

## OUR TERMS AND CONDITIONS    Issued 6<sup>th</sup> April 2018

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 based. As our aim is to maintain repeat business, please discuss any issue with which you may have concern.

*Unless otherwise agreed, these terms and conditions are the only terms we accept. It will be deemed that the client or their agents have read and agreed to our terms before placing an order. Any terms and conditions accompanying an order will be deemed invalid unless previously agreed.*

*We are prepared to consider additions or omissions to these terms on request, but such request must be made before the placement of any order.*

### 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. ( this may not be the party instructing us )

“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 express agreement, or after instruction, the Client's terms shall have no effect and these terms and conditions shall prevail.
- 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.
- 2.05. We do not accept instructions under deed

## **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 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 where such services are either not identified in our fee proposal or expressly excluded from it
- 3.03. If a Client or their Agents wishes to impose their terms and conditions in lieu of these terms and conditions after instructing us, but prior to our works commencing, and if we agree with such a request, then we reserve the right to amend our fee proposal to reflect the revised terms and to recover any reasonable administration and legal costs

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 or an agreement is not reached.

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 (£).
- 4.02 Our terms of payment will be indicated on our fee proposal, but should our fee proposal be silent on such terms ( or if the instruction and proposal are oral ) then the due date for payment shall be 14 days from the date of the invoice and the final date for payment shall be 21 days from the date of the invoice unless we confirm otherwise in writing.  
In the event of any variation to an on-going instruction, the payment terms will be as per the accepted fee proposal, unless otherwise agreed.
- 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 and related statutory instruments from time to time.
- 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. save to the extent that is an existing overdue invoice which 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 and costs 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 on less than 48 hours notice .
- 5.03 We have the right to cancel, suspend or postpone our services. if we have not been paid by the final date of payment of any invoice 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 or if plant hired by others for our use arrives late.
- 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, non-performance of other trades 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, if we decide (at our sole discretion) to charge for it.

## **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 a 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 whether in relation to the works specified.
- 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, regretfully we do not know it all. In consequence we may miss a fault or condition that we may not have been previously aware of, or has only just come to light within the public domain.. 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 responsible. The sole purpose of these documents is to highlight concerns and variances between the drawings and the specification, Building Regulations and good practice.
- 6.10 At no time do we accept design or contractual responsibility for any works we inspect.
- 6.11 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 Whilst it is our intention to maintain these insurances, we reserve the right not to renew should the cost become unviable or should cover no longer be available.
- 7.03 We will not accept any claim from, and have no liability to, anyone other than the client
- 7.04 As we will not have any design or contractual responsibilities or control, we do not readily offer collateral warranties.

Any collateral warranty granted will be subject to a minimum £150 administration fee and will be subject to the approval of our insurers.

- 7.05 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.
- 7.06 Our liability for all matters (whether in breach of contract, in tort or otherwise) shall not in any circumstances exceed the limit of our applicable insurance cover.

## **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 If project specific RAMS are required, then this will usually require us to attend site, usually with a cherry picker to inspect the roof. As such, a charge similar to that proposed for a full survey is likely to be incurred in addition to our original fees.
- 9.03 Contractors requiring us to wear gloves and or glasses when undertaking our surveys should add 25% to our fees.
- 9.04 Short fixed lanyards are not suitable for undertaking our inspections.
- 9.05 If retractable lanyards must be used, please note that an additional charge will be levied for each visit.

In such an event, we insist that no one else is on the roof during our inspection; or at least where we could cause them to trip or fall by use of the lanyard.

- 9.06 We will not wear a lanyard where PV panels have been or are being installed

## **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.
- 10.02 Unless otherwise requested, we only consider a conflict of interest on projects that we have been advise are, or likely to be subject to legal action.
- 10.03 Reports prepared for legal use will be prepared with any obligations we owe to the court in mind.
- 10.04 Please rest assured that our reports will, to the best of our ability, be as accurate as possible, irrespective of our client.

## **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 or warranty of any kind.
- 11.02 It is incumbent upon the person instructing any subcontractor to ensure that they are suitable for the purpose for which they wish to employ them.

End of document