



## TERMS OF BUSINESS – ESTIMATING / COST PLANNING / BILLS OF QUANTITIES

### 1. Agreement

The agreement (the "Agreement") between us, the Firm, and you, the Client, for services on the Project incorporates these Terms. The services to be provided by us (the "Services") are set out in the Quotation and include any additional services agreed with you in writing.

### 2. Duration

Our appointment will commence on the date of instruction (and settlement of invoice) and the completion of the Services will be as agreed with the Client.

### 3. Standard of Care

The Firm will exercise reasonable skill and care in carrying out the Services.

### 4. Timeliness

You will provide us with information, assistance and decisions in a timely manner so as not to delay our work or the Project. We will use reasonable endeavours to adhere to the agreed programmes and we will inform you if we are delayed for reasons beyond our control.

### 5. Reporting

We will provide reports on progress as indicated in the Services Schedule and we will endeavour to bring to your attention any matters which in our opinion are likely to have a material effect the programme or cost of the Services.

### 6. Fees & Payment

Our fees for the Services are set out in the Quote. Payment will be required before any works are undertaken. Fees are quoted exclusive of VAT which will be added as appropriate and a VAT invoice or VAT receipt issued.

### 7. Expenses

Reimbursable expenses are charged at cost. These costs may include but are not limited to travel to and from site (at the request of the Client) & meetings charged at 45p per mile, postage, shipping and printing.

### 8. Changes

If you request any services that, in our opinion, are not covered by the Estimating Service, we will inform you in writing with an estimate if we intend to claim any extra fee for those services. We will also give you an initial estimate of the likely impact on the programme for the Project.

Unless you withdraw your request, we will only implement the change once the terms for carrying out the change are agreed. Our standard time-based fees will normally be used for calculating any increased charges.

### 9. Copyright

Copyright in the designs and other documents and data supplied by us will belong to us. You will have a royalty-free irrevocable license to use them in connection with the Project but not for any other purpose (and not to reproduce any designs for an extension or any new construction work). We will have no liability if you use any designs for purposes other than those for which they were provided to you.



### 10. Insurance

We will take out and maintain professional indemnity insurance cover for an indemnity limit of at least £25,000 in respect of each and every claim. This insurance will be arranged with reputable insurers and maintained for so long as we have any liability under the Agreement. If requested, we will produce evidence that our policy is in place. If professional indemnity insurance ceases to be available to us in the market at commercial rates of premium we will notify you. We will then discuss and attempt to agree how best to protect our respective positions.

### 11. Liability

Our liability for any claim in connection with the Agreement, whether in contract or in tort (including negligence) or for breach of statutory duty, will be limited to the amount recoverable under our professional indemnity insurance (plus the policy excess) but our aggregate liability under the Agreement shall not exceed £25,000. Further the liability of the Consultant under or in connection with this agreement and whether in contract, tort breach of statutory duty shall be limited to the lower of: (1) such sum as the Consultant ought reasonably to pay having regard to its responsibility for the total loss or damage suffered by the Client on the basis that all other consultants, contractors or suppliers whose acts, omissions, services or advices have caused or contributed to such loss or damage shall be deemed to have paid to the Client such contribution as it would be just and equitable for them to pay having regard to the extent of their responsibility (and ignoring any contractual limitations of liability incorporated in their contracts or engagements with the Client); or (2) Two times the fees set out in our Quotation paid or payable to the Consultant at the time of the cause or occurrence of such liability to the Client; provided that this clause shall not exclude or limit the Consultant's liability for death or personal injury or where and to the extent arising from the Consultant's negligence or fraud or fraudulent misrepresentation.

You agree that no individual partners, directors or employees of the Firm will be held liable in respect of negligence, default or other liability arising in relation to the Services, except in case of fraud.

Liability for personal injury or death that is due to our negligence is not excluded by the Agreement.

### 12. Termination

You may give notice to terminate our appointment if we commit a material breach of these Terms and (in the case of a breach capable of remedy) we fail to take steps to remedy the breach within 14 days of being requested to do so in writing. Either of us can give notice to terminate if the other is unable to pay their debts or becomes insolvent or has a receiver, trustee in bankruptcy or liquidator appointed. On termination you will pay all fees and expenses due up to the date of termination and, if we terminate for non-payment, we will also be entitled to all expenses reasonably incurred by us that are directly attributable to termination plus a reasonable amount to compensate us for loss of profit.

### 13. Suspension

If you fail to make any payment to us on time we may give you 7 days' notice of our intention to suspend the Services, with reasons. When payment is received in full, we will resume the Services and you will pay a reasonable amount to cover our expenses during the suspension period and our re-mobilisation costs.

### 14. Confidentiality

The terms of our appointment and any information of a confidential nature that you may give to us or that we may give to you will be kept confidential by the recipient. However, this will not apply to information that becomes publicly available or is already known to the recipient. We may publish information concerning the Project for marketing purposes of the Firm but only after clearing it with you.



### 15. Assignment and Subletting

The Agreement cannot be assigned by either of us without the other's consent. We may sublet parts of our work to specialist consultants but this will not relieve us of our obligations to you.

### 16. Disputes & Law

Each of us will try to resolve any dispute amicably by direct negotiation.

If direct negotiation fails, either of us can refer the dispute to adjudication in accordance with the Royal Institution of Chartered Surveyors (RICS) Dispute Resolution Service. The adjudicator's decision will be final and binding unless either of us gives the other a notice of dissatisfaction within 28 days of the decision. In that case the dispute will be finally decided by the English courts. The Agreement is governed by English law.

### 17. Notices

Any notice under this letter must be in writing and delivered by hand or sent by first class post to the address of the recipient.

### 18. Entire Agreement

The Agreement including these Terms is the only agreement between us relating to the Services and supersedes any previous arrangements, agreements or understandings between us and neither of us has relied on any representation of the other except as stated in the Agreement.

### 19. GDPR

In this clause, the following definitions shall apply:

'client personal data' means any personal data provided to us by you, or on your behalf, for the purpose of providing our services to you, pursuant to our engagement letter with you;

'data protection legislation' means all applicable privacy and data protection legislation and regulations including PECR, the GDPR and any applicable national laws, regulations and secondary legislation in the UK relating to the processing of personal data and the privacy of electronic communications, as amended, replaced or updated from time to time;

'controller', 'data subject', 'personal data', and 'process' shall have the meanings given to them in data protection legislation;

'GDPR' means the General Data Protection Regulation ((EU) 2016/679); and

'PECR' means the Privacy and Electronic Communications (CE Directive) Regulations 2003 (SI 2426/2003).

We shall be considered an independent data controller in relation to the client personal data. Each of us will comply with all requirements and obligations applicable to us under the data protection legislation in respect of the client personal data.

You shall only disclose client personal data to us where:

- (i) you have provided the necessary information to the relevant data subjects regarding its use (and you may use or refer to our privacy notice available at <https://www.magnitudeqs.co.uk> for this purpose);
- (ii) you have a lawful basis upon which to do so, which in absence of any other lawful basis, shall be with the relevant data subject's consent; and
- (iii) you have complied with the necessary requirements under the data protection legislation to enable you to do so.

Should you require any further details regarding our treatment of personal data, please contact Martin Trimble.

We shall only process the client personal data:

- (i) in order to provide our services to you and perform and other obligations in accordance with our engagement with you;
- (ii) in order to comply with our legal or regulatory obligations; and



(iii) where it is necessary for the purpose of our legitimate interests and those interests are not overridden by the data subjects' own privacy rights. Our privacy notice (available at <https://www.magnitudeqs.co.uk/>) contains further details as to how we may process client personal data.]

For the purpose of providing our services to you, pursuant to our engagement letter, we may disclose the client personal data to our regulatory bodies or other third parties (for example, our professional advisors or service providers). The third parties whom we disclose such personal data may be located outside of the European Economic Area (EEA). We will only disclose client personal data to a third party (including a third party outside of the EEA) provided that the transfer is undertaken in compliance with the data protection legislation.]

We shall maintain commercially reasonable and appropriate security measures, including administrative, physical and technical safeguards, to protect against unauthorised or unlawful processing of the client personal data and against accidental loss or destruction of, or damage to, the client personal data.

In respect of the client personal data, provided that we are legally permitted to do so, we shall promptly notify you in the event that:

- (a) We receive a request, complaint or any adverse correspondence from or on behalf of a relevant data subject, to exercise their data rights under the data protection legislation or in respect of our processing of their personal data;
- (b) We are served with and information, enforcement or assessment notice (or any similar notices), or receive any other material communication in respect of our processing of the client personal data from a supervisory authority as defined in the data protection legislation (for example in the UK, the Information Commissioner's Office); or
- (c) We reasonably believe that there has been any incident, which resulted in the accidental or unauthorised access to, or destruction, loss, unauthorised disclosure or alteration of, the client personal data.

Upon the reasonable request of the other, we shall each co-operate with the other and take such reasonable commercial steps or provide such information as is necessary to enable each of us to comply with the data protection legislation in respect of the services provided to you in accordance with our engagement letter with you in relation to those services.

### 20. Standard Hourly Rates for Change of Services

Director - £118 / hr. Associate Director - £97/hr. Managing Quantity Surveyor - £88/hr. Quantity Surveyor - £74/hr.