

Annex 2: Standard terms and conditions

DEFINITIONS AND INTERPRETATION

- 1.1 In these Terms and Conditions the following definitions apply:
- "Business Day"** a day other than a Saturday, Sunday or public holiday in England.
- "Contract"** the contract between us and you for the supply of the Services, formed in accordance with clause 2 and subject to these Terms and Conditions.
- "Deliverables"** the drawings, reports, specifications, typologies and any other documents which we produce for you as part of the Services.
- "Intellectual Property Rights"** copy right and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all renewals and extensions of the same, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- "Letter of Instructions"** the written fee proposal and confirmation of instructions letter (including the annexes) signed by us and provided to you.
- "Services"** the services to be supplied as specified in the Letter of Instructions.
- "Terms and Conditions"** the standard terms and conditions of business set out in this document, together with any special terms agreed in writing between you and us.
- "we" / "us" / "our"** Turley Associates Limited, a company registered in England and Wales under company number 02235387. Registered Office: 1 New York Street, Manchester, M1 4HD.
- "you" / "your"** the person(s) who purchases the Services from us under the Contract, identified as the client in the Letter of Instructions.
- 1.2 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 Any phrase introduced by the terms **"including"**, **"include"** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- ### FORMATION
- 2.1 Your request for Services constitutes an offer by you to purchase the Services in accordance with the terms which are set out in the Letter of Instructions. It shall only be deemed to be accepted by us upon the earlier of (i) our providing you with the Letter of Instructions or (ii) our commencing work on the supply of the Services, at which point the Contract shall come into existence.
- 2.2 The Terms and Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.3 The Contract constitutes the entire agreement between you and us in relation to the Services and supersedes any prior written or oral agreements, representations or understandings between you and us relating to the Services. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty which is not set out in the Contract.
- 2.4 These Terms and Conditions should be read together with the remainder of the Letter of Instructions. If there is any conflict between these Terms and Conditions and any other part of the Letter of Instructions, the other part of the Letter of Instructions will take precedence.
- 2.5 Any fee quotation given to you by us is valid for a period of 30 days only from its date, provided that we have not previously withdrawn it.
- 2.6 Information, statements, drawings, descriptive matter or representations contained in any documents (such as sales literature, quotations, price lists and invoices) other than the Letter of Instructions are for illustrative purposes only and shall not form part of the Contract or have any contractual force. They shall be subject to correction without any liability on our part.
- ### THE SERVICES
- 3.1 We will carry out the Services in accordance with the Letter of Instructions. We will not be responsible for any failure to advise on any matter that falls outside the scope of our instructions. You agree to rely upon your own judgment as to the suitability of the Services for your purposes.
- 3.2 We will perform the Services with reasonable skill and care. Any dates that we agree for the performance of the Services (or any part of them) shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.3 Any advice given by us during the performance of the Services is solely for your benefit and for the purposes of the project to which it relates. We will not be liable for any loss or damage resulting from the use of or reliance on our advice for any other purpose or by any other person.
- 3.4 We agree to perform our obligations under the Contract in accordance with all applicable laws and regulatory requirements in force from time to time. Planning work (if any) will be carried out in accordance with the Royal Town Planning Institute Code of Professional Conduct then in force.
- 3.5 We may make changes to the provision of the Services without your consent to the extent required to comply with any applicable law, binding code of practice or safety requirements.
- ### YOUR OBLIGATIONS
- 4.1 You shall:
- 4.1.1 ensure that the details set out in the Letter of Instructions (including the scope of the Services) are complete and accurate;
- 4.1.2 co-operate with us and our representatives in all matters relating to the Services;
- 4.1.3 provide us with such information as we may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- 4.1.4 comply with all applicable laws and regulatory requirements in force from time to time, and our policies and standards in force from time to time and provided by us to you.
- 4.2 If performance of any of our obligations under the Contract is prevented or delayed by any act or omission by you or your representatives, or if you fail to pay any amount due to us when due, then:
- 4.2.1 without limiting our other rights and remedies we may suspend performance of the Services until you remedy the default;
- 4.2.2 we will not be liable for any costs, loss or damage incurred by you as a direct or indirect result of our failure or delay to perform any of our obligations which we are prevented or delayed from performing, or which we suspend the performance of; and
- 4.2.3 you will reimburse us on written demand for any costs, expenses, loss or damage incurred by us as a direct or indirect result of your default.
- ### PRICE AND PAYMENT
- 5.1 The fees payable for the Services are specified in Annex 1 of the Letter of Instructions.
- 5.2 Unless we expressly agree otherwise in writing:
- 5.2.1 any fee specified by us is not fixed or capped and will be an estimate only based upon the information available at the date of the Letter of Instructions. We may change our estimate by written notice to you at any time; and
- 5.2.2 our fee (whether estimated, fixed, capped or otherwise) does not take into account any factors not known to us at the date of the Letter of Instructions, any additional or alternative services which we carry out or any change in the scope of the Services.

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Without prejudice to clause 5.2.1 we reserve the right to increase our fees to take into account any of the same by providing written notice to you.

- 5.3 We will endeavour to notify you of any increase to our fees with you in advance. However, where the urgency of the work requires us to act in advance of notifying you, we will notify you as soon as reasonably practicable. You agree to pay our additional fees and expenses in the absence of specific written instructions from you for us not to proceed or continue in such circumstances.
- 5.4 We will invoice you for the Services monthly in arrears. You shall pay each invoice in full and cleared funds within 30 days from the date of invoice.
- 5.5 Without prejudice to any other rights or remedies to which we may be entitled, if you fail to make any payment due to us under the Contract by the due date for payment, then you shall pay interest on the overdue amount at the rate of 3% per cent per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

LIABILITY

- 6.1 Nothing in these terms limits or excludes our liability for personal injury or death resulting from our negligence, fraud or fraudulent misrepresentation, or for any other liability which cannot be limited or excluded by law.
- 6.2 Subject to clause 6.1:
- 6.2.1 we will not under any circumstances be liable to you (whether in contract, tort (including negligence), breach of statutory duty or otherwise) for any indirect, special or consequential loss or for any economic loss, loss of profits, loss of business, or depletion of goodwill howsoever caused (and in each case whether direct or indirect); and
- 6.2.2 our total liability to you in respect of all loss, damage, liability and other costs and expenses of any kind arising under or in connection with the Services or this Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall be limited to an aggregate of £1,000,000 (one million pounds).
- 6.3 No advice or service provided to you by an individual director, employee or other representative of ours is provided by them in their individual capacity and no personal duty is owed to you by them.
- 6.4 Neither party shall be liable for any delays or failure to perform any of its obligations under the Contract because of an event beyond its reasonable control ("**Force Majeure**"). In the event of Force Majeure, both parties shall use reasonable endeavours to overcome any difficulties arising as a result and resume their respective obligations as soon as is reasonably possible.

TERMINATION

- 7.1 You may terminate the Contract (either in whole or in part) at any time by not less than 5 Business Days' prior written notice to us.
- 7.2 Without prejudice to any other right or remedy that may be available to us, we may suspend or terminate the Contract (in whole or in part) immediately by written notice to you if:
- 7.2.1 you fail to pay any amount owed to us by the due date for payment;
- 7.2.2 you commit a material breach of the Contract and (if remediable) fail to remedy that breach within 5 Business Days' of receiving a written request from us to do so;
- 7.2.3 any step is taken in relation to your bankruptcy, administration, liquidation or insolvency or any event occurs which has an effect equivalent or similar to any of the foregoing in any other jurisdiction, or you suspend or threaten to suspend the payment of your debts, or we reasonably believe that you are or will imminently become unable to pay your debts as they fall due;
- 7.2.4 by continuing to perform the Contract there would be a conflict of interest; or
- 7.2.5 we consider, in our reasonable opinion, that there has been a serious breakdown of confidence or relations between you and us.
- 7.3 On termination of the Contract for any reason:
- 7.3.1 you shall immediately pay to us all of our outstanding unpaid invoices and interest;
- 7.3.2 in respect of work undertaken and expenses and disbursements incurred in connection with the performance of the Services until the time of termination, but for which no invoice has been submitted, we shall submit an invoice which shall be payable by you immediately on receipt. Work in progress shall be charged by reference to the hourly rate applicable at the time of performance of our work;
- 7.3.3 your and our accrued rights, remedies, obligations and liabilities as at termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 7.3.4 clauses expressly or by implication surviving termination continue in full force and effect.

INTELLECTUAL PROPERTY

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services (including in the Deliverables) shall be owned by us and you acknowledge that except for clause 8.2 you will not acquire any right, title or interest in or to any such Intellectual Property Rights.
- 8.2 We grant you a non-exclusive, royalty-free licence to copy, reproduce, and use the Deliverables solely for the purpose of the project specified in the Letter of Instructions. This licence shall terminate immediately upon termination of the Contract pursuant to clause 7.2.1.
- 8.3 You shall indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in connection with any claim or threatened claim for infringement of the Intellectual Property Rights of any third party which results from our use of any documents, information, specifications or other materials provided to us by you or your representatives in connection with the Services.

DATA PROTECTION AND CONFIDENTIALITY

- 9.1 In providing the Services, we may act as either a data controller or data processor appointed by you. Where we act as data controller in relation to the processing of any personal data, we will comply with the provisions of the Data Protection Act 1998. Where we act as data processor we will take such security measures as are required to enable us to process personal data in compliance with obligations equivalent to those imposed on you by the Seventh Principle of the Data Protection Act 1998.
- 9.2 We may use the information that you provide to contact you or appropriate persons within your organisation about our services that may be of interest to you. If, at any time, you or any member of your organisation no longer wishes to receive this information you should contact Stefan Redfern (stefan.redfern@turley.co.uk).
- 9.3 You and us both agree that we will keep all information regarding the other party's business and affairs confidential at all times and not:
- 9.3.1 use such information for any purpose other than performing the Contract;
- 9.3.2 disclose such information to any third party except to those of employees, agents, advisors and subcontractors who need to know it for the purpose of performing the Contract, provided that such third parties are required to comply with equivalent obligations to those in this clause 9.3;
- except in each case to the extent required to do so by law, any governmental or regulatory authority or by a court of competent jurisdiction, or otherwise permitted to do so by the terms of the Contract, and provided that we may make public the fact that we act on your behalf.

GENERAL

- 10.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted. Any deletion under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 10.2 A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by us in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of, nor shall it prevent or restrict our further exercise of, that or any other right or remedy.
- 10.3 The Contract is personal to you and you may not assign, license, transfer, delegate or sub-contract all or any of your rights or obligations under the Contract without our prior written consent.
- 10.4 A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 10.5 Except as set out in these Terms and Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by us.
- 10.6 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if a company) or its principal place of business (in any other case) or such other address as that party has specified in writing as an acceptable address for the service of notices, and shall be delivered personally, sent by pre-paid first class post or other next Business Day delivery service, registered post, commercial courier, fax or e-mail.

- 10.7 These Terms and Conditions and the Contract shall be governed by and construed in accordance with the laws of England and Wales. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute or claim arising out of or in connection with the Contract, the Terms and Conditions or their subject matter or formation.