

Groundwater Architectural Design – Terms and Conditions for the supply of services

Groundwater Architectural Design having its registered office at 41 Bracken Road, Portlethen, AB12 4TA (“the company”) undertakes to provide the following conditions

The company will exercise reasonable skill and care in conformity with the normal standards of the architectural profession.

The company will act on behalf of the client in the matters set out in the company’s fee agreement. Any changes to the fee agreement or these conditions must be agreed in writing between the company and the client.

The company shall not make any material alteration, addition to or omission from the approved design without the knowledge and consent of the client, except if found necessary during construction for constructional reasons in which case the company shall inform the client without delay.

The company may at any time without notifying the client make changes to the services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the service.

The contract price and any charges payable in respect of services provided to the client (together with any applicable VAT and without any set-off or deduction) shall be paid within a period of twenty-eight days commencing on the date immediately following the date of the company’s invoice unless credit terms have been agreed in advance.

In the event of services being provided beyond those specified at the time of appointment or any client amendments requested involving additional works by the company would attract an hourly rate of seventy-five pounds per hour (together with any applicable VAT and other directly related costs).

Should the client cancel its instructions before completion of the service’s, then the company reserves the right to charge a cancellation fee based on any charges, time, and other directly related costs expended up to and including the day of cancellation.

If payment is not made by the due date, the company shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgement) at the rate of 4% above the base rate from time to time of the Royal Bank of Scotland from the due date until the outstanding amount is paid in full.

Copyright in all documents and drawings prepared by the company and in any works executed from those documents and drawings, shall unless otherwise agreed in writing, remain the property of the company.

The client, unless otherwise agreed, will be entitled to reproduce the company’s design by proceeding to execute the project and providing that the entitlement applies only to the site or part of the site which the design relates and any fees due to the company have been settled in full. This entitlement will also apply to the maintenance, repair and renewal of the works.

Consultants may be nominated by either the client or the company, subject to acceptance by each party.

Where the client employs the consultants, either directly or through the agency of the company, the client will hold each consultant, and not the company, responsible for the competence, general inspection and performance of the work entrusted to that consultant; provided that in relation to the execution of such work under the contract between the client and the contractor nothing in this clause shall affect any responsibility of the company for issuing instructions or for other functions ascribed to the company under the contract.

The company will have the authority to co-ordinate and integrate into the overall design the services provided by any consultant, however employed.

A specialist contractor, sub-contractor or supplier who is to be employed by the client to design any part of the works may be nominated by either the company or the client, subject to the acceptance by each party. The client will hold such contractor, sub-contractor or supplier, and not the company, responsible for the competence, proper execution

and performance of the work thereby entrusted to that contractor, sub-contractor or supplier. The company will have the authority to co-ordinate and integrate such work into the overall design.

The client will employ a contractor under separate agreement to undertake construction or other works. The client will hold the contractor, and not the company, responsible for the contractor's operational methods and for the proper execution of the works.

The company will visit the site at intervals appropriate to the stage of construction to inspect the progress and quality of the works and to determine that they are being executed generally in accordance with the contract documents. The company will not be required to make frequent or constant inspections.

The client will provide the company with such information and to make decisions as are necessary for the proper performance of the agreed service.

The client, if a firm or other body of persons, will, when requested by the company, nominate a responsible representative through whom all instructions will be given.

The client agrees to indemnify the company, its directors, employees and agents against any cause of action resulting from the provision of services of any kind including but not restricted to administrative services, and in addition, any cause of action arising from the client's actions or failure to act, either personally or on behalf of the company.

The company shall not be liable to the client or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of the company's obligations in relation to services, if the delay or failure was due to any cause beyond the company's reasonable control.

The client will save, defend and hold harmless the company against any and all loss, damages, liabilities, claims, judgments, decree awards, actions, costs and expenses arising in connection with the performance or non-performance of all obligations and liabilities required by law to be performed and borne in respect of any and all of the services supplied to the client pursuant to this contract, including without limiting the generality of the foregoing, obligations and liabilities in connection with the termination of the contract. The client agrees that it shall only look to the company (and not to any employee, director or other officer of the company,) for redress if the company considers that there has been any breach of the obligations of the company in terms of this contract (except in respect of death or personal injury). The company agrees not to pursue, at any time, any claims whatsoever arising from the obligations of the company under this contract, whether in respect of breach of contract, or in delict or under statute against such employees, directors or other officers, whether they are named expressly in this contract or otherwise.

Either party to this contract may (without limiting any other remedy) at any time terminate this contract by giving written notice to the other party if the other party 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 voluntary arrangements with its creditors or has a receiver or administrator appointed.

These conditions (together with the terms, if any, set out in the fee agreement) 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 express or implied by statute or otherwise, are executed to the fullest extent permitted by law.

Any notice required or permitted to be given by either party shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time to have been notified pursuant to this provision to the party giving the notice.

No failure or delay by either party in exercising any of the rights under the contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of any contract by the other shall be considered as a waiver by either party of any breach of the contract or shall be considered as a waiver of any subsequent breach of the same or any other provision.

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.

Any dispute arising under or in connection with these conditions or the provision of the services should be made in writing to Kevin Groundwater of Groundwater Architectural Design. All complaints will be handled courteously and promptly. Complaints will be acknowledged within 10 working days and a response addressing the issues raised from the initial letter of complaint will be issued within 30 days from its receipt.

These conditions shall be deemed to have been made in Scotland and the construction validity and performance of them shall be governed in all respects by Scottish Law.