

Heritage Lincolnshire - Terms and Conditions for consultancy

These Terms and Conditions shall apply to the provision of Services by us, Heritage Lincolnshire, a company registered in England and Wales under company number 10014163, whose registered office address is at The Old School, Cameron Street, Heckington, Sleaford, Lincolnshire, NG34 9RW hereinafter called "the Company" to you, as identified in the Proposal.

1. Definitions and Interpretation: In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Agreement" means the contract formed upon our mutual agreement of a date to commence the services, and includes the agreement of these Terms and Conditions;

"Commencement Date" means the date referred to in the Agreement

"Expense" means any cost incurred by us in direct relation to the provision of the Services;

any **"Proposal"** remains open for acceptance for a period of 90 days and means the written proposal for the performance of the Services or any other Services as may from time to time be amended by the written agreement of both the Company and you;

"Session" means an agreed time to perform the Services at your place of business or such other place as agreed from time to time;

"Services" means the Consultancy Projects to be provided by the Company to you in accordance with the Proposal; Unless the context otherwise requires, each reference in these Terms & Conditions to:

1.1.1 "we", "us", "our" is a reference to the Company and includes our employees and agents;

1.1.2 "writing" or "written" includes, but is not limited to, letters and emails;

1.1.3 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.1.4 "these Terms and Conditions" is a reference to these Terms and Conditions;

1.1.5 a Clause is a reference to a Clause of these Terms and Conditions; and

1.1.6 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.

1.2 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon their interpretation. Words imparting the singular number shall include the plural and vice versa. References to persons shall include corporations.

1.3 No terms or conditions stipulated or referred to by you in any form whatsoever shall in any respect vary or add to these Terms and Conditions unless otherwise agreed by us in writing.

2. Consultancy Projects

2.1 We shall schedule a visit to undertake the Consultancy Project upon payment of a 20% deposit, with the remainder payable monthly as the project progresses.

2.2 However, we reserve the right to charge additional interim progress payments as the works progress or if we are delayed from completing our Services through no fault of our own. We also reserve the right to request 100% of the quoted fee up front at our sole discretion and will notify you accordingly in advance.

2.3 With effect from the Commencement Date we shall, in consideration of the Fees being paid in accordance with the terms of Payment herein, provide the Services to you as described within our written Proposal.

2.4 Notwithstanding clause 2.3 above, we shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, to meet the changing needs of you or which do not materially affect the nature or quality of the Services, and we shall notify you in writing in any such event.

2.5 The Consultancy Services are subject to the cancellation provisions in clause 10.

3. Fees & Payment

3.1 You agree to pay the fees in accordance with these terms of payment.

3.2 Unless otherwise stated in writing, we shall charge to you our reasonable travelling time and travel expenses, accommodation, any incidental expenses for materials used and for third party goods and services supplied in connection with the Services.

3.3 You will pay us for any additional services (and additional expenses incurred as a result) provided by us that are not specified in the Agreement. These additional services shall be charged in accordance with our then current, applicable rate in effect at the time of the performance or such other rate as may be agreed.

3.4 All sums payable by either Party are inclusive of any VAT, if applicable, or other taxes on profit (except corporation tax), for which that Party shall be additionally liable.

3.5 Payment of the relevant fees, as detailed in our Proposal, are due in respect of all days or hours worked (or scheduled to work but deferred or cancelled by you giving less than the required written notice). Where the Services are to be performed at your premises, we will work to your hours where possible. Any overtime must be authorised by you in writing before the Services are carried out and will be charged pro rata at the fees listed in our Proposal.

3.6 All payments shall be made in pounds sterling within 30 days of receipt of invoice without any set-off, withholding or deduction except such amount (if any) of tax as you are required to deduct or withhold by law.

3.7 The time of payment shall be of the essence. If you fail to make any payment on the due date then we shall, without prejudice to any right which we may have pursuant to any statutory provision in force from time to time, have the right to suspend the Services and charge you interest on a daily basis at an annual rate equal to the aggregate of 4% above the base rate of the Bank of England from time to time on any sum due and not paid on the due date in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall be calculated cumulatively on a daily basis and shall run from day to day and accrue after as well as before any judgment.

4. Company's Obligations: We agree to:

4.1 Use reasonable care and skill pertaining to our profession to perform the Services.

4.2 Use all reasonable endeavours to complete our obligations under the Agreement, but time will not be of the essence in the performance of these obligations.

5. Client's Obligations: You agree to:

5.1 Give us such information, advice and assistance relating to the Services as we may reasonably require within sufficient time to enable us to perform the Services in accordance with the Proposal.

5.2 provide us with access to your people, systems and documentation in a timely manner, to enable us to perform the Services;

5.3 The information provided by you must be full and correct to the best of your knowledge. We operate a full disclosure policy whereas every piece of information is fully disclosed, withholding information can affect advice and impact your liability.

5.4 Comply with all applicable Health and Safety legislation and regulations whilst any employee of ours or agents are working on your premises.

5.5 Appoint a primary contact to act as your representative to liaise with us in connection with the Services.

5.6 Provide the facilities required for us to carry out the services, unless specifically stated to the contrary in the Agreement.

5.7 If you fail to meet any of the provisions of this clause 5, without limiting our other rights or remedies, we shall: have the right to suspend performance of the Services until you remedy the default; not be held liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay in performing any of our obligations as a result; and be entitled to claim for any costs or losses sustained or incurred by us arising directly or indirectly from your default.

6. Delay & Abortive visits: Our price is based on being able to complete the services in the agreed number of visits over the

Heritage Lincolnshire - Terms and Conditions for consultancy

period as detailed in the Agreement. Where you fail to provide us access to your premises, including but not limited to because the site is locked, unsafe, unsuitable or the agreed persons are not available, we reserve the right to recover any costs incurred by way of delay or abortive visits.

7. Errors or Discrepancies: You shall be responsible for the accuracy of any information submitted to us. Our Proposal is based on the information provided to us at the time of preparing such Proposal. Should any errors or discrepancies become evident which affect our Proposal, we reserve the right to make any adjustments to it.

8. Variation and Amendments

8.1 If you wish to vary the Services to be provided, then you must notify us as soon as possible. We shall endeavour to make any required changes and any additional costs thereby incurred shall be invoiced to you.

8.2 If, due to circumstances beyond our control, we have to make any change in the arrangements relating to the Services, we shall notify you immediately. We shall endeavour to keep such changes to a minimum and shall seek to offer you arrangements as close to the original as is reasonably possible in the circumstances.

8.3 Any price increase necessitated as a result of an agreed variation or amendment shall be payable in accordance with clause 3.

9. Cancellation or Rescheduling

9.1 We require a minimum of 72 hours' notice to reschedule a Session. Where such notice is not provided, we reserve the right to charge for the rescheduled session and any expenses incurred as a result. We will endeavour to reschedule the session to meet your preferred date(s) and time(s), however we cannot guarantee that this will always be possible.

9.2 If, due to circumstances beyond our control, we have to cancel or reschedule a Session or Consultancy Project, we shall notify you immediately. We shall endeavour to keep such changes to a minimum and shall seek to offer you arrangements as close to the original as is reasonably possible in the circumstances. If the Session must be cancelled and cannot be rescheduled, we shall return all sums paid relating to the Session within 14 days.

10. Termination

10.1 We shall be entitled to terminate this Agreement forthwith in the event that:

10.1.1 You have failed to pay the Fees for a period exceeding 5 working days and fail or refuse to do so following the expiry of a written notice from us requesting such payment within 7 days;

10.1.2 We give you 30 days' written notice whereby there will be no continuing liability by either Party;

10.1.3 You demand services which do not form part of the Services and which are not covered by this Agreement.

10.2 You shall be entitled to terminate this Agreement:

10.2.1 In the event that we fail, due to no fault of yours, to render the Services to you in a timely manner and in accordance with the terms of this Agreement.

10.2.2 by giving us 60 days written notice of termination. In this event, any sums payable for the remainder of the term of this Agreement must be paid to us at the same time as notice to terminate is given.

10.3 Either Party has the right to terminate the Agreement immediately if the other:

10.3.1 has committed a material breach of this Agreement, unless such breach is capable of remedy, in which case the right to terminate immediately will be exercisable if the other Party has failed to remedy the breach within 14 days after a written notice to do so; or

10.3.2 ceases, or threatens to cease, to carry on business, goes into bankruptcy or liquidation either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation), becomes subject to an administration order (within the meaning

of the Insolvency Act 1986), or a receiver is appointed in respect of the whole or any part of its assets.

10.4 In the event of termination, we shall retain any sums already paid to us by you without prejudice to any other rights we may have whether at law or otherwise, and all payments required under this Agreement shall become due and immediately payable.

10.5 With the exception of payment, any and all obligations of the Parties which either expressly or by their nature continue beyond the termination, cancellation or expiry of this Agreement shall survive termination under this clause 10 on a pro-rata basis.

11. Confidentiality

11.1 Each Party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by one Party to the other. Each Party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging its obligations under the Agreement and shall ensure that such employees are subject to corresponding obligations of confidentiality.

11.2 This clause 11 shall survive termination of the Agreement, however caused.

12. No employment: Nothing in this Agreement shall render or be deemed to render us an employee or agent of yours or you an employee or agent of ours.

13. Assignment and Sub-Contracting

13.1 You shall not be entitled to assign the benefits under the Agreement.

13.2 We may sub-contract the performance of any of our obligations under the Agreement without your prior written consent. However, we shall be responsible for every act or omission of the sub-contractor as if it were an act or omission of our own.

14. Documentation: We include for any documentation to be submitted in our normal standard format only. If additional copies or specific requirements are needed, we reserve the right to apply additional charges. We shall retain title to the documentation until all payments as detailed above have been paid in full.

15. Liability and Indemnity

15.1 We will provide, to the best of our knowledge, advice, guidance and best practice based on the information provided by you. It is your responsibility to make the decisions based on the advice given.

15.2 We shall not be liable for any costs related to our advice or guidance should you decide to take our professional advice

15.3 We shall not be liable for any adverse consequences where you have withheld information necessary for us to provide professional advice.

15.4 It is imperative that we are kept informed of any changes within the business that may or may not have an effect on your requirements, legal or otherwise. Should this information not be forthcoming from you, or our requests for information not be responded to by you, we shall have no liability whatsoever for any effects on your business' requirements for which we have not been made aware or had no response to requests and have the right to terminate this Agreement forthwith without any financial or other liability to us whatsoever.

15.5 We shall not be liable for any indirect or consequential loss, loss of business, profit, revenue, data or goodwill, nor for lost or wasted management time or employee time of yours.

15.6 Except in respect of death or personal injury caused by our negligence, we will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under the express terms contained herein, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by our servants or agents or otherwise) in connection with the performance of our obligations under the Agreement.

15.7 In the event of a breach by us of our express obligations under

Heritage Lincolnshire - Terms and Conditions for consultancy

these Terms and Conditions, the remedies from you will be limited to damages, which in any event, shall not exceed the fees and expenses paid by you for the Services in the 12 months preceding such breach.

16. Force Majeure: Neither Party shall be liable for any failure or delay in performing their obligations under the Agreement where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Company failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

17. Copyright

17.1 We reserve all copyright and any other rights (if any) which may subsist in the provision of the Services. We reserve the right to take such actions as may be appropriate to restrain or prevent infringement of such copyright.

17.2 We will grant a non-exclusive licence to you to copy any documents or materials provided by us as part of work wholly commissioned by you provided that distribution of any such copies is exclusively within your organisation, and where a branch of your organisation is specified in the Agreement, this non-exclusive licence shall be granted solely to the branch specified therein. You agree not to use any such materials for training purposes without our consent. We shall not be responsible for updating the content of any materials provided to you to take account of events or changes in the law that take place after such materials are provided to you. We shall have no liability for advice given or documents prepared in relation to the Agreement if they are used or relied upon in any other context.

17.3 You warrant that any document or instruction furnished or given by them shall not cause us to infringe any letter patent, registered design or trade mark in the execution of the Services and shall indemnify them against all loss, damages, costs and expenses awarded against or incurred by them in settlement of any such claim for infringement which results from our use of your information.

18. No Waiver: No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

19. Severance: The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and the Agreement, as appropriate). The remainder of these Terms and Conditions shall be valid and enforceable.

20. Notices: Notices shall be deemed to have been duly received and properly served 24 hours after an email is sent, or three working days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that it was properly addressed to the address provided, stamped and placed in the post and in the case of an email, that it was sent to the specified email address of the addressee.

21. Third party rights: A person who is not a party to the Agreement shall have no rights under or in connection with it.

22. Data Protection: Both Parties agree to comply with all applicable data protection legislation, including but not limited to the Data Protection Act 2018, the UKGDPR and any subsequent amendments thereto.

23. Law and Jurisdiction

23.1 These Terms & Conditions and the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by and construed in accordance with the laws of England & Wales.

23.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.