

## PROMOTER TERMS AND CONDITIONS TO APPLY TO ALL AGREEMENTS ENTERED INTO BY WDL LIMITED

### 1. DEFINITIONS

1.1. The words below are agreed to mean as follows:

Agreement	shall mean each contract between the Company and Client consisting of the Proposal and these Terms.
Change	shall mean any change requested to the Job Details.
Change Procedure	shall mean the procedure relating to Changes set out at clause 6 of these Terms.
Client	shall mean the client identified in the Proposal.
Client Materials	shall mean such designs, texts, artwork or other materials as are provided to the Company by the Client, including any third party material which the Client requests that the Company incorporates into the Work.
Company	shall mean WD (Leeds) Limited, a company registered in the UK with number 05167052 with registered office Laneside Cottage, Laneside, Leeds, West Yorkshire, LS12 5HF or of such other address as the Company shall notify the Client from time to time.
Equipment	shall mean all equipment or other goods that are used or reasonably necessary for use by the Company at the Location in the delivery of the Services.
Fee	shall mean the sum set out in the Proposal due to the Company for the Services.
Job Details	shall mean the Services, Location, Work and Fee.
Location	shall mean the location set out in the Proposal and any other locations under the control of the Client to which the Company requires access to enable the Company to provide the Services.
Proposal	shall mean the Proposal document in the Company's standard format agreed by the Client or sent to the Client by the Company prior to instruction.
Services	shall mean the services as set out in the Proposal that the Company is to provide to the Client.
Work	shall mean any building, products, artwork, decoration, design, plans or other deliverable to be produced by the Company as part of the Services.

1.2. Where the context so admits or requires, words denoting the singular include the plural and vice versa;

1.3. References to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time (whether before or after the date of the Agreement) and shall include any provisions of which they are re-enactments (whether with or without modification) and any subordinate legislation made under such provisions.

1.4. The clause headings in these Terms are for information only and do not form part of the Agreement.

### 2. APPLICATION OF THESE TERMS

2.1 These terms apply to all contracts entered into by the Company in relation to any architectural, construction or design services or any associated consultancy or project management services.

2.2 The Company's standard proposal form shall be determinative of any matters referred to therein and may be altered only by agreement of an authorised officer of the Company in writing.

2.3 In the absence of a completed standard proposal form, these Terms shall continue to apply subject that the Proposal shall mean all documents setting out the agreement between the parties relating to the delivery of services and creation of work prior to and including the document in which agreement is reached on the services and deliverables to be provided and the

price to be paid to the Company, but shall not include any standard terms and conditions supplied by the Client, the operation of which is expressly excluded.

### 3. SERVICES AND WORK

- 3.1. The Company shall, in consideration of the Fee, provide the Services.
- 3.2. The Company may require receipt of a purchase order confirming the Client's instructions signed by an authorised officer of the Client prior to proceeding with the Services.
- 3.3. The Company will use all reasonable endeavours to comply with any date or dates for despatch or delivery or completion of the Work as stated in the Proposal and such date or dates shall constitute only a statement of expectation and shall not be binding. Failure to deliver the complete work by such date or dates shall not constitute a breach of contract and the Client shall not be entitled to treat the Agreement as thereby repudiated or to rescind it or claim compensation for such failure or any consequential loss or damage there from.
- 3.4. Where the Client requests that part of the Work is to be provided by third parties, the Company shall take reasonable care in selecting such third party but does not give any warranty that such part of the Work will be appropriate and sufficient for the Client's requirements or for any other purpose.
- 3.5. Providing that the Company complies with the reasonable instructions of the Client, the Services shall, unless otherwise specifically stated in the Proposal, include a maximum of [two] re-edits of non-essential details for paper or electronic documents forming part of the Work following submission of Work at each of the following stages:
  - 3.5.1 Submission of concepts; and
  - 3.5.2 Submission of designs and plans.

### 4. PAYMENT

- 4.1. The Client shall pay to the Company the Fee within 30 days of the Company sending the Client invoices in respect of the Fee as the Fee or part of the Fee becomes due.
- 4.2. The Company shall be entitled to invoice the Client in respect of the Fee at such times as are set out in the Proposal, or if nothing is set out therein, in the following proportions at the following stages:

		<u>Cumulative Fee Percentage</u>
Stage A	Appraisal	Time Charge
Stage B	Design Brief - 10%	) 10%
Stage C	Concept	)
Stage D	Design Development	)
Stage E	Technical Design	) 25%
Stage F	Production Information	)
Stage G	Tender Documentation	)
Stage H	Tender Action	) 40%
Stage J	Mobilisation	)
Stage K	Construction to Practical Completion	) 20%
Stage L	Post Practical Completion	) 5% plus any further sums due as a result of

Changes or otherwise in accordance with the Agreement.

- 4.3. The Company shall be entitled to charge interest on overdue amounts at the statutory rate for late debts prevailing at the time and shall be entitled to such reasonable costs as it incurs in the collection of such overdue payments.
- 4.4. All fees are quoted exclusive of VAT which shall be charged in addition where relevant.
- 4.5. Where the Fee is stated to be a fixed fee then this shall be inclusive of all travel and subsistence expenses. Otherwise, all reasonable expenses and disbursements including travel, subsistence and local authority fees shall be invoiced in addition to the Fee at any time after they are incurred and shall be paid by the Client within 30 days of the date of invoice.
- 4.6. Should expedited delivery of Services be agreed and necessitate overtime or other additional costs an extra charge may be made over and above the Fee set out in the Proposal.
- 4.7. The Company shall be entitled to suspend or cancel Services at any time in the event that payment of any sums is overdue.

### 5. CLIENT'S GENERAL OBLIGATIONS

- 5.1 The Client shall ensure that the Company is granted all access to the Location as is required by the Company to provide the Services including the installation, maintenance, operation, removal and other management of the Equipment.
- 5.2 In the event that travel outside of the United Kingdom is necessary in order to deliver the Services, the Client will provide reasonable assistance to the Company in relation to visas and importation documentation including any necessary licence or documentation required to allow Equipment into and out of any relevant country.
- 5.3 The Client agrees and acknowledges that at no point shall the ownership and title in any Equipment transfer to or vest in the Client and in the event that it is necessary for importation or other administrative purposes to register any such items in the name of the Client, the Client undertakes to do all such things and execute all such documents as are necessary to ensure that unencumbered ownership and title re-vests in the Company.
- 5.4 The Client shall ensure that persons operating at the Location are fully aware of any requirements of the Company communicated to the Client and that such persons shall provide reasonable co-operation to the Company.
- 5.5 The Client is responsible for surveying the ground at the Location to ensure that it is appropriate for the planned Services and Work.
- 5.6 The Client shall ensure that the Location has a sufficient electricity supply for installation and operation of the Equipment.
- 5.7 The Client shall ensure a prompt and full response to any questions or queries submitted by the Company or the Company's sub-contractors regarding the Location or access to or facilities at the Location.
- 5.8 The Client shall be responsible for all health and safety issues unless the Company is appointed as CDM co-ordinator.
- 5.9 The Client shall provide all Client Materials as are identified in the Proposal or which are otherwise necessary for production of the Work and shall ensure that all Client Materials are suitable for inclusion in and compatible with the Work.
- 5.10 Where any Client Materials are not suitable for inclusion in and compatible with the Work, the Company may make any consequential amendments to the Job Details that the Company reasonably deems necessary.
- 5.11 The Client acknowledges that the Company is at no point under any obligation to retain any originals or copies of the Work or any earlier version of the Work, rough or preparatory materials involved in creating the Work unless otherwise agreed in writing.
- 5.12 The Client undertakes to inspect all Work or any part or stage of the Work thoroughly upon delivery of the same by the Company to the Client and ascertain for itself that the Work is appropriate and sufficient for the Client's needs.
- 5.13 The Client will give notice to the Company of their acceptance of the Work or of the need for any amendments to the Work or remedial work in order to make the Work compliant with any agreed specifications or agreed functions or purpose, together with reasons for the withholding of acceptance within 7 days of submission of the final Work by the Company and in the absence of such notice and appropriate reasons, will be deemed to have accepted the Work.

## **6. CHANGES IN THE SERVICES OR WORK DURING THE AGREEMENT**

- 6.1. In the event that the Client requires or desires any Change, it shall give the Company written notice of that Change. In that written notice of Change, the Client shall confirm whether, during the operation of the Change Procedure, the Company shall continue to provide the Services in accordance with the existing Job Details or whether the Company shall cease to provide the Services. In the event that the Client does not indicate that the Company is to cease work, the Company shall continue to provide the Services in accordance with the existing Job Details.
- 6.2. The Company shall, within 7 days of receipt of the Client's written notice of the request for a Change, send the Client a document setting out any amendments to the Job Details as it reasonably deems would be caused by such Change.
- 6.3. The Client shall, within 7 days of receipt of the Company's notice given in accordance with clause 6.2, decide whether to accept any such amendments to the Job Details and to continue on the basis of the Change, or whether to revert to the original Job Details to the extent that such reversion is possible.

- 6.4. In the event that the Client instructs the Company to cease to provide the Services and produce the Work in accordance with the existing Job Details, and subsequently instructs the Company not to carry out the change requested, the Client acknowledges that it will be liable for any additional costs occasioned by the cease in work or production, and further acknowledges that the Company shall be entitled to make any and all such amendments to Job Details as are reasonably necessary as a result of the instruction to cease production.
- 6.5. In the event that the Client does not respond within 7 days of receipt of the Company's notice given in accordance with clause 6.2 then the Company will be entitled to continue on the basis of the Change or to revert to the original Job Details to the extent that such reversion is possible at the sole election of the Company.
- 6.6. Nothing in the Change Procedure shall act to change or cancel the operation of these Terms except for the Job Details and in particular no further terms and conditions introduced by the Client during the Change Procedure shall have effect.
- 6.7. In the event that the Client requests that a Change be agreed and implemented without following the Change Procedure or following an expedited Change procedure then the Company may accept or reject such Change at their discretion and may upon acceptance of such Change charge such extra fees as are agreed between the parties, or in the absence of such agreement such reasonable extra fees considering the nature and timing of the Client's request, the Fee and the effect of implementing the Change on any and all other work undertaken or agreed by the Company with the Client or third parties.

## **7. COPYRIGHT AND OTHER RIGHTS**

- 7.1. Without prejudice to any rights in the Client Materials, whether those rights are owned by the Client or a third party, the Client acknowledges that the Company retains all copyright, design rights, rights in inventions, know how, patents and any other intellectual property rights in the Work.
- 7.2. In the event that the Client wishes to copy or reproduce the Work or any part of it either at the Location or anywhere else, the Client shall request the services of the Company to do so and the Company shall use reasonable endeavours to provide a quote at their normal rates to undertake the further copying or reproduction of the Work.
- 7.3. The Company grants the Client a licence to maintain the Work only at the Location effective upon payment of the full Fee.
- 7.4. The licence above shall not be transferable to any third party including to new owners, leaseholders or tenants of the Location.
- 7.5. The Client hereby grants the Company a non-exclusive, royalty free, perpetual license to copy, reproduce, adapt or to otherwise use the Client Materials for any purposes relating to the Services.
- 7.6. The Client acknowledges that the Company asserts its moral rights generally in respect of the Work under the Copyright Design and Patents Act 1998 and in particular to be credited as author, designer or producer in relation to the Work as appropriate.
- 7.7. The Client acknowledges that it shall not, by itself or with the assistance of any third party, be entitled to re-edit or otherwise amend the Work or any works made in preparation of the Work, including any designs or plans made in relation to the Work, without having first acquired the written consent of the Company, the granting of which will be at the absolute discretion of the Company.
- 7.8. The Client acknowledges that the Company is under no obligation to provide any preparatory works in relation to the Work, including any and all designs or plans or any other works of a similar nature to the Client. In the event that the Client requires any such preparatory works, it shall make a written request to the Company which the Company may, at its absolute discretion, decide to fulfil or refuse.

## **8. PROMOTION OF THE COMPANY'S BUSINESS**

- 8.1. The Client agrees that the Work will form part of the Company's archive of works and that the Company may use the Work for the purposes of promoting its own business, subject to the requirements of clause 15 of these Terms.

**9. WARRANTY**

- 9.1. The Client hereby warrants to and undertakes with the Company that it has full title and authority to enter into the Agreement and is not bound by any previous agreement that adversely affects the Agreement.
- 9.2. The Client warrants that it is entitled to provide the Client Material to the Company and that, in using the Client Material in the Work, the Company shall not:
  - 9.2.1. infringe the copyright, performers rights, moral rights, any rights in registered or unregistered trade marks, any registered or unregistered design right, any rights in patents, any rights in confidential information or any other rights of a like nature without limitation;
  - 9.2.2. be liable in any action for defamation, slander, trade libel, malicious falsehood or any similar right of action; or
  - 9.2.3. be liable in any action for obscenity, incitement to racial or religious hatred, be held in contempt of court, or be liable for any similar offences or in any action of a like nature.

**10. INDEMNITY**

- 10.1. The Client agrees to indemnify and hold harmless the Company against all civil damages, costs, judgements or any other penalties awarded against the Company in any legal proceedings arising from any alleged or actual breach of the warranty set out in clause 9 of these Terms including, but not limited to any amounts paid in reasonable settlement of any claim before or after proceedings are issued, even where such claim is subsequently shown to be false.

**11. CANCELLATION**

- 11.1. The Client may cancel the Agreement and the Services by giving the Company 30 day's written notice.
- 11.2. In the case of cancellation by the Client in accordance with clause 11.1 above or in the event of any other purported cancellation, the Client agrees to pay the Company a cumulative proportion of the agreed Fee as follows:

		<u>Cumulative Fee Percentage</u>
Stage A	Appraisal	Time Charge
Stage B	Design Brief - 10%	) 10%
Stage C	Concept	)
Stage D	Design Development	)
Stage E	Technical Design	) 25%
Stage F	Production Information	)
Stage G	Tender Documentation	)
Stage H	Tender Action	) 40%
Stage J	Mobilisation	)
Stage K	Construction to Practical Completion	) 20%
Stage L	Post Practical Completion	) 5%

- 11.3. In the event that the Client gives the Company notice of its intention to cancel, the Company shall, at any time following the receipt of such notice, be entitled to send the Client an invoice in respect of all sums set out in clause 11.2 above. Such invoice shall be paid by the Client within 30 days of its receipt.
- 11.4. The provisions of 4.3 above shall apply to the payment of any amount in accordance with this clause 11 and all expenses already incurred shall remain payable.
- 11.5. The Company may cancel the Agreement without breach by giving the Client 30 day's written notice no later than 30 days before the date of the Event in the event that the Company reasonably believes that it will not be practicable to deliver the Services.

## **12. TERMINATION**

- 12.1. In addition to any other rights and remedies at law the Agreement may be terminated by giving written notice to the other party in the event that:
- 12.1.1. the Client has failed to account or make payments as required under the Agreement whether demanded or not;
  - 12.1.2. the Client or the Company has committed a material breach of its obligations under the Agreement unless such party rectifies the position where this is reasonably possible within seven days;
  - 12.1.3. either party goes into voluntary or involuntary liquidation (otherwise than for the purpose of a solvent reconstruction or amalgamation) or has a receiver or administrator or similar person appointed or is unable to pay its debts within the meaning of s268 Insolvency Act 1986 or ceases or threatens to cease to carry on business or any event occurs that is analogous to any of the foregoing in the territory of the relevant party.
- 12.2. On termination of the Agreement the Client shall not have the right to take over and complete the Work or have its nominee complete the Work on its behalf or use (including use as a point of reference) or instruct the use of any concepts, drawings or designs developed or proposed by the Company without having first obtained the consent of the Company in accordance with clause 7.7 of these Terms.

## **13. LIMITATION OF LIABILITY**

- 13.1 This Clause 13 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Client in respect of any breach of the Agreement or any act or omission relating to the Services or the Work.
- 13.2 The Company's entire liability shall not exceed a sum equal to £5,000,000.
- 13.3 In no event shall the Company be liable for any indirect losses, damage or costs including any loss of profits or loss of goodwill.
- 13.4 Nothing in these Terms limits or excludes the liability of the Company for death or personal injury resulting from its negligence or for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Company.

## **14. INSURANCE**

- 14.1. The Client agrees that if it provides facilities or equipment for the purpose of enabling the provision of the Services or creation of the Work these are provided entirely at the Client's risk. The Client is advised to maintain adequate employers' insurance and public liability and property damage insurance in respect of the same.

## **15. CONFIDENTIALITY**

- 15.1. Each party hereto shall not except as authorised or required by its duties hereunder use, divulge or communicate to any person, persons or company any of the trade secrets, secret or confidential information, confidentiality operations, processes, or dealings, concerning the organisation, business, finances, transactions or affairs of the other party or its customers or clients (hereinafter called "Confidential Information") which may come to its knowledge during the provision of the Services and shall keep with complete secrecy all Confidential Information entrusted to that party and shall not use or attempt to use any such information in any manner which may cause loss to the other.
- 15.2. Each party shall use its best endeavours to procure that any Confidential Information is only disclosed to such of its employees and sub-contractors (if any) as may be necessary for the proper performance of its duties hereunder and that such employees or sub-contractors (if any) shall comply with the terms of this Clause.
- 15.3. The restrictions in this Clause 15 shall continue to apply after termination of the Agreement or delivery without limit in point of time but shall cease to apply to information or knowledge which may come into public domain other than by authorised disclosure of either party.

## **16. NO PARTNERSHIP OR EMPLOYMENT**

- 16.1. The parties agree that nothing in the Agreement is intended to create any partnership or employment relationship between the parties.

**17. NOTICES**

- 17.1. Unless otherwise specified in the Agreement any notice, consent, authorisation, communication or approval required to be given under the Agreement shall be effected by e-mail and first class post, addressed to the party to be notified, or personally delivered in writing to the party to be notified at, in each case the address set out in the Proposal or at such other latest address as may in the future be notified in writing by the party to be notified to the other.
- 19.2. Unless otherwise specified in the Agreement, the date of giving or serving of such notice, consent, authorisation, communication or approval shall be the date of such personal delivery or 2 working days following the date of such posting or upon transmission in the case of email where a read receipt is obtained by the sender.

**18. DISPUTES**

- 18.1. The Company aims to provide a professional standard of service, but if at any time either party is not satisfied, they shall bring the issue to the others attention as soon as possible and the parties shall discuss how to resolve the issue and shall aim to settle the matter by negotiation or informal mediation. Alternatively, either party can start proceedings to settle the dispute at any time but nothing shall prevent either party from referring to any appropriate dispute to adjudication at any time under the Scheme of Construction Contracts (England and Wales) Regulations 1998.

**19. GENERAL**

- 19.1. Neither party shall assign, transfer, charge or make over the Agreement or any of its rights or obligations without the written consent of the other.
- 19.2. In the event that the Agreement cannot be performed or its obligations fulfilled for any reason beyond the reasonable control of either party including war, industrial action (except by employees of the affected party), power failure, floods and Acts of God then such non-performance or failure to fulfil its obligations shall be deemed not to be a breach of the Agreement. In the event that the Agreement cannot be performed or its obligations fulfilled for any reason beyond either party's control for a continuous period of three months, then either party may at its discretion terminate the Agreement by notice in writing at the end of that period. In the event that obligations may be fulfilled after a delay of less than three months, the Company shall amend the Job Details as is required to reflect that delay and the provisions of the Agreement shall continue to take effect.
- 19.3. If any provision of the Agreement shall be prohibited by, or adjudged by a court to be unlawful, void or unenforceable such provision shall to the extent required be severed from the Agreement and rendered ineffective as far as possible, without modifying the remaining provisions of the Agreement and shall not in any way affect any other circumstances or the validity or enforcement of the Agreement.
- 19.4. Neither party is authorised to, or shall undertake to bind the other party in any way by any warranty, agreement, contract, representation or order, written or oral, or by an instrument or action of any kind, whether in the name of the Company or the Client or otherwise.
- 19.5. The Agreement may not be varied or modified except in writing and signed by both parties.
- 19.6. The Agreement constitutes the entire Agreement between the parties in relation to the subject matter hereof and supersedes all earlier Agreements however made. For the avoidance of doubt, in entering the Agreement neither party has relied on any representation made by the other.
- 19.7. The Agreement, and any dispute arising out of or in connection with it, shall be subject to the laws of England and the parties submit to the exclusive jurisdiction of the English Courts in relation to any such dispute.