

Conditions of Engagement for Professional Services

REFERENCE
Building Services Consultancy

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CONDITIONS OF ENGAGEMENT

1 Definitions

In construing this Agreement the following expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

'The Client' means the person or body engaging the services of the Consulting Engineer and shall include his or its successors and assigns.

'The Agreement' shall comprise these Conditions of Engagement and either a formal Memorandum of Agreement duly signed or a letter of acceptance of appointment to the Project confirming the use of these Conditions of Engagement and the arrangements regarding remuneration of the Consulting Engineer.

'The Consulting Engineer' means Devona Ltd. trading as D&K Partnership, engaged to act as Consulting Engineer.

'The Architect' means the person, partnership or company appointed by the Client to provide architectural services for the Project and he shall be deemed to be the design team coordinator unless otherwise agreed in writing.

'The Project' means the Project with which the Client is proceeding and of which the Works form a part.

'The Works' means that part of the Project in connection with which the Client has engaged the Consulting Engineer to perform professional services, as described in the *Scope of Works* and on which the *Fee Structure* is based.

'Contractor' and *'Subcontractor'* means any persons, firm or (limited) company under contract to perform work and/or supply goods in connection with the Works.

'The Quantity Surveyor' means any person, partnership or company appointed to provide quantity surveying services for the project.

'Working Drawings' means drawings prepared by the Consulting Engineer in such detail as will enable the Works to be installed. Individual Working Drawings may relate to one or more of the services and the drawings shall be prepared to a scale appropriate to show details.

Notes:

Where the Client is the Contractor then references in this agreement to the Contractor shall be construed as meaning both the Client and the Contractor and where there are references to the Client it shall be construed as meaning both the Contractor and the Client as defined herein.

Where the Architect is the Client then references in this agreement to the Client shall be construed as meaning both the Client and the Architect and where there are references to the Architect it shall be construed as meaning both the Architect and the Client as defined herein.

Words importing the singular number only shall include the plural number and vice versa where the context requires.

Words importing the masculine gender shall include the feminine gender where the context requires.

Words importing persons shall include corporations where the context requires.

Figures expressing financial values are always excluding VAT.



2 Duties of Consulting Engineer

The duties to be performed by the Consulting Engineer shall be generally as set out below unless otherwise agreed in writing between the Client and the Consulting Engineer :

2.1 General

- 2.1.1 The stages in this document are modelled on the procedural stages set out in the RIAI Plan of Work. The tasks as listed can be increased or decreased if required; they may also be rearranged to suit particular in-house procedures. Should any amendments be required, this should be made clear at Appointment Stage and stated in Schedule 1.
- 2.1.2 Appointment of the Consulting Engineer should take place before any work is undertaken by him.
- 2.1.3 Tasks listed are to be carried out in collaboration with all Design Team members.

2.2 Stage 1 - Project Inception/Briefing

- 2.2.1 Consult with the Client/Architect.
- 2.2.2 Confirm details of the *Scope of Works* with the Client/Architect and agree to the *Fee Structure*.
- 2.2.3 Where a project involves the refurbishment and/or extensions to existing buildings, confirm the need for specialist surveys and investigations in connection with existing services.
- 2.2.4 Prepare and agree allocation of budget/cost limit for the Building Services.
- 2.2.5 Discuss and agree the programme and procedures with the Client/Architect.

2.3 Stage 2 - Outline Proposal

- 2.3.1 Take Client's instructions.
- 2.3.2 Establish the availability and conditions of supply of primary M&E Services, i.e. electricity, gas, telephone, TV, etc.
- 2.3.3 In the case where a project involves the refurbishment and/or extensions to existing buildings, arrange for specialist surveys and investigations to be carried out on existing services, and consider and advise on the results.
- 2.3.4 Consult with the Architect and examine options for thermal performance of building including report on fuel options.
- 2.3.5 Identify and evaluate with the Design Team alternative design concepts, taking into account life cycle costing.
- 2.3.6 Check budget allocations/cost limits based on historical data, taking account of abnormal costs, site conditions and programme.
- 2.3.7 Prepare and agree outline elemental cost plan.
- 2.3.8 Obtain Client's approval and sign-off.

Stage 3 - Scheme Design

- 2.3.9 Take Client's instructions.
- 2.3.10 Develop costs of alternative design proposals in conjunction with other members of the Design team.
- 2.3.11 Participate with other members of the Design Team in value engineering and life cycle costing exercises.
- 2.3.12 Advise the Architect on the preparation of the Planning Application, i.e. requirements for boiler houses, plant rooms, flues, ESB Substations, Meter positions, services compounds or any other matters which may affect the planning application.
- 2.3.13 Discuss with the Architect and the Structural Engineer the principles of integrating the Building Services with the building structure and finishes, including agreement on distribution routes for service runs, "soft spots" and cross-over zones within the building.
- 2.3.14 Prepare and agree detailed elemental cost plan.
- 2.3.15 Advise the Project Supervisor (Design Process) in the preparation of the Preliminary Health and Safety Plan.
- 2.3.16 Advise on duration of Building Services elements of construction programme.
- 2.3.17 Obtain Client's approval and sign-off.

2.4 Stage 4 - Detailed Design

- 2.4.1 Take Client's instructions.
- 2.4.2 Develop detailed design from the approved scheme design.
- 2.4.3 Subsequent to the issue of the Fire Certificate, prepare layout drawings and outline specification for emergency lighting, fire alarms, etc.
- 2.4.4 Review (with the Architect and the Client) the services design in respect of its compliance with the requirements of the brief.
- 2.4.5 Verify elemental cost plan against detailed design development on an ongoing basis and take remedial action as required.
- 2.4.6 Obtain Client's approval and sign-off.

2.5 Stage 5 - Production Information

- 2.5.1 Take Client's instructions.
- 2.5.2 Examine conditions of planning permission and consult with the Architect and, as necessary, with the nominated Authorities to ensure that the requirements of the planning approval are incorporated in the tender design.
- 2.5.3 Develop and prepare, in consultation with the Design Team Working Drawings and specifications of the Building Services installations, integrated with the building and structure.
- 2.5.4 Revise as necessary the Building Services documentation following the above detailed review with the Architect and the Client, and submit revisions for Architect/Client approval.

- 2.5.5 Consult with the Architect and the Quantity Surveyor regarding conditions of contract, forms of tender and warranties to be used on the project.
- 2.5.6 Obtain Client approval for extent of PC Sums or Provisional items in Building Services tenders.
- 2.5.7 Prepare tender documents where appropriate.
- 2.5.8 Prepare detailed elemental cost check.
- 2.5.9 Obtain Client's approval and sign-off.

2.6 Tender Action Stage

- 2.6.1 Take Client's instructions.
- 2.6.2 Advise on tendering procedures for sub-contracts.
- 2.6.3 Advise Client and Design Team in the pre-selection/selection of panel of tenderers.
- 2.6.4 Invite tenders for Building Services installations.
- 2.6.5 Check tenders returned and prepare tender report and contract award recommendation.
- 2.6.6 Prepare cost analysis of (lowest) recommended tender.
- 2.6.7 Reconcile recommended tender with project cost check and as appropriate, provide recommendations on schedule of adjustments to reconcile this tender with the cost check.
- 2.6.8 Obtain Client's approval and sign off.

2.7 Project Planning Stage

- 2.7.1 Take Client's instructions.
- 2.7.2 Assess and advise on requirements for (site) meetings and visual inspections.
- 2.7.3 Arrange, in conjunction with the Architect, pre-start meetings with the Contractor and Subcontractors, for the purpose of confirming the scope and design intent of the Building Services installations.

2.8 Operations on Site and Completion

- 2.8.1 Take Client's instructions.
- 2.8.2 Advise Client regarding appointment as appropriate of resident site inspection staff.
- 2.8.3 Advise the Architect on necessary instructions to be issued to the (Sub) Contractors.
- 2.8.4 Advise the Architect/Client of potential variations and compensating savings.
- 2.8.5 Agree cost of variations with Subcontractors.
- 2.8.6 Advise the Architect regarding the issue of instructions relating to any proposed variations for the installations.
- 2.8.7 Provide the Architect with interim valuations and issue payment recommendations in respect of the services installations.

- 2.8.8 Prepare and issue regular detailed financial reviews/progress reports showing projected final account figures for the Building Services installations for incorporation into the overall cost reports for the project.
- 2.8.9 Request from the Contractor all test and commissioning reports required to verify the correct operation of the systems involved, having witnessed commissioning tests where appropriate.
- 2.8.10 Review available test and commissioning reports and advise on the satisfactory completion of this work.
- 2.8.11 At appropriate stages issue visual inspection lists to the Architect in respect of the Building Services installations for action by the Contractor and the Subcontractors.
- 2.8.12 Issue, as appropriate, an Opinion on Compliance with the Building Regulations in respect of the Building Services Installations Designs.
- 2.8.13 At practical completion, arrange for the preparation by the (Sub) Contractors of operating and maintenance manuals and instructions, including record drawings of the Building Services installations.
- 2.8.14 Arrange, in conjunction with the Architect, for the Contractor and nominated Specialist Subcontractors/Suppliers to hand over the individual systems and to provide detailed instruction to client personnel regarding the operating features of the systems installed.
- 2.8.15 Advise the Client regarding the need to enter maintenance contracts for the various systems installed under the Building Services sub-contracts.
- 2.8.16 Advise the Architect on release of retention monies.
- 2.8.17 Prepare Final Account and Final Report and issue to the Architect and Client.
- 2.8.18 After hand-over and before the end of the defects liability period, visit site with the Architect / Client to check operation of M&E Building Services installations and advise regarding the correction of any operational difficulties that may exist. Issue report on this visit to all parties.

2.9 Building Energy Rating (BER) and related Energy Reporting

- 2.9.1 The rating methodology used by the Consulting Engineer to produce the BER reflected in the BER Certificate is based on Sustainable Energy Ireland (SEI) approved software and incorporates standard occupancy assumptions and a range of technical judgements based upon the views of various professional organisations regarding the energy efficiency impact of various building components and attributes.
- 2.9.2 Where Energy Reporting and/or preliminary Rating is based upon “typical buildings” that are meant to represent a number of similar units of a Client’s project, such Reporting and/or Rating is to be considered as being preliminary and cannot be relied upon to be reproduced for any individual units.
- 2.9.3 Where Energy Reporting, Rating and/or Certification is based upon agreements with the Client regarding the application of energy reduction measures, the Consulting Engineer can not be held liable for the actual execution by the Client of such agreement and is not held to any form of inspection or supervision.
- 2.9.4 With reference to Clause 14 the Consulting Engineer can not be held liable for any omissions and/or errors in the information given to him by the Client and/or others representing the Client, nor for omissions, errors or later changes in specifications of products and/or systems, i.e. U-values of insulation materials and windows, used to calculate the BER or any related Energy Report, nor for any consequence of same to the SEI acceptance of Certified values.

3 Remuneration of Consulting Engineer

- 3.1 The Client and the Consulting Engineer shall agree the remuneration of the Consulting Engineer for the performance of the necessary services under Clauses 2.1 to 2.9 of these Conditions of Engagement.
- 3.2 Subject to other arrangements agreed between the Consulting Engineer and the Client, such as interim payments made on a monthly or other basis, payments on account shall become due as percentages of the total fees as follows:
- 3.2.1 15% @ stage of Planning Application / Scheme Design
 - 3.2.2 20% @ on completion of Detailed Design stage
 - 3.2.3 35% @ up to & including Tender / mechanical/electrical sub-contract recommendations
 - 3.2.4 25% @ during construction period and up to & including practical completion
 - 3.2.5 5% + Warranty fees @ final account
- 3.3 Payments:
- 3.3.1 Interim payments under Clause 3.2.1 and 3.2.2 above shall be calculated on the cost of the Works (or any portion thereof) as designed by the Consulting Engineer and before allowing for any modifications required by the Client to be made to the designs, between the receipt of tenders therefore and the acceptance of a tender. These values shall be based on the tender recommended for acceptance or, where a tender has not been received, on the Consulting Engineer's best estimate of the value of the Works or of the relevant portion thereof.
- Such payments (except payments in respect of the modifications above referred to, which shall be treated as abandoned work under the provisions of Clause 14) shall not be regarded as valuations of the duties performed at the respective stages but shall rank solely as payments on account towards the total fee ultimately payable and calculated on the cost of the Works, as defined in Clause 10 of the Agreement.
- 3.3.2 Progress payments under Clause 3.2.4 above shall be calculated on the value of the work completed.
- 3.4 The Consulting Engineer shall be entitled to render an account for the last instalment of the said fee at the issue of the Final Account or on completion of the Works, whichever occurs first. If the final accounts with Contractors or other costs have not by then been agreed, the account to be rendered by the Consulting Engineer shall be paid on the basis of the best estimate available to the Consulting Engineer, leaving any necessary adjustment to be made when such final accounts are available.
- 3.5 Where the Works are the subject of more than one contract, the fees shall be calculated separately in respect of each contract. The instalments of the fee, as set out above, shall become due separately in respect of each individual Contract.
- 3.6 Where the times of reaching the above stages are substantially delayed through circumstances over which the Consulting Engineer has no control, the Consulting Engineer shall be entitled to interim payments as determined by the amount of work performed by him. If such delays result in the need for additional meetings, such extra activities shall be subject to additional payment to be agreed between Client and the Consulting Engineer.
- 3.7 Remuneration of the Consulting Engineer in respect of the preparation of Building Energy Reports and/or Rating as in Clause 2.9 shall become due in full on completion of and for any such Building Energy Report or Rating.
- 3.8 Remuneration of any involvement Consulting Engineer in respect of the preparation of Bills of Quantities shall become due in full on completion of the Bills of Quantities.

4 Alteration or Modification to Design

- 4.1 After completion of the duties under Clause 2.1 to 2.4, if any design, whether completed or in progress, or any specification, drawing or other document prepared in whole or part by the Consulting Engineer, shall require to be modified or revised by reason of instructions received by the Consulting Engineer or by reason of circumstances which could not reasonably have been foreseen, such modification or revision and any consequential reproduction of documents shall be the subject of additional payment, to be agreed between the Client and the Consulting Engineer.

5 Remuneration for Additional Services

- 5.1 In respect of additional services provided by the Consulting Engineer the Client shall agree with the Consulting Engineer appropriate and reasonable separate payments for same and the Client shall pay the Consulting Engineer such specialist fees and out of pocket expenses in connection therewith as may be incurred by the Consulting Engineer. Such additional services shall include, inter alia, work and advice in connection with:
- 5.1.1 Licences and permits.
 - 5.1.2 Surveys, investigations, cost analyses, etc., in connection with existing installations or modifications to existing installations.
 - 5.1.3 Checking, coordinating and/or advising upon any part of the Building Services of the Project not designed by the Consulting Engineer.
 - 5.1.4 Preparing shop details.
 - 5.1.5 Inspecting or witnessing the testing of materials or machinery during manufacture.
 - 5.1.6 Excessive delay on the part of the Client or of any Contractor or the taking by the Client of the Works or any part thereof out of the hands of any Contractor due to his failure properly to perform the relevant Contract.
 - 5.1.7 Resident Site Inspection.
 - 5.1.8 Full commissioning service.
 - 5.1.9 Litigation or Arbitration.
 - 5.1.10 Preparing or assisting in the preparation of (environmental) impact assessments.
 - 5.1.11 Other tasks outside of the scope of the Appointment as described in above Clauses 2.1. through 2.8.
 - 5.1.12 Extension of the works after the date mentioned in the Memorandum of Agreement.
- 5.2 Any additional remuneration agreed to be paid to the Consulting Engineers by the Client as a result of the project not being completed by aforementioned date (due to the contractor, late decision by the Client) will only include reasonable costs incurred by the Consulting Engineer and no loss of profit will be paid.
- 5.2.1 The Client will not pay additional remuneration to the Consulting Engineer if the project is not completed by the aforementioned date if such delays are solely attributable to the late issuing of information by the Consulting Engineer.
- 5.3 Hourly rates for additional remuneration will be paid in accordance with Schedule 2.

6 Out-of-Pocket Expenses

- 6.1 In addition to the remuneration to be paid under Clause 5. of this Agreement, the Consulting Engineer shall be reimbursed by the Client all out-of-pocket expenses actually and properly incurred by him in respect of:
 - 6.1.1 Printing, reproduction and purchase of all documents, specifications, bills of quantities, drawings, maps and records.
 - 6.1.2 Facsimile calls, telephone, emails, tele-conferencing charges etc.
 - 6.1.3 Postage, courier and similar delivery charges.
 - 6.1.4 Travelling and hotel expenses and other similar disbursements at the current rates agreed within the Public Service or as otherwise agreed.
 - 6.1.5 Advertising for tenders and for resident site staff, provided that the Consulting Engineer and the Client may agree on a lump sum or on an increase in the scale of fees to cover any or all of these expenses.

7 Payment of Accounts

- 7.1 The times at which payments under Clause 3 become due are stated therein.
- 7.2 The Consulting Engineer shall be entitled to render accounts for additional remuneration under Clauses 4 and 5, and reimbursements under Clauses 5 and 6, as and when the additional services are provided or the expenses incurred as the case may be.
- 7.3 All sums due from the Client to the Consulting Engineer in accordance with the terms of this Agreement shall be paid within 30 days of the submission by the Consulting Engineer of his accounts therefore to the Client, and any sums remaining unpaid at the expiry of such period of 30 days shall bear interest thereafter, such interest to accrue from day to day at the rate of 2% per annum above the current Bank Rates for AA 1 year term loan borrowers.

8 Cost of the Works

- 8.1 The Cost of the Works or any part thereof shall be deemed to include:
 - 8.1.1 The cost to the Client of the Works from whatever cause arising including:
 - 8.1.1.1 The Subcontractors' agreed final account for the Works
 - 8.1.1.2 All fixed equipment provided by the Client.
 - 8.1.1.3 The due proportion of the main contractor's preliminary and general items.
 - 8.1.1.4 The cost of the builders work in connection with the engineering services and associated attendances.
 - 8.1.1.5 Payments made to the contractor by way of bonus, ex-gratia, incentive, etc.
 - 8.1.1.6 The cost of services connections related to the Works. Such cost shall exclude:
 - 8.1.1.6.1 Administration expenses incurred by the Client.
 - 8.1.1.6.2 Professional fees and out-of-pocket expenses.
 - 8.1.1.6.3 Interest on capital during construction, and the cost of raising moneys required for carrying out the construction of the Works.

- 8.1.1.6.4 Cost of land and wayleaves.
- 8.1.1.7 A fair valuation of any labour, materials, manufactured goods, machinery or other facilities provided by the Client.
- 8.1.1.8 The cost, assessed as if they had been constructed independently, of any chimneys, or of any air conditioning or ventilation ducts and their insulation, forming part of the building structure; or alternatively a fair proportion of their actual capital cost, as may be mutually agreed.
- 8.1.1.9 The market value, as though they were purchased new, of any second-hand materials, manufactured goods and machinery incorporated in the Works.

9 Resident Site Inspection

- 9.1 The Consulting Engineer shall, at the cost of the Client subject to the Client's approval which shall not be unreasonably withheld, appoint such staff as the Consulting Engineer considers necessary for the efficient inspection of work on site. Such staff shall take instructions from the Consulting Engineer only. The Client shall at his own cost arrange for local office accommodation, furniture, telephones, equipment and transport as shall be reasonably necessary for the use of the staff. In the event of such staff not being appointed, the Consulting Engineer may offer and be entitled to charge, if accepted, for any inspection additional to the site visits under Clause 2.7.2 in accordance with Clauses 5 and 7.

10 Site Meetings

- 10.1 The cost of attending Site Meetings to engineering services as required under Clause 2 is included in the remuneration provided for in these Conditions of Engagement. The average frequency of the site visits allowed for during the installation stage of the works is as per Clause 2.7.2. Any additional site visits required will be charged on a time basis; see also Clauses 2.8.2 and 3.6 in connection with site visits.

11 Damage or Destruction of Works

- 11.1 If at any time before the completion of the Project any part of the Works shall be damaged or destroyed, the Client shall pay to the Consulting Engineer the appropriate remuneration for any additional work or expense resulting from such damage or destruction.

12 Postponement or Abandonment of the Works

- 12.1 If at any time the Client decides to abandon the Project, he shall thereupon by notice in writing to the Consulting Engineer forthwith terminate the Consulting Engineer's appointment under this Agreement. If at any time the Client decides to postpone the Project, he shall thereupon by notice in writing to the Consulting Engineer terminate or suspend the Consulting Engineer's appointment under this Agreement forthwith. Upon such a termination or suspension the Client shall pay to the Consulting Engineer a sum calculated in accordance with the provisions of Sub-Clause 12.7 below.
- 12.2 If at any time the Client decides to postpone or abandon any part of the Works, he may thereupon by notice in writing to the Consulting Engineer seek to vary this Agreement either by excluding the services to be performed by the Consulting Engineer in relation to such part of the Works, or by suspending performance of the same and in such notice the Client shall specify the services affected. The Consulting Engineer shall forthwith comply with the Client's notice and the Client shall pay to the Consulting Engineer a sum calculated in accordance with the provisions of Sub Clause 12.8 below in respect of such compliance.

- 12.3 If the Client shall not have required the Consulting Engineer to resume the provision of services in respect of the whole or any part of the Works suspended under Sub-Clause 12.1 or 12.2 within a period of 6 months from the date of the Client's notice:-
- 12.3.1 In the case of suspension under Sub-Clause 12.1 this Agreement shall forthwith automatically terminate; or
- 12.3.2 In the case of a suspension under Sub-Clause 12.2 the suspended services shall be deemed to have been excluded from the services to be performed by the Consulting Engineer under this Agreement.
- 12.4 In the event of the failure of the Client to comply with any of his obligations under this Agreement, or upon the occurrence of any circumstances beyond the control of the Consulting Engineer which are such as to delay for a period of more than 6 months or prevent or unreasonably impede the carrying out by the Consulting Engineer of his services under this Agreement, the Consulting Engineer may upon not less than 60 days' notice in writing to the Client terminate his appointment under this Agreement, provided that, in lieu of so terminating his appointment, the Consulting Engineer may:-
- 12.4.1 forthwith upon any such failure or the occurrence of any such circumstances suspend the carrying out of his services hereunder for a period of 60 days (provided that he shall as soon as practicable inform the Client in writing of such suspension and the reasons therefore), and
- 12.4.2 at the expiry of such period of suspension either continue with the carrying out of his services under this Agreement or else, if any of the reasons for the suspension then remain, forthwith in writing to the Client terminate his appointment under this Agreement. Upon such a termination the Client shall pay the Consulting Engineer a sum calculated in accordance with the provisions of Clause 3.
- 12.5 The Consulting Engineer shall, upon receipt of any notice in accordance with Sub-Clause 12.1 or in the event of the termination by him of his appointment in pursuance of Sub-Clause 12.4, proceed in an orderly manner but with all reasonable speed and economy to take such steps as are necessary to bring to an end his services under this Agreement.
- 12.6 Any termination of the Consulting Engineer's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either party to this Agreement or whatever rights each party may have at law against the other.
- 12.7 Upon a termination or suspension of the Consulting Engineer's appointment by the Client in pursuance of Sub-Clause 12.1 or in the event of a de facto termination or suspension, the Client shall pay to the Consulting Engineer the sums specified in 1. 2. and 3. below less the amount of payments previously made to the Consulting Engineer under the terms of this Agreement.
- 12.7.1 A fair and reasonable proportion of the sum which would have been payable to the Consulting Engineer under Clause 3 if no such termination or suspension had taken place. In the assessment of such proportion, the services carried out by the Consulting Engineer up to the date of termination or suspension and in pursuance of Sub-Clause 12.1 shall be compared with a reasonable assessment of the services which the Consulting Engineer would have carried out but for the termination or suspension. In any case in which it is necessary to assess the payment to be made to the Consulting Engineer in accordance with the sub-clause by reference to the cost of the Projects or the Works, then to the extent that such cost is not known, the assessment shall be made upon the basis of the Consulting Engineer's best estimates of cost.
- 12.7.2 Amounts due to the Consulting Engineer under any other clauses of this Agreement.
- 12.7.3 A disruption charge equal to one quarter of the sum payable under 1. above subject to a maximum of 20% of the total fee which would have been payable under Clause 3.
- 12.8 Upon a termination or suspension by the Client in pursuance of Clause 12.2 the Client shall pay to the Consulting Engineer the sums specified in 1. 2. and 3. below.

- 12.8.1 A fair and reasonable proportion of the sum which would have been payable to the Consulting Engineer under Clause 3 in respect of the services affected if no such termination or suspension had taken place. The proportion shall be calculated in accordance with the provisions of Sub-Clause 12.7.1. above.
- 12.8.2 Amounts due to the Consulting Engineer under any other clauses of this Agreement.
- 12.8.3 A disruption charge, to be calculated in accordance with the provisions of Sub-Clause 12.7 above.
- 12.9 In any case in which the Client has required the Consulting Engineer to suspend the carrying out of the Consulting Engineer's services in pursuance of Sub-Clause 12.1 or 12.2 above, the Client may, at any time within the period of 6 months from the date of the Client's notice, require the Consulting Engineer in writing to resume the performance of such services. In the event:
- 12.9.1 The Consulting Engineer shall, within a reasonable time of receipt by him of the Client's said requirements in writing, resume the performance of his services in accordance with this Agreement, the payment made under Sub-Clause 12.7.1. or 12.8.1. as the case may be ranking as payment on account towards the total sum payable to the Consulting Engineer under Clause 3.
- 12.9.2 Notwithstanding such resumption, the Consulting Engineer shall be entitled to retain or receive as an additional payment due in accordance with this Agreement the disruption charge referred to in Sub-Clause 12.7.3. or 12.8.3. above.
- 12.10 If the Consulting Engineer shall need to perform any Additional services in connection with the resumption of his services in accordance with Sub-Clause 12.9 the Client shall pay the Consulting Engineer in respect of the performance of such Additional services in accordance with Clause 5 and any appropriate reimbursements in accordance with Clause 6.
- 12.11 In any case of postponement of the works by reason of any Client's decision, the Remuneration level of the Consulting Engineer at the time of resuming of the services shall be increased by a percentage equal to the difference in general construction cost level compared to the time of postponement.

13 Care and Diligence

- 13.1 The Consulting Engineer shall exercise all reasonable skill, care and diligence in the discharge of the duties agreed to be performed by him and, in so far as any of his duties are discretionary, shall act fairly as between the Client and the Contractor. Except in an emergency, the Consulting Engineer shall not, without the prior approval of the Client, authorise any modification of the Works involving a substantial extra cost.
- 13.2 The Engineer will report and advise generally through the design team coordinator.

14 Liability of Consulting Engineer

- 14.1 The Consulting Engineer shall be liable to his Client for the consequences of any negligent act, omission or statement on his part or on the part of his employees to the extent and subject to the limitations set out in Clauses 14.2 to 14.11.
- 14.2 Unless otherwise agreed between the Client and the Consulting Engineer, the Consulting Engineer shall maintain professional indemnity insurance provided always that such insurance is available at commercially reasonable rates. The Consulting Engineer shall immediately inform the Client if such insurance ceases to be available on the terms required by this condition at commercially reasonable rates in order that the Client and the Consulting Engineer can consider means of best protecting their respective positions in the absence of

such insurance. Unless otherwise agreed between the Client and the Engineer, the Professional Indemnity Insurance cover required to be maintained by the Consulting Engineer under this Agreement shall be for an amount and period of time necessary to cover liability arising under Clause 14.9 and 14.10 respectively. A confirmation of the Professional Indemnity Insurance is to be attached to the Agreement as Schedule 3.

- 14.3 Where requested in writing by the Client, the Consulting Engineer shall maintain public, liability insurance covering the Consulting Engineer, his employees and agents from the effective date of this Agreement until the completion of the services provided always that such insurance is available at commercially reasonable rates.
- 14.4 The liability of the Consulting Engineer shall extend to only direct loss or damage suffered by the Client in respect of matters arising directly from within the scope of the Consulting Engineer's commission.
- 14.5 The Consulting Engineer shall not be liable for any loss or damage sustained or sustainable by the Client in relation to any negligent or fraudulent act, omission or statement of any Resident Engineer, Superintending Engineer, Clerk of Works, Inspector or other person employed by the Client or by any Contractor or Subcontractor or by any other person not being an employee of the Consulting Engineer.
- 14.6 Liability of the Consulting Engineer shall be limited to such sum as the Consulting Engineer ought reasonably to pay having regard to his responsibility for the loss or damage suffered as a result of the occurrence or series of occurrences in question, on the basis that all other Consultants and all Contractors and Subcontractors shall be deemed to have provided similar contractual undertakings to the Client (whether or not they shall have been so provided to the Client) in respect of the carrying out of their obligations and shall be deemed to have paid to the Client such proportion which it would be just and equitable for them to pay having regard to the extent of their responsibility.
- 14.7 The Consulting Engineer makes no warranty, promise or representation as to the performance, suitability or competence of any Contractor, Subcontractor or other person employed or retained in the undertaking in which the Consulting Engineer is commissioned but not being an employee of the Consulting Engineer nor does he offer or give any indemnity in relation to the matters referred to in this sub-clause.
- 14.8 In relation to specialist trades and/or goods or services incorporated in the Works, Subcontractors or Suppliers may be appointed on the recommendation of or with the concurrence of the Consulting Engineer. Where such Subcontractors or Suppliers design any part of the Works the said Subcontractors or Suppliers and not the Consulting Engineer shall be responsible for such design.
- 14.9 The Client and the Consulting Engineer may agree the sum to which, notwithstanding anything to the contrary contained in this Agreement, the liability of the Consulting Engineer under or in connection with this Agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall be limited. In the absence of such agreement, such sum shall be deemed to be a maximum of €2,700,000 per occasion, but never to exceed the sum paid by the Professional Indemnity Insurance of the Consulting Engineer.
- 14.10 The liability of the Consulting Engineer to the Client expires after the expiration of such period of time as is stated in the Agreement from the issue of the Certificate of Practical Completion to the Contractor or, where there is no such certificate, from the issue of such other record stating or indicating that the Works are substantially complete unless in the meantime the Client has made claim in writing upon the Consulting Engineer, specifying the negligent act, omission or statement said to have caused the alleged loss or damage sustained or sustainable. If no such period of time is stated elsewhere in the Agreement it shall be deemed to be 6 years.
- 14.11 The Consulting Engineer shall not be liable to his Client for the consequences of any statement on the part of his employees unless such a statement has been confirmed in writing

by the Consulting Engineer's qualified Design Engineer overseeing the Client's project and/or a member of the Consulting Engineer's Senior Management.



15 Information to be Supplied to Consulting Engineer

15.1 The Client shall supply free of charge to the Consulting Engineer:

- 15.1.1 All such current plans and sections of all buildings (to a scale of not less than 1/100) and essential details (to a scale of not less than 1/25), together with all such site plans (to a scale of not less than 1/1,250) and levels as the Consulting Engineer may reasonably require.
- 15.1.2 All current pertinent data and information, together with such assistance as shall reasonably be required for the carrying out by the Consulting Engineer of his duties under this Agreement.
- 15.1.3 Where the Client cannot supply such information free of charge to the Consulting Engineer, the Consulting Engineer shall arrange to obtain the information insofar as is practicable. A time charge and costs to be agreed between the Consulting Engineer and the Client shall be payable to the Consulting Engineer for so doing.

16 Copyright

16.1 The ownership of copyright in all drawings, reports, specifications, bill of quantities and other documents provided by the Consulting Engineer in connection with the Works shall remain vested in the Consulting Engineer, but the Client shall have a licence to use such drawing, reports, specifications, bills of quantities and other documents for any purpose related to the construction, letting or maintenance of or extension to the Works, provided that the Consulting Engineer has been fully remunerated in accordance with the terms of this Agreement. Notwithstanding the aforesaid, the Client shall not make copies of such drawings or other documents nor shall he use the same in connection with any other works without the prior written approval of the Consulting Engineer and upon such terms as may be agreed between the Client and the Consulting Engineer.

17 Non-Assignment

- 17.1 The Consulting Engineer shall not have the right to assign or transfer the benefit and obligations of this Agreement or any part thereof, except with the Client's written approval, provided that it shall be lawful for the Consulting Engineer at any time to take into partnership another Partner or Partners and that he or they or the survivor of them shall thenceforth be deemed to be included in the expression the Consulting Engineer.
- 17.2 If the Consulting Engineer dies or becomes incapacitated or otherwise unable to perform his duties under this Agreement the Client will have the right to review the engagement and terminate it unless alternative arrangements are made to the satisfaction of the Client.

18 Settlement of Disputes

18.1 In the event of any dispute or difference arising between the parties in connection with or arising from this Agreement then either party may request conciliation/mediation. If such a request is made and is acceded to by the other party then the parties shall endeavour to agree on a conciliator/mediator and shall submit the matter in dispute to him. The conciliator/mediator shall discuss the matter with the parties and endeavour to resolve it by their agreement. All discussions in conciliation/mediation shall be without prejudice, and shall not be referred to in any later proceedings. Failing agreement, the conciliator/mediator may by written decision, himself determine the matter. The determination of the conciliator/mediator shall be final and binding on both parties unless, within 14 days following the date of the determination, either party notifies the other in writing that it rejects the determination of the conciliator/mediator. In that event the matter shall proceed to arbitration as in Clause 18.2. Each party shall bear his own costs in the conciliation/mediation and shall each pay half the costs of the conciliator/mediator.

- 18.2 In the event of any dispute or difference arising between the parties in connection with or arising from this Agreement then either party may require that the matter be referred to the arbitration of a person to be agreed upon between the parties or, if the parties fail to appoint an arbitrator within one calendar month of either party serving on the other party a written notice to concur in the appointment of an arbitrator a person to be appointed on the application of either party by the President for the time being of the Institution of Engineers of Ireland. If the arbitrator declines the appointment or after appointment is removed by the order of a competent court or is incapable of acting and the parties do not within one calendar month of the vacancy arising fill the vacancy then the President for the time being of the Institution of Engineers of Ireland shall on the application of either party appoint an arbitrator to fill the vacancy. The award of the arbitrator shall be final and binding on the parties and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts 1954 -1980 or any statutory re-enactment or amendment thereof for the time being in force.

19 Project Management

- 19.1 Where Project Management is undertaken by a Consulting Engineer it shall be subject to a separate Fee Agreement not provided for in these Conditions of Engagement. The fee shall be related to the nature and scope of the project and the range of responsibilities undertaken.

20 Communications Standard Disclaimer

- 20.1 D&K emails documents to initially accelerate the correspondence if requested to do so. Emailed documents can be misread, manipulated and or reproduced incorrectly and therefore are considered to be void copies. D&K issues hard copies of all documents. Only hard copies are true copies to be used for information, design, tender, construction etc Emails are inherently insecure. D&K Partnership cannot guarantee that messages or any attachments have not been intercepted or corrupted or include viruses and accordingly does not accept legal responsibility for them. D&K Partnership internal procedures do not allow for the creation or modification of contracts by email. Run virus checks on any attachments.
- 20.2 The information in transmissions is private, confidential, may be legally privileged, is the property of the sender and is intended solely for the use of addressee. If you are not the addressee, you should not read, disclose, distribute, copy, use or rely upon the information contained in the information. If you have received information in error please notify D&K Partnership immediately at (+353) 64 41686.



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