

BEACON PLANNING LTD - TERMS AND CONDITIONS

Planning Consultancy Services I.

Definitions and Interpretation

1.1 In these Conditions:

'Agreement' means the Agreement for the provisions of the Services by the Company to the Client as contained in the Letter of Engagement and these Conditions

'Charges' means the fees, charges and expenses for the Services as set out in the Letter of Engagement

'Client' means the person named on the Letter of Engagement for whom the Company has agreed to provide the Services in accordance with these Conditions

'Input Material' means any materials, drawings, documents, graphics, data or other information provided by the Client to the Company relating to the Services

'Output Material' means any written reports, drawings, documents, planning application documents or other materials and any data or information provided by the Company in connection with the Services

'Letter of Engagement' means the Letter of Engagement to which these Terms and Conditions are appended

'Project' means any project of the Client in respect of which the Company is providing Services

'Services' means planning consultancy services and (where relevant) other services to be provided by the Company as set out in the Letter of Engagement

'The Company' means Beacon Planning Limited whose registered address is at 8 Quay Court, Colliers Lane, Stow-cum-Quay, Cambridge, CB25 9AU

'Writing' includes facsimile transmission, email and comparable means of communication

1.2 Words denoting the masculine gender shall include the feminine and neuter genders and vice versa and words denoting the singular shall include the plural and vice versa

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation

2. Supply of the Services

2.1 The Company shall provide the Services to the Client subject to these conditions. The Client shall sign, date and return the Letter of Engagement to the Company to acknowledge the Client's acceptance of the details of the Services and Charges outlined in the Letter of Engagement before the Company shall commence work

2.2 The Client at its own expense shall supply the Company with the Input Material in sufficient time to enable the Company to provide the Services within any time limits which may be specified in the Letter of Engagement.

2.3 The Client shall ensure that the Input Material is of a quality, type and nature suitable for use by the Company and shall ensure the accuracy of all Input Material

2.4 The Client shall at its own expense retain the original copies of all Input Material. Where original documents have been provided by the Client, the Client shall insure against their accidental loss or damage. The Company will endeavour to return such original documents supplied by the Client wherever possible but gives no warranty so to do and shall have no liability for any loss or damage however caused to such documents

2.5 The Company may at any time without notifying the Client make any changes to the Services which are necessary to comply with any safety or other statutory requirements or which do not materially affect the nature or quality of the Services

3. Payment

The Client agrees to pay the charges on the following terms:-

3.1 All Charges shall become due and payable to the Company at the times and the stages specified in the Letter of Engagement and the Client shall pay in full the amount specified in the invoice within 28 days of delivery of the invoice

3.2 The Client shall pay any additional charges which are in the Company's sole discretion required as a result of the Client's instructions or lack of instructions, delay in providing or the inaccuracy of any Input Material or any other cause attributable to the Client

3.3 The Client shall pay any expenses incurred by the Company in supplying the Services over and above those agreed in the Letter of Engagement as agreed between the parties in advance in writing

3.4 In the event of late payment the Client shall pay interest on the amount of the Charges outstanding at the date of statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998 from the date on which such payment was due until payment in full is made

- 3.5 If payment remains overdue for more than 21 days the Company reserves the right to discontinue supply of the Services until payment of all outstanding charges and interest is made. Such discontinuance does not relieve the Client of its obligation to pay any outstanding Charges and interest
- 3.6 The Client shall be liable for and shall indemnify the Company against all costs and expenses incurred by the Company in respect of any steps, actions or proceedings made or brought against the Client by the Company to obtain payment of outstanding Charges and interest
- 3.7 All payments must be in UK Pounds Sterling unless otherwise agreed in writing. If any cheque from the Client is returned by the bank as unpaid for any reason the Client will be liable for an administration fee of £30
- 4. Additional Services**
- 4.1 The Agreement constitutes the sole Agreement between the Company and the Client regarding the Services. Any additional work requested by the Client must be the subject of a new Agreement
- 5. Performance**
- 5.1 The Company warrants with the Client that the Services will be provided using reasonable care and skill and so far as reasonably possible in accordance with the Letter of Engagement
- 5.2 The Company shall use reasonable endeavours to provide the Services at the intervals and within the dates referred to in the Letter of Engagement but such dates are estimates only and time shall not be of the essence with regard thereto.
- 6. Intellectual Property Rights**
- 6.1 The property and copyright or other Intellectual Property Rights in any Input Material shall (subject to any such rights of any third party) belong to or continue to belong to the Client
- 6.2 The Client warrants that any Input Material and its use by the Company for the purpose of providing the Services will not infringe the copyright or other rights of any third party and the Client shall indemnify the Company against any loss, damages, costs, expenses or other claims arising from any such infringement
- 6.3 The property and copyright or other Intellectual Property Rights in the Output Material shall belong to the Company but subject to and after

payment in full of the Charges together with any other monies and interest as referred to in Clause 3 hereof the Company grants to the Client an exclusive and non-transferable licence to use the Output Material but only for the purpose for which the same was prepared by the Company. The Client shall keep any written report whole and unaltered and shall not reproduce the same or disclose the same to any third party unless it shall have obtained the prior written consent of the Company.

7. Confidentiality

7.1 Each party shall keep confidential (a) the terms of this Agreement; and (b) any and all confidential information that it may acquire in relation to the business or affairs of the other party. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this Agreement. Each party shall ensure that its officers and employees comply with the provisions of this clause 7.

7.2 The obligations on a party set out in clause 7.1 shall not apply to any information which:

7.2.1 is publicly available or becomes publicly available through no act or omission of that party; or

7.2.2 a party is required to disclose by order of a court of competent jurisdiction.

7.3 The provisions of this clause 7 shall survive any termination of this Agreement for a period of three years from termination.

8. Client's obligations

8.1 The Client acknowledges and agrees that in connection with the provision of the Services by the Company the Client shall co-operate with the Company as the Company shall reasonably require and provide to the Company such information and documentation as the Company reasonably requires to enable it to provide the Services.

9. Disclaimers

9.1 The Company does not warrant that any result or objective whether or not stated in these Terms and Conditions or the Letter of Engagement shall be achieved, be achievable or be attained at all or by given date.

9.2 Each of the parties acknowledges that in agreeing to these Terms and Conditions, it does not do so in reliance on any representation, warranty or other provision accept as expressly

- provided in these Terms and Conditions or in the Letter of Engagement.
- 9.3 During performance of the Services the Company may at the Client's request recommend third party service providers to the Client ("Recommended Providers") (including, without limitation, architects, landscape architects, transport planners, surveyors, ecologists, engineers and technical specialists). The Company is in no way affiliated with such Recommended Providers, nor does the Company act as their agent or representative. Should the Client decide to engage a Recommended Provider it shall enter into a direct contractual relationship with the Recommended Provider and the Company accepts no liability or responsibility for any advice given by, any act or omission of, or any representation, statement or warranty made by a Recommended Provider. The Company does not warrant that a Recommended Provider is suitable or qualified to provide any service to the Client and the Client should make its own enquiries in this regard.
- 9.4 The provision of collateral warranties to third parties by the Company is excluded.
- 10. Limitation of Liability and Indemnity**
- 10.1 This condition 10 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Client in respect of any breach of the Agreement, any use made by the Client of the Services, the Output Material or any part of it and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 10.3 Nothing in these Conditions limits or excludes the liability of the Company:
- 10.3.1 for death or personal injury resulting from negligence; or
- 10.3.2 for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Company.
- 10.4 Subject to condition 10.2 and condition 10.3:
- 10.4.1 the Company shall not be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information, any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 10.4.2 without prejudice to the generality of clause 10.4.1 above the Company shall not be liable in respect of any claim or claims arising out of or in connection with pollution and contamination.
- 10.4.3 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Agreement shall be limited to 10 times the amount of the Charges.
- 10.4.4 in calculating any liability of the Company under the provisions of clause 10.4.3, it shall be assumed that:
- 10.4.4.1 all other consultants and all contractors and sub-contractors connected with any Project shall have provided contractual undertakings on terms no less onerous than those set out in this clause 10 to the Client in respect of the carrying out of their obligations
- 10.4.4.2 there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party and any such other party who is responsible to any extent for loss and damage is contractually liable to the Client for such loss and damage; and
- 10.4.4.3 all other consultants and all contractors and sub-contractors connected with such Project have paid to the Client such proportion of any loss and damage which it will be just and equitable for them to pay having regard to the extent of their responsibility for such loss and damage.
- 10.5 The Company shall not be liable to the Client or be deemed to be in breach of this Agreement by reason of any delay in performing or failure to perform any of the Company's obligations in relation to the Services if the delay or failure was due to any cause beyond the Company's reasonable control.

Without prejudice to the generality of the foregoing, the following shall be regarded as clauses beyond the Company's reasonable control:-

- 10.5.1 Act of God, explosion, flood, tempest, fire or accident.
- 10.5.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition.
- 10.5.3 Acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority.
- 10.5.4 Import or export regulations or embargos.
- 10.5.5 Strikes, lock outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party).
- 10.5.6 Difficulties in obtaining raw materials, labour, fuel, parts, machinery or hardware.
- 10.5.7 Power failure or breakdown in machinery or hardware.
- 10.5.8 Injury to or illness of employees.
- 10.6. The Client shall indemnify the Company and keep the Company indemnified from and against all third party Claims and third party Losses incurred by the Company as a result of:
 - 10.6.1 The Company providing the Services save that the Company shall not be entitled to rely on the indemnity given in this clause 10.6 where such third party Claims and third party Losses arise as a result of negligence of the Company; and
 - 10.6.2 any breach by the Client of this Agreement
 - 10.6.3 for the purposes of this clause 10.6 the following words shall have the following meanings:
 - “Claims”: all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise)
 - “Losses”: all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever
 - “the Client”: shall include the Client's employees, agents and officers.

11. Distance Selling Regulations

Except where the Client is acting in the course of a business, if a Client enters into a contract for services with the Company on the terms of this Agreement without meeting with the

Company (or its duly authorised representatives) face to face, the Consumer Protection (Distance Selling) Regulations 2000 will apply and the Client will have the right to cancel the Agreement within seven working days of the date of acceptance of these Terms and Conditions and the Letter of Engagement. The Client may exercise the right to cancel by serving written notice on the Company.

Please note: by agreeing to the terms of this Agreement the Client consents to the Company commencing to provide the Services from the day of receipt by the Company of the signed Letter of Engagement from the Client (or where the day of receipt falls on a weekend or public holiday, the next working day following the receipt) and the Client's right to cancel the contract will expire when the Company commence the Services.

12. Termination

- 12.1 Either party may (without limiting any other remedy) at any time terminate the Agreement by giving written notice to the other if the other commits any breach of these conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so or if the other goes into liquidation or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed
- 12.2 In the event that the Agreement is terminated, the Client shall pay to the Company a proportionate sum for Services as carried out up to the date of termination on the basis of time incurred and materials used

13. General

- 13.1 In providing the Services the Company is acting as an independent contractor. The Company reserves the right to enter into a subcontract with a third party for the provision of all or any part of the Services
- 13.2 These Conditions together with the terms set out in the Letter of Engagement constitute the entire agreement between the parties supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions expressed or implied by statute or otherwise are excluded to the fullest extent permitted by law
- 13.3 Neither party may assign, transfer or in any way make over any of its rights or

- obligations to any third party without the written consent of the other party
- 13.4 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as any at the relevant time has been notified pursuant to this provision to the party giving the notice
- 13.5 No failure or delay by either party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right and no waiver by either party of any breach of the Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision
- 13.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected
- 13.7 English Law shall apply to the Agreement and the parties agree to submit to the jurisdiction of the English Courts
- 13.8 These Conditions do not nor are they intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999
- 13.9 If this Agreement constitutes a 'Construction Contract' as defined in the Housing Grants, Construction and Regeneration Act 1996, either party may refer any dispute arising under this Agreement to adjudication in accordance with the Scheme for Construction Contracts (England & Wales) Regulations 1998.

14. Clauses surviving termination

Clauses 1, 3, 6, 7 and 10 shall survive termination of this Agreement