

## STANDARD TERMS OF ENGAGEMENT

**Any engagement or agreement between the Client and the Consultant for the provision of Services shall be on the basis of these terms and conditions of engagement to the exclusion of any other agreement or terms and conditions.**

### **1. Definitions**

- 1.1 **"The Client"** means the person partnership or company who instructs the Consultant to undertake the Services.
- 1.2 **"Documents"** means records reports documents papers and other materials originated by or on behalf of the Consultant pursuant to this agreement.
- 1.3 **"Fees"** means the fees and disbursements and any relevant tax thereon to be charged by the Consultant to the Client pursuant to this agreement in connection with the provision of the Services.
- 1.4 **"The Consultant"** is Considine Limited (registered in England under Company Number 6895573) whose registered address is **25 Hollingworth Court, Turkey Mill, Ashford Road, Maidstone, Kent ME14 5PP**
- 1.5 **"Fee Proposal Letter"** means the letter setting out the Consultant Fees to be charged to provide the Services.
- 1.6 **"The Services"** means the services set out in the Fee Proposal Letter to be provided by the Consultant for the Client pursuant to this agreement and any variation thereof agreed in accordance with the provisions below.

### **2. Duties**

- 2.1 The Consultant shall in providing the Services exercise reasonable skill and care in conformity with the normal standards of Consulting Civil or Structural Engineers subject to the reasonable instructions of the Client so long as the Services are within the range of services ordinarily provided by the Consultant and subject to there being no commercial regulatory or legal reason for not providing the Services.
- 2.2 The Consultant and the Client both acknowledge that in respect of all services performed for the Client prior to the date of this agreement such services shall have been deemed to have been performed under these terms of engagement.

### **3. Information provided by the Client**

- 3.1 The Client shall make a full disclosure of all relevant information in connection with the performance of the Services. The Consultant shall be entitled to rely on the accuracy of any drawings data information and statements made by the Client or its third parties and shall have no liability for any reports or advice if based on any such information that proves to be inaccurate.
- 3.2 The Client shall provide all relevant information relating to site conditions especially those which may be considered prejudicial to safe working practices including information concerning ground conditions, underground installations, pipe work, cables, drains or other

service media. Without prejudice to the foregoing the Client shall ensure that conditions of work on site are such as to enable the Consultant its employees and sub-contractors to carry out the Services and in particular without injury to any person or loss or damage to any property.

3.3 The Client shall observe and perform all its obligations under the Construction (Design and Management) Regulations 2015 or any amendment thereof and any other relevant statutes and bye-laws relating and maintain appropriate insurance for the duration of this Agreement.

**4. Delay**

4.1 The Consultant shall use reasonable endeavours to carry out and perform the Services by the dates reasonably required having due regard to the Client and agreed in advance in writing by the Consultant.

4.2 The Consultant shall give reasonable notice in writing to the Client of any circumstances which make it impracticable for the Consultant to carry out any of the Services or carry them out in accordance with any previously agreed timetable. The Client shall agree to any reasonable request by the Consultant for an extension of any date or period if it appears to the Consultant that for reasons that were not apparent on commencement that an extension of time would be required in order to complete the Services, but so that there is no obligation on the Consultant to provide any work other than that already included in the Services. Where any such notice is given the Consultant will not be liable for any losses direct indirect or consequential suffered by the Client or any third party however occasioned arising out of delays in the performance of the Services.

**5. Variations**

5.1 Any variation to the Services or to this Agreement proposed by the Client must be agreed in advance with the Consultant in writing including any adjustment to the Fee and/or timescale.

5.2 Where the Consultant is involved in the provision of additional services and/or expense unless otherwise agreed in writing the Consultant shall be entitled to additional fees calculated on a time basis or on such other basis as shall be agreed between the parties in writing. In such cases the Charge Out Rates as noted in Table 1 below will apply unless otherwise agreed in writing. Other expenses incurred will be charged at cost plus 15%.

Director	£125 /hr
Engineer / Technician	£90 /hr
Autocad Technician	£60 /hr
Mileage	£0.50 /mile

Table 1 - Charge Out Rates

## **6. Invoices**

- 6.1 Unless otherwise agreed in writing, invoices shall be rendered monthly in arrears to cover fees on a percentage complete basis, determined by the Consultant, at the current scale rates together with any reimbursable costs and expenses associated with the Service. Invoices shall also include charges for sub-contractor services where applicable. The scale of rates will be amended annually on 1st April or more frequently at the discretion of the Consultant.
- 6.2 Payment is due 14 days from the invoice date and the Client shall not be entitled to defer or withhold payment on the grounds of any claim or counterclaim. All rights of set off which the Client may otherwise exercise or purport to exercise are hereby expressly excluded. Release of Construction Information will be subject to payment of invoice.
- 6.3 Where sums due are not paid in full by the due date the Consultant shall have the right to add interest at the rate of 5% per calendar month on unpaid fees from the date payment is due until the date of payment and to charge any reasonable expenses incurred associated with collection of fees and interest including but without limitation legal costs court fees and collection agency fees.
- 6.4 If the Consultants account is 30 days or more overdue in addition to any other rights or remedies the Consultant reserves the right to suspend the Services without liability until such time as all outstanding amounts are paid in full.
- 6.5 Where the Client is also a consultant, or reliant on Third Party funding, the payment of The Fees cannot be subject to payment of their fees, or funding, for the project i.e. "pay when paid".
- 6.6 **CYBERCRIME ALERT: BEWARE OF FRAUDSTERS - REMAIN VIGILANT** - Please be aware that there is a significant risk posed by cyber fraud, specifically affecting email accounts and bank account details. PLEASE NOTE that our bank account details WILL NOT change during the course of a transaction, and we will NOT notify you of a change of our bank details via email. Please be careful to check account details with us in person if in any doubt. We will NOT accept responsibility if you transfer money into an incorrect account. **IF YOU ARE ADVISED THAT OUR BANK DETAILS HAVE CHANGED – DO NOT SEND ANY MONEY AND PLEASE CONTACT OUR MAIDSTONE OFFICE IMMEDIATELY**

## **7. Professional Indemnity Insurance**

- 7.1 The Consultant currently holds professional indemnity insurance cover with a level commensurate with their responsibilities arising from the overall conduct of their business, with limitations outlined in Section 8.

7.2 The Consultant shall use reasonable endeavours to maintain such insurance for a minimum of 6 years from the date of the completion of the Services provided that such insurance is available to the Consultant at commercially reasonable rates and terms throughout this period.

## **8. Limitation on Liability**

8.1 **Financial Cap** - Notwithstanding anything to the contrary in this Agreement, the liability of the Consultant 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 not exceed in aggregate the sum of one million pounds (£1,000,000).

If no amount is inserted above, the liability of the Consultant shall not exceed in aggregate a multiple of ten times the total of the fees payable to the Consultant by the Client in respect of the Services.

## **8.2 Pollution, Contamination and Asbestos Exclusion**

Notwithstanding anything to the contrary in this Agreement and without prejudice to any provision in this Agreement whereby liability is excluded or limited to a lesser amount the Consultant is not responsible under this Agreement or otherwise for:

- i. advising as to the actual or possible presence of pollution or contamination or as to the risks of such matters having occurred, being present or occurring in the future (herein called “pollution and contamination matters”); and/or as the case may be
- ii. advising on matters that wholly, partly, directly or indirectly arise out of or result from asbestos (including without limitation the costs of testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any asbestos or product or waste that contains asbestos) (herein called “asbestos matters”); and/or as the case may be

and the liability of the Consultant under or in connection with this Agreement whether in contract, in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) for any claim that may arise out of or in connection with pollution and contamination matters, and/or asbestos matters as the case may be is excluded.

## **8.3 Fire Safety Liability**

Without prejudice to any other provision of this Agreement, the Consultant shall have no liability whatsoever or however so arising in respect of any claim, losses, liability, cost, expenses or other costs directly or indirectly arising out of or in connection with:

- (i) the combustibility, fire protection performance, fire resistance and/or fire retardant characteristic of any external cladding or roofing systems;
- (ii) any internal fire protection systems; and/or
- (iii) any aspect of the fire safety or fire performance of a building or structure.

- 8.4 No action or proceedings under or in respect of this Agreement whether in contract, in tort, in negligence, for breach of statutory duty or otherwise shall be commenced against the Consultant after the expiry of 6 years from the date of completion of Services or the termination of the Services if earlier.
- 8.5 Further and notwithstanding anything to the contrary contained in this Agreement and without prejudice to any provision in this Agreement whereby liability is excluded or limited to a lesser amount, the liability of the Consultant, if any, for any loss or damage (“the loss or damage”) in respect of any claim or claims shall not exceed such sum as it would be just and equitable for the Consultant to pay having regard to the extent of the Consultant’s responsibility for the loss or damage and on the assumptions that:
- (i) all other consultants and advisers, contractors and sub-contractors involved in the Project shall have provided contractual undertakings to the Client on terms no less onerous than those set out in this Agreement in respect of the carrying out of their obligations in connection with the Project; and
  - (ii) there are no exclusions of or limitations of liability nor joint insurance or coinsurance provisions between the Client and any other party to the Project and that any such other party who is responsible to any extent for the loss or damage is contractually liable to the Client for the loss or damage: and
  - (iii) all the parties referred to in (i) above, have paid to the Client such proportion of the loss or damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss or damage.
- 8.6 Unless otherwise agreed in writing the Services are performed exclusively for the Client. No liability will be assumed for any interest in or reliance on the Services by any third party.
- 8.7 To the maximum permitted by law the Consultant shall not have any liability to the Client for any lost profits, loss of use, cost of procurement of substitute services or any special indirect punitive or consequential damages however caused whether in contract tort or any theory of liability and whether or not the Consultant has been advised of the possibility of such damage.
- 8.8 To the maximum permitted by law any implied terms and warranties are excluded.
- 8.9 To the maximum permitted by law no claims shall be against the officers, employees of the Consultant.
- 8.10 If due to force majeure or any other circumstances beyond its control the Consultant is or is likely to be unable to perform a material obligation or is or is likely to be delayed or prevented from performing its obligations under this Agreement the Consultant shall be relieved from liability under or in connection with this Agreement.

**9. Confidentiality**

9.1 Save as may be necessary for the proper performance of the Services or as otherwise compelled by law or regulatory authority neither party shall not disclose to any third party, other than their officers, employees professional advisors and consultants and other agents, any information arising out of the Services which is reasonably designated as confidential by the other. Such confidential information shall not include information, which is or becomes public (other than by breach of these terms), was known to the other party before this agreement, or is independently developed by or becomes available to the other party.

**10. Intellectual Property Rights**

10.1 Copyright in the Documents prepared by the Consultant in connection with the Services shall remain vested in the Consultant but provided full payment has been made for the Services the Client may upon written authorisation by the Consultant have a transferable licence for the whole period for which copyright is to subsist without payment of any further fee to use the Documents for the purposes for which they were provided

10.2 The names "Considine" or "Considine Limited" shall not be used for advertising or other promotional purposes by the Client without the prior written consent of the Consultant.

10.3 The Consultant shall not be liable for any use of the Documents for any purpose other than that for which the same were intended.

**11. Suspension and Termination**

11.1 The Client may at any time by giving not less than 30 days notice to the Consultant require the Consultant to suspend performance of the Services. Unless otherwise agreed, and subject always to the provisions of this Clause below, the Client shall give the Consultant not less than 14 days notice of its desire to have the Consultant resume performance of the Services. The Consultant shall be under no obligation at that stage to continue the Services for the Client or to adhere to any timescale or fee previously agreed.

11.2 If the Client is in breach of any of its obligations under this Agreement and such breach remains unremedied for 14 days after notice thereof has been given to the Client, the Consultant may forthwith suspend the performance of the Services until 14 days after such time as the breach is remedied.

11.3 In the event of any suspension of the Services pursuant to Clauses 11.1 or 11.2, the remuneration of the Consultant and the time-scale for performance of the Services shall be adjusted to such extent as is fair and reasonable to take account of the disruption caused by the suspension, and the Fee Schedule shall be modified accordingly.

11.4 The Client may at any time by giving not less than 30 days notice to the Consultant terminate the Consultant's engagement.

- 11.5 The Consultant may terminate this agreement forthwith by notice to the Client in the event of a material breach by the Client of its obligations under this Agreement which is irremediable or, where remediable, which the Client shall have failed to remedy within 14 days after receiving notice specifying the breach and requiring its remedy.
- 11.6 Either party may terminate the Consultant's engagement forthwith by notice to the other if the other ceases to trade or enters into liquidation whether voluntarily or compulsorily (other than for the purposes of amalgamation or reconstruction) or compounds with its creditors or has a receiver, administrative receiver, administrator, nominee, supervisor or similar officer appointed over all or any of its assets or its undertaking or any part thereof or if any action, petition, application or proceeding is initiated or resolution passed relating to any of the aforementioned matters.
- 11.7 If any suspension of the Services lasts for one month or more, the Consultant shall be entitled to terminate its engagement forthwith by notice to the Client.
- 11.8 Any termination of the Consultant's engagement shall not prejudice or affect any rights or remedies accrued prior to or in consequence of the termination.
- 11.9 On any termination of the Consultant's engagement, the Consultant shall be entitled to payment for all services performed and costs incurred up to the date of termination on the basis set out in the Fee Proposal Letter and any costs which the Consultant is contractually obligated to incur notwithstanding the termination, and for taking such steps as reasonably necessary to bring to an end the Services. Save where termination arises because of the Consultant's default or insolvency (or similar grounds referred to in Clause 11.6), the Consultant shall, in addition to payment pursuant to this Clause, be entitled to reasonable compensation for the termination of its engagement.
- 11.10 The Consultant may upon the occurrence of any circumstances beyond the control of the Consultant (which for the avoidance of doubt includes any pandemic and/or epidemic) ("Force Majeure") which prevents or significantly impedes the performance of the Services, without prejudice to any other remedy and upon the giving of not less than [four weeks'] Notice, suspend for a period of up to [twenty-six weeks] the performance of the Services in respect of all or part of the Services affected. For the avoidance of doubt, the Consultant shall not be in breach of this Agreement and shall have no liability under or in connection with this Agreement as a result of i) any act, omission, or default ii) any failure to perform the Services in accordance with this Agreement and/or iii) any prolongation or delay to the Services, to the extent it is caused or contributed to by any Force Majeure.

**12. Assignment and Sub-contracting**

- 12.1 Neither the Consultant nor the Client shall assign the whole or any part of the benefit of or in any way transfer the obligation of this Agreement without the prior written consent of the other.
- 12.2 The Consultant shall not sub-contract any of the Services without the consent of the Client such consent not to be unreasonably withheld or delayed.

**13 Collateral Warranties**

- 13.1 The consultant may agree to enter into collateral warranties subject to full payment of fees, an agreed form and wording, and appropriate fees being agreed for this provision. The minimum Consultants fee per warranty to be entered into if not stipulated in the fee letter is £500 plus VAT.

**14. Governing Law**

- 14.1 The validity construction and performance of this Agreement shall be governed by English law.
- 14.2 Any difference or dispute arising out of this Agreement shall be referred by either of the parties to arbitration by a person to be agreed between the parties or failing agreement within 14 days after either party has given the other a written request to concur in the appointment of an arbitrator, a person to be nominated at the request of either party by the President of the Chartered Institute of Arbitrators and such arbitration shall be conducted in accordance with the Arbitration Act 1996.

**15. Severability**

- 15.1 The unenforceability of any part of this Agreement will not affect the enforceability of any other part.

**16. Notices**

- 16.1 Any notices served under or in connection with this Agreement shall be in writing and be properly served if sent by recorded delivery or registered post to the address of the party receiving it as notified from time to time by either party to the other.

**17. Contracts (Rights of Third Parties) Act 1999**

- 17.1 Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement.

**18. Waiver**

- 18.1 Unless otherwise agreed no delay act or omission by either party in exercising any right or remedy will be deemed a waiver of that or any other right or remedy. Consent by a party where required will not prejudice its future right to withhold similar consent.