrative receiver or administrator or liquidator or to any person in whom the Contract may become vested,

or

b) to give such administrative receiver, administrator, liquidator or other person the option of carrying out the Contract subject to their providing of a guarantee for the due and faithful performance of the Contract up to an amount to be agreed.

12. TERMINATION

12.1 If either party is in breach of its obligations under the Contract and fails to remedy the breach within 14 days (or such longer reasonable period as may be specified) of receiving a written notice to remedy the breach, then the Contract can be terminated forthwith by the party not in default without prejudice to the accrued rights of the parties.

13. CONFIDENTIALITY

13.1 The Company and the Client shall keep confidential all information of the other party, whether designated as confidential or not, obtained under or in connection with the Contract and shall not divulge the same to any third party without the written consent of the other party. The provisions of this clause shall not apply to any information in the public domain otherwise than by breach of the Contract; or information obtained from a third party who is free to divulge the same.

13.2 The Company and Client shall divulge confidential information only to those employees who are directly involved in the Contract or have use of equipment and/or software used in connection with the Contract and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.

13.3 The Company may refer to the Contract or to the fact that the Client is his/her customer with the prior consent of the Client which shall not be unreasonably withheld.

14. FORCE MAJEURE

14.1 If the Company is delayed in the performance of the Services by circumstances beyond its reasonable control, it shall give immediate written notice of that fact to the Client and shall be entitled to an extension of any time specified in Schedule 2 for the completion of the Services. If the Services are so delayed by more than 45 days after the date of the notice, or such other period as the parties may agree, either party may terminate the Contract by giving written notice to the other party. In the event of such termination, the Company shall be entitled to that part of the Charges applicable to the Services provided prior to the receipt of the written notice of termination, including costs that are reasonably incurred in expectation of the Services continuing and any additional costs reasonably incurred in terminating the services.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 Unless otherwise agreed in writing, know-how and intellectual property rights evolved and generated from or arising in the performance of or as a result of the Contract shall (to the extent that they are not already vested in the Company) vest in and be the absolute property of the Company. The Client shall have a non-exclusive, non-transferable, royalty-free licence to use, and have used, that know-how and intellectual property rights for any purpose in connection with

the Contract.

15.2 Know-how and intellectual property rights evolved and generated from or arising in the performance of or as a result of the activities of the Company shall (to the extent that they are not already vested in the Company) vest in and be the absolute property of the Company.

16. RECRUITMENT CONSIDERATION

16.1 Should any member of the Company's staff directly involved in the provision of the Services leave the Company's employment to join the Client or any company associated with or in its ownership either during the period of his or her direct involvement with the Services or within a period of 6 months after his or her direct involvement with the Services ceases, the Client will pay the Company, in addition to all interim fee account invoices and/or final fee account invoice in respect of the provision of the Services, a recruitment fee of 40% of the gross annual salary of the member of staff concerned.

17. SEVERANCE

17.1 If any court or other tribunal finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part provision shall to the extent required be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

18. RECORDS

18.1 The Company shall maintain records of all Services provided under the Contract for a period of 2 years from the completion of the Contract. The Company shall provide copies of such records to the Client as may be reasonably required on request and the Client shall reimburse the Company with the reasonable costs incurred in preparing and supplying the copies.

19. LAW

19.1 Nothing in this Contract is intended to confer on any third party any benefit or right to enforce any of these terms pursuant to the Contracts (Rights of Third Parties) Act 1999 which benefit or right is excluded.

19.2 This Contract and any dispute which arises between the Client and the Company under or in connection with it shall be subject to the Laws of England.