

## OUR TERMS AND CONDITIONS    Issued 27<sup>th</sup> November 2013

Nothing in these terms and conditions is intended to be unfair or unreasonable. They simply set out a basis of understanding upon which our fee proposal is offered. As our aim is to maintain repeat business, please discuss any issue with which you may have concern.

### 1, DEFINITIONS

“We”, “ Us” or “DHC Ltd ”	Shall mean DAVID HICKS CONSULTANTS LTD
“Client”	Shall refer to the company or persons paying for our services.
“Instruction”	Shall mean an order placed upon us for our services. This may be written, by email or verbal.
“Agent”	Shall mean a person or organisation that is conducting business ( including instructing us ) on behalf of the client.

### 2. GENERAL

- 2.01. Unless agreed in writing prior to the placement of an order or instruction, these terms and conditions together with our fee proposal, shall form the entire agreement between the client and DHC Ltd.
- 2.02 If the Client imposes terms and conditions without such agreement, or tries to impose terms and conditions after instruction, the client’s terms will be null and void.
- 2.03 Nothing within this document shall override English law. Should such a conflict be discovered then English Law will take precedent.
- 2.04 Headings are included in this document for ease of reference only and shall not affect the interpretation or construction of this agreement.

### **3. FEE PROPOSALS**

- 3.01. We attempt to issue a fee proposal for every project ( unless prior blanket rates are agreed ) This document will usually state a set project price ( either a rate per visit / service or lump sum) for the project. We will also state terms of payment and the rates at which any additional works required outside the fee proposal will be charged.
- 3.02 It is incumbent upon the Client or his agents to ensure that we have quoted for the services required within our Fee Proposal. We will not accept any claims for services not provided if these have not been made clear or requested at the time of our proposal or if they have been specifically excluded as stated our fee proposal.
- 3.03 If a client or their agents wishes to impose their terms and conditions in lieu of these after instructing us, but prior to works commencing, then we reserve the right to amend our fee proposal accordingly. We may also charge an administration fee for reading and replying as required if this work is excessive. This may include solicitor's costs if one is required.

Giving such consideration however, does not guarantee acceptance of the client's terms.

This administration cost will still be charged if the instruction is subsequently cancelled by either party.

The client's or agent's terms and conditions will not be accepted once our work has commenced.

### **4. PAYMENT**

- 4.01 Unless otherwise agreed, all transactions will be conducted in English Pounds (£).
- 4.01 Our terms of payment, which may be subject to status, will be indicated on our fee proposal. In the event of any variation to an on-going instruction, the payment terms will be as per the accepted fee proposal, unless otherwise previously agreed.
- 4.02. Should both instruction and proposal be verbal, the terms will be deemed to be 14 days from the date of Invoice, unless also agreed and subsequently confirmed by us in writing.
- 4.03 We reserve the right to submit our invoices monthly (at our discretion) for a contract lasting beyond the end of a calendar month.
- 4.04 VAT shall be charged extra to our invoices at the rate ruling at the time of invoice. Likewise we reserve the right to adjust our invoice in accordance with any new legislation as legally required.

- 4.05 We reserve the right to charge late payment penalties and interest on unreasonably overdue accounts in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 ( or as subsequently revised )
- 4.06 In addition, the client accepts that they will be liable for any and all legal costs if we pursue late payment; including our reasonable administration costs.
- 4.07 Our Invoices are usually issued in PDF via email. Please advise if this is not acceptable.
- 4.08 Over payment by the client will either be refunded after such funds have cleared or will form an adjustment to the following invoice. Refunds will not be made where an existing overdue invoice remains unpaid.

## **5 CANCELLATION OF ORDER**

- 5.01 The client has the right to cancel or postpone an instruction at any time. It is agreed that the client will be liable for any abortive costs up to point of cancellation. This may include, but is not restricted to, consultancy fees already expended including travelling time if already undertaken or cancellation of plant, rail or air fares and hotel costs. Such charges will be justified upon request and in accordance with the rates stated within our Fee Proposal.
- 5.02 We reserve the right to charge in full, or part, ( at our discretion ) for any inspection visit cancelled or postponed without giving a minimum of 48 hour's notice .
- 5.03 We have the right to cancel, suspend or postpone our services. if we have not been paid or have reason to believe that we will not be paid; or the client is acting unreasonably. In such an event, the client will be liable for all our fees including any additional costs with regard to resolution.
- 5.04 We reserve the right to charge waiting or abortive time should the site refuse or delay our inspection. Likewise late or non arrival of plant hired by others for our use may also be charged.
- 5.05 We will not be held responsible for a delay in providing our services if caused by matters outside of our control. This may include, but is not restricted to weather, road accidents and blockages etc
- 5.06 A Survey will be aborted in the event we discover unadvised site hazards ( overhead cables, asbestos etc ) and an alternative safe method of working cannot be found. In such cases the client may still be liable for an aborted visit.

## **6 OWNERSHIP & CLARIFICATION OF REPORTS**

- 6.01. All reports issued by us are deemed copyright. The client and their agents may issue copies to third parties as long as such issue is relevant to the project and used for the purpose for which the report is intended
- 6.02 Unless otherwise agreed a report is prepared exclusively for our client. It shall not be assigned or sold to any third party; David Hicks Consultants Ltd shall not be liable or bear any responsibility for the use of information contained in this report by any other party other than our client.
- 6.03 Unless instructed by a court or similar authority, we will not disclose a report to any third party, without first receiving our client's permission or instruction.
- 6.04 Unless previously agreed, we reserve the right to use photographs taken during our duties for the purposes of preparing a CPD or similar presentations, (including our own web site material)
- We will ensure to the best of our ability, that such inclusion, will not identify a client.
- 6.05 Unless otherwise agreed, we reserve the right to list our client on the "services" page of our web site
- 6.06 Our reports do not offer any guarantee or warranty of any kind.
- 6.07 Our reports are based on a number of random inspections and tests undertaken during our visit. It should not be construed as a 100% inspection of each and every detail. E.g. We have not inspected every screw or sheet lap etc. (unless instructed to do so) Likewise, we can only report on matters available for inspection during our visit.
- 6.08 Whilst our experience is extensive, regrettably we do not know it all. In consequence we may miss a fault or condition that we may not have been previously aware of. We will not accept liability for such rare omissions and that the client accepts such limitations when placing an order.
- 6.09 Our Drawing reviews do not remove the design responsibility from the designer or contractor previously responsible. The sole purpose of these documents is to highlight concerns and variances between the drawing and the specification. Building regulations and good practice.
- 6.10 Where a report suggests the probable longevity of a roof, wall or component, this cannot be guaranteed, but is offered as a "best guess" indication only.

## **7 INSURANCES & PLANT**

7.01 We carry Professional Indemnity and other Insurances to the value of £ 1,000,000 (One Million GBP) a copy of our certificate is available via our web site or upon request. The client or their agents should ensure that these insurances satisfy their requirements prior to placing an instruction.

7.02 Only our client ( The person or organisation paying ) is covered by this insurance. We will not accept any claim or liability by any other party unless agreed prior to instruction.

7.03 *( this clause is being reviewed and third party cover may no longer be available )*

Letters of reliance may be provided to some parties upon request, providing the party has a true and proven interest. This will not be offered as an automatic right. However, there will be a £100 + VAT administration fee per letter (payable in advance ) which is in addition to our fee proposal.

7.04 Please note that neither we, nor our insurers will be held responsible for any damage or liability caused by plant hired in by others, irrespective of cause. This includes plant such as, but not restricted to, MEWPs or scaffold Towers, irrespective if supplied for our exclusive or joint use. We will only be responsible for plant hired by us for our exclusive use.

7.05 Our liability is restricted to the cover of our insurances only.

## **8 LAW & JURISDICTION**

8.01 This Agreement shall be governed, construed and interpreted in accordance with English law. The parties hereby agree to submit to the exclusive jurisdiction of the English Courts in respect of any dispute arising out of or in connection herewith.

8.02 We undertake to comply with all English law in the conduct of our business, including, but not restricted to the Bribery Act 2010 or subsequent revisions.

## **9 HEALTH & SAFETY**

9.01 Unless otherwise agreed, all works will be undertaken in accordance with our Generic RAMS ( Available from our web site under “Safety Docs” )

9.02 Contractors requiring us to wear gloves and or glasses when undertaking our surveys should add 25% to our fees.

## **10 CONFLICTS OF INTEREST**

10.01 We will advise of any conflict of interest when we receive an instruction or if not immediately identified then upon discovery. However, please be assured that our reports and advice are usually factual and fully supported and we will bear no favour to any party. In short, a report will be prepared totally impartially irrespective of client.

10.02 A conflict of interest will be deemed to be where we are also currently working for another related party on the same or different contract.

We will also advise where we have a long standing working relationship with another involved party, even if we do not have current work with them.

10.03 Reports prepared for legal use will be prepared as if we were instructed by the court.

## **11 SUB-CONTRACTOR PROPOSAL**

11.01 Where we have given names of subcontractors as being suitable to undertake a project, we cannot be held responsible for any failings or negligence of that contractor whatsoever. These recommendations are given in good faith on the basis of our previous experience of the contractor and do not constitute a guarantee of any kind.

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