

**RME Services Ltd****Terms of Business****1. Definitions**

In this Agreement particular words shall have the meanings defined in the following:

**'Offer'** means the offer letter(s), all of its appendices and/or attachments (if any) and any other relevant documentation issued by RME Services to the Client or his representative.

**'Agreement'** means the Offer and these Terms of Business and the Client's acceptance thereof.

**'Client'** means the person to whom RME Services Ltd sends the offer provided that where such person acts as a agent, the Client shall be the principal.

**'Services'** means all the work and services (including advice provided whether or not in writing) carried out or to be carried out for the Client by RME Services Ltd.

**2. Performance**

2.1 RME Services Ltd shall exercise reasonable skill, care and diligence in performing the Services. Notwithstanding any responsibilities and obligations, which the Client may have under any other contract or at law, nothing in this Agreement or in any proposal, report or other document is to be construed as a warranty or guarantee by RME Services Ltd other than to use (or have used) reasonable skill, care and diligence.

2.2 RME Services Ltd shall use all reasonable endeavours to perform the Services to the programme, if any, set out in the Agreement, but shall not be liable if it is unable to perform any or all of the Services as a result of any cause beyond its reasonable control.

2.3 The Client shall supply to RME Services, in a timely manner so as not to disrupt the performance of the Services, and without charge, all the information and things in the possession of the Client or any of the Client's agents, consultants or contractors and any instructions, decisions, consents, approval or access to property and use of facilities, as described in (or reasonably to be inferred from) this Agreement as necessary for the performance of the Services by RME Services Ltd.

**3. Payment**

3.1 The Client shall pay RME Services Ltd the costs set out in the Agreement. Interim invoices, if any, and the final invoice shall become due for payment on the date of the submission of the RME Services Ltd invoice therefor and the final date for payment shall be 21 days thereafter. The Client may not withhold any payment after the final date for payment of any sum due under this Agreement unless he/she gives, not later than 14 days before such final date, a notice specifying the amount proposed to be withheld and the ground for withholding payment or, if there is more than one ground, each ground and the amount attributable to it.

3.2 The Client shall be liable to pay interest on all amounts remaining unpaid after the final date for payment at the statutory rate pursuant to the Late Payment of Commercial Debts (Interest) Act 1998. The Client shall be liable to pay all debt collection fees (including legal fees) and costs whatsoever incurred by RME Services Ltd in collecting unpaid monies.

3.3 All sums due under this Agreement are exclusive of Value Added Tax, the amount of which shall be paid by the Client to RME Services Ltd at the rate and in the manner prescribed by law.

**4. Additional Work**

4.1 If RME Services Ltd is instructed by or on behalf of the Client to carry out additional work to that stated in the Offer or such work is necessary in the circumstances and/or suffers delay or disruption in the performance of the Services for reasons beyond the reasonable control of RME Services Ltd, the Client shall make additional payment to RME Services Ltd in respect of the additional work carried out and the additional resources employed and/or the delay or disruption suffered.

4.2 The additional payment shall be calculated on the basis of the method of assessing payment under the Agreement or, where no such method is set out in the Agreement, payment shall be such a sum as is reasonable in the circumstance.

**5. Intellectual Property, Confidentiality and Publicity**

5.1 The copyright of all drawings, reports and other documents (including material in electronic form) prepared by RME Services Ltd in the performance of this Agreement shall remain vested in RME Services. Any of RME Services Ltd know-how, techniques, or processes used in the course of carrying out the Services are confidential to RME Services Ltd. The Client shall not, without the prior written consent of RME Services Ltd, divulge to any party details of any confidential information disclosed by RME Services Ltd in the performance of the Services.

5.2 The Client shall have a licence to copy and use only the final drawings, reports and other documents provided by RME Services Ltd and only for the purpose and for the same project for which they were prepared or compiled. RME Services Ltd shall not be liable for the use of such drawings, reports or other documents other than for the purpose for which they were provided by RME Services Ltd. RME Services Ltd may, on giving not less than seven days written notice, revoke this licence if the Client fails to pay, in accordance with this Agreement, any costs or other payments due under this Agreement.

5.3 The Client shall not, without the prior written agreement of RME Services Ltd, provide to any third party or publish on any website the whole or any part of any drawing, report or other document prepared by RME Services Ltd in the performance of this Agreement.

5.4 RME Services Ltd may reproduce for reasonable publicity purposes any photographs taken and documentation prepared by it in the performance of the Services. The Client will consult with RME Services Ltd when issuing publicity which concerns the Services. RME Services Ltd shall not use any information that the Client has stated in writing to be confidential.

## **6. The Liability of RME Services Ltd**

6.1 Notwithstanding anything to the contrary in this Agreement, the total liability of RME Services Ltd (other than for personal injury or death resulting from negligence) under or in connection with this Agreement, howsoever arising, whether in contract or in tort, in negligence, for breach of statutory duty or otherwise shall be limited to and not exceed in aggregate £100,000 or ten times the total costs due under this Agreement, whichever is the greater.

6.2 Subject to the foregoing clause, which may operate to extinguish or reduce the liability of RME Services Ltd, under this clause the liability of RME Services Ltd under or in connection with this Agreement in respect of any claim or series of claims arising out of one occurrence or series of occurrences whether in contract or in tort, in negligence, for breach of statutory duty or otherwise, shall be limited to the least of the following amounts:

(i) the greater of (a) the reasonable direct cost incurred by the Client to carry out corrective works of demolition, reconstruction and repair of physical damage or clean-up works directly resulting from defective performance of the Services (excluding for the avoidance of doubt any of the following losses incurred by the Client whether direct or indirect: lost profits, wasted management time, cost of delay, increased supervision costs, professional fees, contractor and other third party costs and claims, diminution in value, financing charges or financial loss) together with the RME Services Ltd costs for performing the defective part or parts of the Services; or (b) five times the RME Services Ltd costs for performing the defective part or parts of the Services;

(ii) the amount, if any, recoverable by RME Services Ltd by way of indemnity against the claim or claims in question under any professional indemnity insurance taken out by RME Services Ltd and in force at the time that the claim or claims or (if earlier) circumstances that may give rise to the claim or claims is or are reported to the insurers in question. This limitation shall not apply if no such amount is recoverable due to RME Services Ltd having been in breach of its obligation under Clause 2 of the terms or of the terms of any insurance maintained in accordance therewith or having failed in due time to report the claim or such circumstances to the insurers in question and

(iii) the amount of the RME Services Ltd 'Net Contribution' if applicable; that is the amount that is determined on the basis that the RME Services Ltd liability is limited to that proportion of the Client's losses, which it would be just and equitable for RME Services Ltd to pay having regard to the extent of the RME Services Ltd responsibility for the same and on the assumptions that: all other contractors, sub-contractors, project managers, consultants or advisors engaged in connection with the same project shall have provided to the Client contractual undertakings on terms no less onerous than those set out in Clause 2.1 in respect of the carrying out of their obligations in connection with the project; and there are no exclusions to or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party referred to in this sub-clause and any such other party, who is responsible to any extent for the Client's losses, is contractually liable to the Client for the same; and all such other contractors, sub-contractors, project managers, consultants or advisors have paid to the Client such sum as it would be just and equitable for them to pay having regard to the extent of their responsibility.

6.3 No action or proceedings under or arising out of or in connection with this Agreement, whether in contract or in tort, in negligence, for breach of statutory duty or otherwise shall be commenced by a party:

- (a) after the expiry of six years after the completion of the Services or such earlier date as may be prescribed by law.
- (b) at any time against any employee, officer or director of the other party (save in respect of death or personal injury resulting from negligence).

## **7. Insurance**

7.1 Provided always that such insurance is available at commercially reasonable rates and, subject to all exceptions, exclusions and limitations to the scope of cover that are commonly included in such insurance at the time it is taken out or renewed, as the case may be, RME Services Ltd shall maintain professional indemnity and public liability insurance.

7.2 When reasonably requested to do so, RME Services Ltd shall provide a broker's certificate as evidence that insurance is being maintained.

## **8. Terrorism**

8.1 RME Services Ltd is not responsible under this Agreement or otherwise for taking measures or providing design or advice to prevent or mitigate the effect of any act of terrorism or any action that may be taken in controlling, preventing, suppressing or in any way relating to an act of terrorism (hereinafter called 'terrorism matters') and the liability, if any, of RME Services Ltd under or in connection with this Agreement, whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim, which may arise out of or in connection with terrorism matters, is excluded.

**9. Pollution, Contamination and Asbestos**

- 9.1 Unless included in the Services, RME Services Ltd is not responsible under this Agreement or otherwise for advising on matters, which wholly, partly, directly or indirectly arise out of or result from asbestos (including without limitation the costs of testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any asbestos, or product or waste that contains asbestos) or pollution and contamination (including without limitation by naturally occurring or man-made substances, forces or organisms or any combination of them whether permanent or transitory and however occurring herein called 'asbestos and pollution and contamination matters') and the liability, if any, of RME Services Ltd under or in connection with this Agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim, which may arise out of or in connection with asbestos and pollution and contamination matters, is excluded.

**10. Indemnity**

- 10.1 The Client shall indemnify and keep indemnified RME Services Ltd from and against any and all claims (including those for injury and death), demands, proceedings, damages, costs, charges and expenses arising out of or in connection with this Agreement in excess of the total liability of RME Services Ltd determined in accordance with Clause 6.1 and/or, as the case may be, the liability of RME Services Ltd determined in accordance with Clause 6.2 and/or arising out of or in connection with terrorism matters and/or asbestos and pollution and contamination matters where Clause 9 applies and/or which may be in respect of events occurring after the expiry of the period referred to in Clause 6.3.

**11. Site Operations**

- 11.1 In the event of any visit to site by RME Services Ltd personnel, they shall be regarded for all purposes as being the Client's visitors. RME Services Ltd shall not be deemed to have assumed the role of occupier, or otherwise to have assumed control of or responsibility for the site or any persons on it.
- 11.2 In undertaking any physical site works, RME Services Ltd shall take reasonable care to minimise damage to property, including underground services and other sub-surface obstructions notified to RME Services Ltd (in writing) as being the likely position of underground services or other obstructions.

**12. Suspension and Termination**

- 12.1 If the Client shall fail to pay RME Services Ltd in full any amount properly due and payable under this Agreement by the final date for payment, RME Services Ltd may (without prejudice to its other rights and remedies) after giving the Client not less than seven (7) days notice in writing of the same, specifying the grounds for so doing, suspend its performance of this Agreement until payment in full of the amount due. Any period, during which RME Services Ltd exercises its right to suspend its performance shall be disregarded, in computing for the purposes of any contractual time limit, the time taken by RME Services Ltd, or any of its sub-contractors, to complete any Services directly or indirectly affected by the exercise of such right.
- 12.2 Either party may terminate performance of this Agreement (a) at any time by giving not less than one month's written notice to the other or (b) in the event of a material breach of this Agreement by the other or, in the event of the insolvency of the other, by giving not less than two weeks' written notice. In this Agreement 'insolvency' shall mean going bankrupt, going into liquidation (either voluntary or compulsory except as part of a bona fide scheme of reconstruction or amalgamation), being dissolved, compounding with its creditors or having a receiver, administrative receiver or administrator appointed for the whole or part of its assets.
- 12.3 If circumstances arise for which RME Services Ltd is not responsible and which RME Services Ltd considers make it irresponsible for it to perform all or any part of the Services, RME Services Ltd shall be entitled to terminate the appointment or discontinue performance of any part by giving not less than two weeks' written notice.
- 12.4 Termination of the appointment of RME Services Ltd under this Agreement shall not prejudice or affect the accrued rights or claims of either party.

**13. Personnel**

- 13.1 The Client shall not solicit (and shall procure that no parent company or subsidiary of the Client solicits) the services of any employee officer or director of RME Services Ltd without the prior written consent of RME Services Ltd during the term of this Agreement or for the period of six months after the termination of this Agreement.
- 13.2 If during such period any such employee, officer or director of RME Services Ltd accepts an offer of employment made by the Client as a result of an introduction in the course of this Agreement, the Client shall pay to RME Services Ltd, a sum equivalent to six months gross salary (plus bonuses) of the person concerned.

**14. Disputes**

- 14.1 Any dispute shall, in the first instance, be referred to the Chief Executive of the Client and RME Services Ltd, who shall attempt, in good faith, to resolve the matter,
- 14.2 Each party shall have the right to refer any dispute to adjudication in accordance with the Construction Industry Model Adjudication Procedure current at the time of referral.

**15. General**

- 15.1 The Client shall not, without the written consent of RME Services Ltd, assign or transfer any benefit or obligation under this Agreement. RME Services Ltd shall be free to sub-let performance of part or all of the Services. For the avoidance of doubt, agency staff seconded to or engaged by RME Services Ltd shall not be deemed to be sub-contractors.
- 15.2 English Law shall govern the application and interpretation of this Agreement, and each party submits to the jurisdiction of the courts of England.
- 15.3 Nothing in this Agreement confers, or purports to confer on any third party, any benefit or any right to enforce any term of this Agreement. In particular, any advice provided by RME Services Ltd is for the sole benefit of the Client and may not be used or relied upon by third parties.
- 15.4 Nothing in this Agreement excludes or restricts the liability of RME Services Ltd for death or personal injury resulting from its negligence.
- 15.5 Other than any variation set out in the offer, no variation to these Terms of Business may be made without the written agreement of the Client and RME Services Ltd.