

The following Terms and Conditions of Engagement contract applies to all works undertaken by **Terra Firma (the Company)** unless specifically amended in writing by the Company prior to the commencement of the works.

**The Client** is the person, company, authority or other body who instructs the Company to carry out the work and to whom the invoice will be rendered. **The Contract** is between the Client and the Company.

Contracts entered into between **The Company** and **The Client** are subject to the following conditions:

## 1. ACE CONDITIONS OF ENGAGEMENT

Unless otherwise amended, the appointment will be in accordance with the Association of Consulting Engineers (ACE) Conditions of Engagement 1995 or the latest revision thereof, inclusive of all current amendments.

## 2. OFFICIAL INSTRUCTION

The Company will not commence work until a purchase order or signed agreement has been received from the Client. Postponement or late stage cancellation due to circumstances outside the Company's control will result in charges being levied.

## 3. SCOPE OF SERVICES

These terms and conditions of engagement relate to services in respect of the provision of reports, surveys and any necessary ancillary work, the scope of which will be agreed in writing between the Client and the Company prior to the commencement of work.

The Scope of Services to be performed by the Company, shall be as specified in the Letter of Offer / Quotation. The Terms and Conditions of the Quotation are set out in Schedule 1 of this document.

Whilst we consider the Scope of Services specified in the letter of offer / quotation to be competent and reasonable, the works may not take into account any additional requirements of regulatory bodies such as the Local Authority and the Environmental Agency/NRW.

#### **4. VALIDITY**

Unless otherwise stated, the Quotation provided by the company shall only be valid for a period of 60 days from the date of issue.

#### **5. CHANGES**

**5.1 Scope** – The services described in the Quotation are based on facts known at the time of preparation, and include information supplied by the client.

Subsequent information may indicate that the Scope of Services must be refined. In this case, the Company will promptly provide the client with an amendment to the scope of services and the amended copy will be deemed to have been approved by the client if not objected to within fifteen (15) days of receipt by the client.

Additionally, the client may by written instruction make changes to the Company's scope of services. In any of the above circumstances, the Company's payment shall be adjusted accordingly and thereafter the Company shall commence performance of the additional services.

**5.2 Program** – The Client shall upon request of the Company, grant an extension to any planned program for performance of the services and, if appropriate, an adjustment to the Company's payment, if the Company has been delayed or impeded in the performance of the services by (i) a Change of Order (ii) any delay caused by the client (iii) an event of Force Majeure (being any event beyond the control of the Company (iv) a suspension for any reason (v) a change of law (vi) any other reason mutually agreed by the parties.

#### **6. PROJECT INFORMATION**

The client shall make available to the Company all data on project scope, schedule, cost and quality requirements and any other information necessary to allow the Company to undertake and perform the services. The Company shall be entitled to rely upon all such information made available by the client. The Company shall have no liability arising from any consequences of non-provision of any information by the Client.

## **7. INSURANCE**

The Company shall, at its own cost and expense maintain employer's liability, public liability and professional indemnity insurance coverage in amounts in accordance with legal requirements and the Company's own business requirements.

For the purposes of the warranty and liability provisions above, the Company's professional indemnity insurance shall be maintained in the sum of £5,000,000 (five million pounds) for each and every claim for a period expiring 12 years after the date of the last issued report.

Subject to the same remain available in the market on commercially reasonable rates and terms to consultants of our discipline. We agree to provide evidence of such insurance whenever reasonably requested to do so.

## **8. INTELLECTUAL PROPERTY RIGHTS**

Copyright of all drawings, reports and other documents provided by the Company in connection with the services shall remain vested in the Company. The Client shall have a licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the project in relation to which the services are provided.

The Company shall not be liable for any use by the client of any of the drawings or documents for any purpose other than that for which the same were prepared and provided. The documents relating to the project may be used in respect of any post completion activity undertaken by the Client but no liability shall attach to the Company for such use.

## **9. TERMINATION / SUSPENSION**

The client may terminate the services if the Company is in substantial breach of its obligations herein and the Company has not commenced to remedy that breach within thirty (30) days after receipt of a written notice to that effect from the client.

The Company may suspend or terminate performance of the services if any payment payable to the Company has been outstanding for more than sixty (60) days from the date of the Company's relevant invoice.

In the event of termination of the services the client shall make payment to the Company for:

- i. All invoice and interest amounts outstanding at date of termination
- ii. All services completed up to the time of termination and
- iii. All expenses of termination by the Company in connection with performance of the services provided.

### **9.1 Cancellation Charges**

Professional attendance and plant hire cancellation charges will apply based on the following notices: 1 Day 100%, 2 Days 75%, 3 Days 50%, 4 Days 25%. If alternative work can be found these charges may not be applied.

### **10. PAYMENT OF FEES**

Payment for the provision of the services by the Company shall be specified in the Letter of Offer / Quotation.

Invoices will be raised monthly or on completion of each stage of work unless otherwise agreed by the Company. Where third party services are contracted for by the Company in order to complete the work, the Company reserves the right to render interim invoices to recharge the cost and management of third party services to the Client.

Invoices will be rendered on a lump sum, re-measure or time charge basis unless otherwise agreed in writing between the Company and the Client prior to the commencement of work. Invoices raised will be deemed correct unless queries are notified within 14 days of issue.

Disbursements for printing, reproducing, courier services and specific additional services will be recharged at cost.

Advice and/or further assistance provided by the Company, after the Clients required work has been completed, will be charged at £100.00 p/h (ex VAT).

Payment is due on the date of invoice and accounts should be settled in full within 30 days. Where payment is unduly delayed, the Company reserves the right to charge interest on overdue invoices rendered at 8% above the bank of England Base rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

VAT will be applied to all invoices raised at the standard rate applicable at that time. The Company's services are classified as consultancy/professional services and fall outside the scope of the Construction Industry Scheme (CIS); therefore the VAT on our services provided is not subject to the HMRC reverse charges.

Terra Firma hold no liability for work which has not been paid for.

## 11. GOVERNING LAW

The provision of the services shall be governed by and construed in accordance with English Law.

Should the applicable laws, rules or regulations of England and Wales (or the place where the work is being performed or for where the project is designed if other than England or Wales) be changed or enacted after submission of the Company's tender for the services in such a manner as to cause increase in cost to the Company or to delay the planned program, payment and program shall be adjusted accordingly.

## 12. DUTY OF CARE

The Company confirm that the services shall be performed with reasonable skill and care in accordance with the accepted professional engineering and consulting standards and practices existing at the date of performance of the services.

The Company's liability arising out of the performance of the services shall be limited to:

- i. Reperformance of any services to correct the breach and
- ii. the direct consequences of such breach where such breach was reported to the Company in writing within one year of the date of performance of the relevant services. However, the Company's maximum liability arising out of or related to the services shall be limited to the lesser of the Company's compensation for the services or the limits of professional indemnity insurance coverage specified herein.

Unless specifically noted to the contrary, the Company shall not be responsible for the acts or omissions of the client or the client's contractor or any of the contractors agents, employees or sub-contractors; nor for the acts or omissions of material or equipment manufacturers or suppliers; nor for the acts or omissions of any engineer or consultant.

Notwithstanding any extended limitation periods arising under the Building Safety Act 2022 or the Defective Premises Act 1972, the Company's liability shall remain subject to the limitations set out in these Terms and Conditions, including the limits of Professional Indemnity Insurance maintained by the Company at the time the services are performed.

### **13. COLLATERAL WARRANTY**

No Collateral Warranty will be entered into by the Company unless the client has advised in writing at the time of preparation of the services and in any event prior to commencement of the services, that a warranty is required. . The warranty that may be granted is in the standard form as issued from time to time by the British Property Federation. No alterations to the warranty wording will be contemplated.

All warranties other than the above, whether express or implied, including within limitation any warranties of merchantability or fitness for purpose, are expressly excluded.

The client shall defend, indemnify and hold harmless the Company from and against all claims, demands, or causes of action for damage to or loss of any equipment or property of the client, the client's customer(s), or their respective contractors, consultants or vendors (other than the Company) for injury to or death of any employees of the Client Group arising out of the performance of the services regardless of whether such loss or damage shall result in whole or in part from the Company.

Whether due to delay, breach of warranty, negligence, or any other causes the Company shall not be liable for any special indirect or consequential damages of any nature, or for Client's loss of actual or anticipated profits or revenue, loss by reason of shutdown, non-operation or increased expenses of manufacturing or operation.

#### **14. THIRD PARTIES**

Nothing in the Agreement confers or is intended to confer any rights to any third party to the Agreement and as such the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.

#### **15. SPECIAL TERMS**

Any special terms agreed shall be set out in a **schedule** and be placed at the end of this document. In the event of conflict such special terms shall take precedence over these standard terms.

#### **16. ENTIRE AGREEMENT**

The terms and schedules attached hereto constitute the entire agreement between the parties and no changes, modification or amendments to these terms shall be valid unless agreed to by the parties in writing and signed by their authorised officers.

OFFICIAL

## SCHEDULE 1 – TERMS & CONDITIONS OF THE QUOTATION

- **Site Sensitivity**

We assume that the relevant regulatory bodies, organisations and/or associations have been contacted regarding potential ecological, arboriculture or archaeological restrictions. Any restrictions should be forwarded to us so that we can liaise with the respective body and amend the site works appropriately.

- **Timescales**

The period of site works assumes no significant delays. If unavoidable delays occur that we have no reasonable control over then the period of site works may need to be extended. If this is the case you will be contacted in order to discuss and confirm agreement. We have assumed normal working hours are 08:30-17:00, daylight permitting.

- **Access**

We assume that the land owner's permission has been granted. Straight forward drive on drive off access to the required locations is also assumed. If the site is not reasonably or safely accessible on the day of investigation, then the scope of works can be amended although you will be charged for all additional items incurred.

- **Underground Services**

It is assumed that underground services information will be provided by you. If this is not the case, the main underground service plans (Gas, Electricity, Water & BT) will be sourced by ourselves at a cost of £150.00 + VAT. A full telecommunication search will incur a further cost of £200.00 + VAT, the need of which will be determined by the location of the site.

All excavations will be at least 5m away from all underground services (as indicated from the plans) and scanned using a CAT. If Terra Firma identifies the possibility of unexpected underground services then either on-site detection (GPR) by a specialist contractor or hand dug trial pits should be undertaken, which will incur additional costs.

Terra Firma take no responsibility for damage, or the resulting effects of damage, to services which are uncharted, inaccurately mapped or not sufficiently installed (e.g., too shallow, no surround material, no warning tape etc).

Please note that no site works will commence until all appropriate precaution has been provided.

- **Site Security**

Unless specified in our quotation, it is assumed that the site is private and secure and therefore no allowance has been made for site security. If you suspect that the site may be used by the general public then please inform us as the excavations will need to be made secure, which may also incur additional costs.

It should be noted that we are unable to accept responsibility for securing the site perimeter during the site investigation site works. Within unsecure sites, additional costs may be incurred if 24hr security is requested by our contractors in order to protect plant.

- **Welfare**

It is responsibility of the principal contractor to provide adequate welfare facility if required

- **Boreholes**

It should be noted that borehole depths proposed are preliminary at this stage and are likely to be reviewed on a daily basis as the investigation continues. You will be notified immediately of any variations in expected borehole depths. It is assumed that a suitable water supply is available on site.

- **Trail Pits**

Unless specified in our quotation, we have not allowed for the breaking out of any hard standing. If required, a breaker can be arranged at an additional cost

- **Soakaway Testing**

We have assumed that a modified BRE365 soakaway test can be undertaken if permeability's are low. If this is not the case we will contact you and confirm if you require full tests to be undertaken, however please note that this will comprise night-time monitoring and will incur significant additional costs.

- **Re-instatement**

The borehole and trial pits will be re-instated to the best of our abilities, however, if 'as was' re-instatement is required then additional costs should be allowed for, depending upon the requirement for re-grassing or re-laying of concrete/tarmac. We also assume that the holes may be backfilled with site won arisings, left slightly proud so that to anticipate settlement.

All plant will track to position causing the least amount of disturbance/rutting possible. If this is a particular issue then please inform us as allowances, such as undertaking the site works during dry conditions should be taken.

- **Chemical Testing**

The pathfinder chemical testing suite allows for general 'marker' contaminants, however if the Phase 1 Desk Study discovers potential historical industrial uses then additional specific testing suites may be required.

Samples taken for chemical testing will be sent to the laboratories the day after the site investigation. At present a turn-around time for results is approximately 10 days, however this is not guaranteed and delays should be expected from time to time due to equipment breakdowns. It should be noted that expedited services will need to be confirmed by the laboratories and are dependent on workloads at the time.

- **Waste Management**

We have assumed that no material is to be removed from site during the development. However, if this is not the case then please inform us as Waste Classification may need to be undertaken, which will incur an additional cost.

- **Sample Storage**

All samples collected from site will be stored for at least 30 days in a controlled manner before being disposed.

- **Further work**

We consider the scope of works to be competent and reasonable, however the works may not take into account the requirements of Regulatory Bodies such as the Local Authority and the Environment Agency and additional works may be necessary

- **Provisional Rates**

Where a provisional rate is shown in the quotation the final cost to which it relates shall be calculated and substituted in the final account. If any provisional items are required you will be contacted to confirm agreement. Regarding dayworks, these include but are not limited to breaking out, hand dug inspection pits, collecting water/materials, winching and washing down.

In addition, supervision is based on best judgement but may increase/ decrease, depending on the nature of the site and ground conditions.

## SCHEDULE 2 – CDM 2015

The majority of work that we carry out falls within the definition of 'construction' as outlined in the Construction (Design and Management) Regulations 2015 (regulation 2(1)).

Under these regulations, we have duties with which we must comply, and we must also ensure you, our clients, are aware of your duties (regulation 15 (1)) to make suitable arrangements for managing a project.

Your duties extend to:

- Appointing a Principal Contractor and Principal Designer on those jobs where more than one contractor is involved
- Allowing sufficient time and resources are allocated
- Providing relevant pre construction information
- Ensure welfare facilities are provided
- Notifying sites which exceed the notification threshold, to the HSE

Where you wish us to act as Principal Contractor or Principal Designer, we need to be appointed directly by you, in writing and these appointments may incur additional costs. If you do not make these appointments, we will assume you are carrying them out.

Where we deem welfare to be insufficient, we will provide this on your behalf but this may cause unavoidable delay and additional cost.

To allow us to plan our work and ensure we comply with our obligations, the following pre construction information is typically required from our clients:

- Nature and extent of site
- Utility drawings
- Any information or records of identified contamination on the surface at locations of the exploration.
- Asbestos surveys
- Details of any access restrictions
- Existing design drawings

Where preconstruction information is not provided and it is felt to be necessary, we will obtain it on your behalf, but this may cause unavoidable delay and additional cost.

## **SCHEDULE 3 – BUILDING SAFETY ACT 2022**

The Client acknowledges that the Building Safety Act 2022 (“the Act”) introduces statutory duty holders whose titles may mirror those used under the Construction (Design and Management) Regulations 2015 (“CDM”).

Unless expressly agreed in writing, the Consultant is **not** appointed as:

- Principal Designer under the Building Safety Act 2022;
- Principal Contractor under the Building Safety Act 2022; or
- any Accountable Person or Principal Accountable Person role.

Any reference to “Designer”, “Principal Designer” or similar terminology within the Consultant’s documents shall apply only to the regulatory context expressly stated and shall not be assumed to apply across different legislation.

### **Client Responsibilities**

The Client acknowledges that duties under the Building Safety Act 2022 are additional to and separate from CDM duties and remain the Client’s responsibility unless expressly transferred by statute. In particular, the Client is responsible for:

- Appointing competent statutory duty holders.
- Providing accurate, complete and timely information relevant to building safety risks;
- Ensuring cooperation and coordination between duty holders.

The Consultant shall be entitled to rely upon information provided by the Client and others and shall have no obligation to verify such information unless expressly included within the agreed scope of Services.

### **Where services fall within the scope of the Building Safety Act 2022:**

- The Client acknowledges that statutory duty holder roles under the Act are separate from CDM roles
- Appointments under CDM do not automatically satisfy the requirements of the Act.
- Ground investigation works may be classed as “design” where they influence foundation design, earthworks, gas protection or other safety-critical elements.
- Ground investigation information may be relied upon long after project completion as part of the golden thread of information.
- The Client is responsible for ensuring that information is used only for its intended purpose and in the appropriate project context.
- Any engagement with the Building Safety Regulator, gateway submissions or safety case support must be expressly agreed in writing.

Unless expressly agreed, the Company’s appointment does not include statutory duty holder roles under the Building Safety Act 2022.