



BURY ASSOCIATES
DIGITISING YOUR WORLD

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Terms of Business

BURY ASSOCIATES LIMITED

TERMS & CONDITIONS

June 2019

The client's attention is, in particular, drawn to condition 11 of these conditions.

1 DEFINITIONS AND INTERPRETATION

1.1 In these conditions the following words have the following meanings:

"Client"	the person, firm or company named on the Instruction as the client;
"Contract"	any contract between the Surveyor and the Client for the supply of the Services;
"Instruction"	the Client's request for the supply of Services;
"Price"	the price payable to the Surveyor by the Client for the Services;
"Report"	the report produced by, or on behalf of, the Surveyor under the Contract;
"Services"	the services to be supplied by the Surveyor and described in the Instruction;
"Site"	the place where Services are to be undertaken by the Surveyor and specified in the Instruction;
"Surveyor"	Bury Associates Limited

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these conditions.

2 APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.3, the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any request for services, confirmation of instruction, specification or any other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Client's request for services, confirmation of instruction, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all the Surveyor's Services and any variation to these conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed by the Surveyor. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Surveyor which is not set out in the Contract. Nothing in this condition shall, however, exclude or limit the Surveyor's liability for fraudulent misrepresentation.
- 2.4 Each Instruction or acceptance of a quotation for the Services by the Client from the Surveyor shall be deemed to be an offer by the Client to purchase the Services subject to these conditions.
- 2.5 No request for Services issued by the Client shall be deemed to be accepted by the Surveyor until a written acknowledgement of such request is issued by the Surveyor or (if earlier) the Surveyor performs the Services.
- 2.6 The Client warrants and shall ensure that the terms of its Instruction and any applicable specification are true, complete and accurate.
- 2.7 Any quotation is valid for a period of 60 days only from its date, but the Surveyor may withdraw it at any time. Any quotation is given on the basis that no Contract shall come into existence until the Surveyor acknowledges the Instructions.

3 SERVICES

- 3.1 The description of the Services shall be as set out in [the Instruction].
- 3.2 The Surveyor shall use reasonable skill and care in its performance of the Services which it will perform in a timely manner and in accordance with the Contract.
- 3.3 Unless otherwise agreed in writing by the Surveyor, the Surveyor shall perform the Services at the Site.

4 PRICE

- 4.1 Unless otherwise agreed by the Surveyor in writing, the Price shall be set out in the [Instruction].

4.2 The Price shall be exclusive of VAT.

5 PAYMENT

5.1 Subject to condition 5.4, payment of the Price shall fall due in pounds sterling 10 days following the date of the Surveyor's invoice.

5.2 Time for payment shall be of the essence.

5.3 No payment shall be deemed to have been received until the Surveyor has received cleared funds.

5.4 All payments payable to the Surveyor under the Contract shall become due immediately on its completion or termination despite any other provision.

5.5 The Client shall make all payments due under the Contract in full and without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by the Surveyor to the Client.

6 HEALTH AND SAFETY

6.1 The Client shall ensure that the Site is safe and the Client shall comply with all statutory requirements as regards health and safety at work and any other relevant rules and regulations.

7 INTELLECTUAL PROPERTY

7.1 All intellectual property created or developed by the Client shall, for the avoidance of doubt, remain vested in the Client.

7.2 All intellectual property created or developed by the Surveyor or any employee, agent or sub-contractor of the Surveyor in the course of supplying the Services shall remain vested in the Surveyor.

7.3 Copyright in all documents, drawings, data or other materials prepared by the Surveyor in relation to the performance of the Contract will remain vested in the Surveyor, but the Client will have a royalty free right to use, reproduce and issue them to the members of any Design Team appointed for the regeneration of the site.

7.4 All other intellectual property owned or developed by the Surveyor non-exclusively for the Client and used in the course of supplying the Services shall belong to the Surveyor at all times.

7.5 Each party (the "indemnifier") shall indemnify and keep indemnified the other party (the "recipient") against, and hold it harmless from, all claims, liabilities, costs (including reasonable legal fees and disbursements) expenses, demands or damages brought or made against or incurred by the recipient pursuant to any claim by a third party that any intellectual property, information, material and/or data supplied by or on behalf of the indemnifier and used or processed by the recipient or any of its sub-contractors in connection with the Contract infringes the intellectual property of any third party.

8 ACCESS TO THE SITE

For the duration of the Contract, the Client grants the Surveyor and its employees, agents and sub-contractors a right of access and as necessary to occupy the Site for the purposes of carrying out its obligations under the Contract.

9 SUB-CONTRACTORS

9.1 The Surveyor may sub-contract the supply of the Services to a responsible and experienced sub-contractor.

9.2 Where any Services are supplied by a sub-contractor the Surveyor shall be wholly responsible for the acts and omissions of such sub-contractor as though they were its own acts and omissions.

10 SUSPENSION OF THE SERVICES

10.1 The Surveyor shall be entitled to suspend performance of the Service if the Client is in breach of any of the provisions of the Contract or any other contract with the Surveyor.

10.2 The Surveyor shall be under no obligation to refund any part of the Price or any other sums paid in advance in respect to the Services or additional services not provided during a period of suspension.

11 LIMITATION OF LIABILITY

11.1 Nothing in these conditions excludes or limits the liability of the Surveyor:

11.1.1 for death or personal injury caused by the Surveyor's negligence or the negligence of its employees, agents or sub-contractors; or

11.1.2 any other liability which cannot be legally excluded or limited.

11.2 Subject to clause 11.1, the Surveyor shall not be liable under or in relation to the Contract for any indirect or consequential loss or damage (whether such liability arises due to negligence, breach of contract, misrepresentation or otherwise).

11.3 Subject to clause 11.1 and without prejudice to the provisions of clause 11.2 the Surveyor's liability arising from or in connection with the contract (whether the liability arises for breach of contract, negligence, or otherwise) shall be limited to the Price for any single event or series of related events.

11.4 The provisions of this clause 11 shall survive the termination or expiry of the Contract for any reason.

12 ASSIGNMENT

12.1 The Surveyor may assign the Contract or any part of it to any person, firm or company.

12.2 The Client shall not be entitled to assign the Contract or any part of it without the prior written consent of the Surveyor.

13 FORCE MAJEURE

The Surveyor reserves the right to defer the date of delivery or to cancel the Contract or reduce the Services (without liability to the Client) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control.

14 GENERAL

- 14.1 Each right or remedy of the Surveyor under the Contract is without prejudice to any other right or remedy of the Surveyor whether under the Contract or not.
- 14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.3 Failure or delay by the Surveyor in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 14.4 Any waiver by the Surveyor of any breach of, or any default under, any provision of the Contract by the Client shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 14.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 14.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

15 COMMUNICATIONS

- 15.1 All communications between the parties about the Contract shall be in writing and delivered by email, hand or sent by pre-paid first class post:
 - 15.1.1 (in case of communications to the Surveyor) to its registered office or such changed address as shall be notified to the Client by the Surveyor; or
 - 15.1.2 (in the case of the communications to the Client) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Client set out in any document which forms part of the Contract or such other address as shall be notified to the Surveyor by the Client.

15.2 Communications shall be deemed to have been received:

15.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

15.2.2 if delivered by hand, on the day of delivery; or

15.2.3 if delivered by email, on the day of delivery.

16 CORRECTIONS

16.1 Work carried out by the Surveyor which the Client reasonably considers fails to meet the standards contained in the Specification shall be returned to the Surveyor within 60 days of receipt for correction at the Surveyor's own expense. If such work is found, on being checked by the Surveyor, to be within the standards specified then the costs incurred by the Surveyor in checking shall be payable by the client.