

## OSG Architecture Limited – terms and conditions of business

### 1. These terms

- 1.1 Our Letter of Appointment and these Conditions are the terms and conditions on which we provide our Services to you. They set out how we will provide the Services, the fees we will charge, how you or we may end the Contract and other important information. Please read the Letter of Appointment and these Conditions carefully and speak to the person who is handling your work if you have any questions or if anything is unclear.
- 1.2 In some areas, you will have different rights under these Conditions if you are a business or consumer. You are a consumer if you are an individual procuring our services for your personal use and not in connection with any trade or profession.

### 2. Information about us and how to contact us

- 2.1 **Who we are.** We are OSG Architecture Limited a company registered in England and Wales. Our company registration number is 8507286 and our registered office is at Henwood House, Henwood, Ashford, Kent, TN24 8DH.
- 2.2 **How to contact us.** You can contact us by telephoning our team on 01233 812148 or by writing to us at info@osgarchitecture.co.uk or OSG Architecture, Unit 2A, Capital House, 4 Jubilee Way, Kent, ME13 8GD.
- 2.3 **How we may contact you.** If we have to contact you, we will do so by telephone or by writing to you at the email address or postal address you provided to us.
- 2.4 **"Writing" includes emails.** When we use the words "writing" or "written" in these Conditions, this includes emails.

### 3. Interpretation

The following definitions apply in these Conditions.

#### 3.1 Definitions:

<b>Client</b>	the person(s), firm or company who purchases Services from OSG.
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with clause 18.5.
<b>Contract</b>	the contract, comprising the Letter of Appointment and these Conditions, between OSG and the Client for the supply of the Services.
<b>Fees</b>	the fees payable by the Client for the provision of the Services in accordance with clause 9.
<b>Intellectual Property Rights</b>	copyright and related rights, moral rights, rights in designs, rights to use, and protect the confidentiality of, confidential information, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights 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.
<b>Letter of Appointment</b>	the letter of appointment from OSG to the Client to which these Conditions are annexed.
<b>OSG</b>	OSG Architecture Limited registered in England and Wales with company number 8507286.
<b>Project</b>	the Client's project in relation to which OSG are to provide the Services as specified in the Letter of Appointment.
<b>Services</b>	the services to be performed by OSG as specified in the Letter of Appointment or otherwise agreed in writing from time to time.

**4. Basis of contract**

- 4.1 The Client shall return signed acceptance of these Conditions or otherwise provide OSG with written authority to proceed. If the client does not return a signed copy of these Conditions and OSG continues to provide the Services, the Client will be deemed to have accepted the Letter of Appointment and these Conditions.
- 4.2 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate and, if you are a business client, to the exclusion of those terms which are implied by law, trade custom, practice or course of dealing.

**5. Supply of Services and OSG's obligations**

- 5.1 OSG shall:
  - 5.1.1 provide the Services and perform its obligations under the Contract using reasonable care and skill in accordance with the normal standards of the architect profession;
  - 5.1.2 keep the Client informed of progress in the performance of the Services and of any issue that may affect the programme, cost or quality of the Project;
  - 5.1.3 supply the Services to the Client in accordance with the Letter of Appointment in all material respects and use all reasonable endeavours to meet any performance dates specified in the Letter of Appointment, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services; and
  - 5.1.4 co-operate and collaborate with such other contractors and consultants as are appointed by the Client in connection with the Project, including sharing designs and other relevant information.
- 5.2 It may be necessary to amend the Services or approved design to comply with any applicable law or regulatory requirement, but OSG shall notify the Client in any such event.

**6. Client's obligations**

- 6.1 The Client shall:
  - 6.1.1 ensure that the terms of the Letter of Appointment are complete and accurate and meet its requirements for the Project;
  - 6.1.2 co-operate with OSG in all matters relating to the Services;
  - 6.1.3 provide OSG with such information, access and instructions as OSG may reasonably require in order to provide the Services and ensure that such information is complete and accurate in all material respects. The Client acknowledges that OSG shall be entitled to rely on such information;
  - 6.1.4 appoint and pay such other contractors and consultants as are required in connection with the Project and require them to co-operate and collaborate with OSG. Such contractors and consultants shall be instructed directly by the Client and OSG makes no warranty as to the competence, performance, work, services, products or solvency of any such contractors or consultants. The Client shall hold such contractors and consultants (and not OSG) responsible for the proper carrying out and completion of construction works; and
  - 6.1.5 if the Client is a company or other corporate entity, provide OSG with contact details for a representative of the Client with authority to provide information and instructions to OSG as required.
- 6.2 OSG shall not be liable for any delays to the Services or Project caused by the Client's failure to comply with the obligations in this clause 6.

**7. Construction (Design & Management) Regulations 2015**

- 7.1 The Construction (Design & Management) Regulations 2015 (**CDM Regulations**) set out key health and safety obligations for construction projects and apply to both business and consumer clients, though the obligations for business clients are more burdensome.
- 7.2 Under the CDM Regulations the Client must make suitable arrangements for managing a project including appointing a principal designer to co-ordinate the pre-construction phase of the project.
- 7.3 Unless set out in the Letter of Appointment, assuming the role of principal designer or any other role under the CDM Regulations is not included within the Services and it is the Client's responsibility for ensuring it complies with all of its duties under the CDM Regulations. OSG can provide a fee estimate should the Client wish for OSG to assume the role of principal designer for the Project.

## **8. Planning permission and other applications for consent**

- 8.1 OSG shall make no enquiries as to the presence of any restrictive covenants, easements, rights of way or other legal burdens affecting the land or building to which the Project relates or any requirement to comply with the Party Wall Act 1996. The Client should make its own enquiries and satisfy itself in respect of these matters before instructing OSG.
- 8.2 The Client shall instruct the making of applications for consent under planning legislation, building acts and regulations and such other legislation as may be required in connection with the Services and Project. The Client shall pay any statutory charges and any fees, expenses and disbursements in respect of such applications.
- 8.3 The Client acknowledges that OSG cannot guarantee that planning permissions and other approvals from third parties will be granted at all or in accordance with any anticipated timescale. OSG reserves the right to charge additional fees for amending or redrawing any proposal should the Client wish to make significant amendments to the design or should another application for planning permission or other approval need to be submitted. Once decisions have been received from the relevant authorities, it may be necessary to revise the budget and timescales for the Project.
- 8.4 Should the Client wish to appeal a planning permission decision or other decision, OSG will advise the Client of its additional charges payable in respect of the appeal, including preparing the appeal and the supporting statements and documents required.

## **9. Payment of Fees, expenses and disbursements**

- 9.1 The Fees for performance of the Services and any additional services shall be calculated in accordance with this clause 9 and as specified in the Letter of Appointment.
- 9.2 Unless otherwise set out in the Letter of Appointment or agreed in writing, OSG shall invoice the Client on a monthly basis in arrears.
- 9.3 Where the Fees are charged at hourly rates, they will be calculated according to the time spent providing the Services and the status of the person carrying out the work. OSG's current hourly rates are included in the Letter of Appointment and are available on request at any time during the Contract.
- 9.4 The hourly rates are reviewed annually in April each year. Details of any revised rates during the Contract will be supplied on request and OSG will usually only notify the Client of the new rates in the unlikely event that these rates have increased by more than 10% per annum.
- 9.5 Where the Fees are charged based on a percentage of the building costs for the Project, they will be based on the total building costs (or the current estimate of those costs where the actual costs cannot yet be ascertained) and no deductions shall be made in respect of contractor discounts, retentions or otherwise without OSG's prior written agreement.
- 9.6 Where the Fees are charged by any other method, for example lump sums on completion of certain stages of the Project, this will be set out in the Letter of Appointment.
- 9.7 If there are any changes to the scope of the Services or any of the information supplied by the Client turns out to be incorrect, this may increase the Fees. It may be that the Project becomes protracted or is more complicated than envisaged at the date of the Letter of Appointment which will have a knock-on effect on the Fees. Unless agreed otherwise, such additional fees shall be calculated on a time spent basis in accordance with clause 9.3 and OSG shall inform the Client on becoming aware that Fees will be higher.
- 9.8 In addition to the Fees, OSG shall be entitled to charge the Client for any expenses reasonably incurred by OSG in connection with the Services including, but not limited to, travelling expenses, photocopying expenses, the costs of purchasing Ordinance Survey maps and data and the cost of services provided by third parties and required for the performance of the Services. Standard charges for expenses are included in the Letter of Appointment.
- 9.9 All Fees and other amounts payable by the Client under the Contract shall be subject to VAT at the rate current at the time of invoice.
- 9.10 The Client shall pay each invoice submitted by OSG within 21 days of the date of the invoice.
- 9.11 If the Client fails to make a payment due to OSG under the Contract by the due date, then, without limiting OSG's remedies under clause 14, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment, as well as debt recovery costs incurred by OSG. Interest under this clause 9.11 will accrue each day at 4% a year above National Westminster Bank PLC's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.12 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**10. Intellectual Property Rights and use of drawings and documents**

- 10.1 OSG shall own all Intellectual Property Rights in the drawings, documents and such other work produced in performing the Services (including material in electronic format) and asserts its moral rights to be identified as the author of all such work.
- 10.2 OSG grants to the Client a licence to copy and use the drawings and documents for the purposes of receiving and using the Services and only in connection with the Project. Such drawings and documents may not be used for reproduction of the design for any part of any extension of the Project and/or for any other project except with the prior written consent of OSG and on payment of a licence fee to OSG.
- 10.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 10.2 without the prior written consent of OSG. If the drawings and documents are used by third parties for any reason, with or without the consent of OSG, that third party shall be responsible for checking the accuracy of all dimensions, details and other information shown so as to satisfy themselves as to its accuracy.
- 10.4 If at any time the Client is in default of payment of Fees or other amounts due under the Contract, the licence granted under clause 10.2 shall cease immediately and automatically. Use of the licence may be resumed on receipt by OSG of such outstanding amounts.
- 10.5 No part of any design by OSG may be registered by the Client without the prior written consent of OSG.

**11. Data protection**

- 11.1 OSG may process, transfer or disclose personal information about the Client for the purposes of providing the Services, complying with the Client's instructions and complying with its legal obligations.
- 11.2 OSG will only use the Client's personal information as set out in OSG's privacy policy, a copy of which is available on its website. A hard copy of OSG's privacy policy is available on request.

**12. Insurance and limitation of liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 12.1 OSG maintains professional indemnity insurance cover in respect of its own legal liability for individual claims not exceeding £10million per claim, provided such insurance continues to be offered on commercially reasonable terms. The limits and exclusions in this clause reflect the insurance cover OSG has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.
- 12.2 The Client agrees that they will not bring any claim against any employee or director of OSG in respect of any loss or damage they or any person or company associated with them suffer or incur, directly or indirectly, in connection with the provision of the Services. Accordingly, any claim the Client wishes to make can only be made against OSG.
- 12.3 Nothing in the Contract limits any liability for:
  - 12.3.1 death or personal injury caused by negligence;
  - 12.3.2 fraud or fraudulent misrepresentation; and
  - 12.3.3 any other liability which cannot legally be limited.
- 12.4 Subject to clause 12.3:
  - 12.4.1 OSG shall not be liable for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - 12.4.2 OSG's total liability to the Client arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise, shall not exceed the amount of OSG's professional indemnity insurance in force at the time of the claim.
- 12.5 No action or proceedings arising out of or in connection with this Contract shall be commenced after six years from the last date on which the Services were performed or, if earlier, the practical completion of construction of the Project.
- 12.6 The Client shall hold the contractor or contractors responsible for the proper carrying out and completion of the construction works and for health and safety provisions on site. It is expected that all contractors appointed will be competent in their profession.
- 12.7 OSG shall not be liable for any increased liability falling on it by reason of any limit which the Client may have agreed with any contractor or consultant or which may otherwise have fallen upon OSG by reason of the contributory negligence of any other person against whom the Client does not make recovery for any reason. This is relevant in circumstances in which OSG and other persons may be liable in respect of the

same damage. In these circumstances, OSG's liability shall be limited to such sums as it ought reasonably to pay having regard to its responsibility for the damage (within the meaning of section 2(1) of the Civil Liability Contribution Act 1978) and on the basis that such other parties are deemed to have paid the Client such sums as they ought reasonably to have paid:

12.7.1 having regard to that party's responsibility for the damage; and

12.7.2 disregarding any limitation, the Client may have agreed with such party or that such party has ceased to exist.

12.8 This clause 12 shall survive termination of the Contract.

### **13. Consumer client's right to cancel**

13.1 Consumer clients (individuals procuring the Services for personal use and not for commercial gain) who enter into the Contract away from OSG's offices have the right to cancel the Contract within 14 days under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. Cancellations must be made using the form enclosed with the Letter of Appointment or otherwise by giving notice in writing, in each case sent by email or post to OSG.

13.2 If OSG were instructed to perform any Services before the Client ended the Contract, OSG shall be entitled to any fees and expenses properly due before receipt of the Client's notice of cancellation.

### **14. Termination**

14.1 The Client or OSG may terminate the Contract or suspend performance of the Services at any time by giving the other party seven days' prior written notice, stating the reasons for doing so.

14.2 Without affecting any other right or remedy available to OSG, OSG may terminate the Contract with immediate effect by giving the Client written notice if:

14.2.1 the Client fails to pay any amount due under the Contract on the due date for payment;

14.2.2 the Client commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within seven days of OSG asking the Client in writing to do so;

14.2.3 the Client (or either of them where there is more than one Client), being an individual, is the subject of a bankruptcy petition; or

14.2.4 the Client, being a company or LLP, takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

14.3 Without affecting any other right or remedy available to OSG, OSG may suspend the supply of Services if;

14.3.1 the Client fails to pay any amount due under the Contract on the due date for payment;

14.3.2 the Client commits a material or persistent breach of the Contract; or

14.3.3 OSG are prevented from or impeded in performing the Services for reasons beyond OSG's reasonable control.

### **15. Consequences of termination**

15.1 On termination of the Contract:

15.1.1 the Client shall immediately pay to OSG all of OSG's outstanding unpaid invoices, interest and any other costs incurred and, in respect of Services supplied but for which no invoice has been submitted, OSG shall submit an invoice, which shall be payable by the Client immediately on receipt; and

15.1.2 a copy of the drawings and documents produced in performing the Services not previously provided to the Client shall be delivered on demand to the Client by OSG, subject to the terms of the licence under clause 10 and payment of all outstanding Fees, expenses and other amounts due to OSG.

15.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

15.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 16. Complaints

If any issues arise concerning the provision of the Services that the Client is not able to resolve with their day-to-day contact at OSG, the Client should refer the matter in writing to Steven Gee, a director, at Unit 2A, Capital House, 4 Jubilee Way, Faversham, Kent, ME13 8GD. A copy of OSG's complaints procedure is available on request.

## 17. Photography and publicity

OSG shall have the right to publish photographs and images relating to the Client's project on OSG's website, social media platforms and in any other marketing publications or magazines. The Client shall give OSG reasonable access for this purpose for two years after practical completion of the Project.

## 18. General

18.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

18.2 **Assignment.** Neither OSG nor the Client shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of other, which consent shall not be unreasonably withheld or delayed.

### 18.3 Confidentiality.

18.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the Project and the business, affairs and commercial contacts of the other party, except as permitted by clause 18.3.2.

18.3.2 Either party may disclose the other's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out its obligations under the Contract;
- (b) to take professional advice in relation to the Contract or Services, or in order to obtain/maintain insurance cover; and
- (c) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

18.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

18.4 **Entire agreement.** If the Client is a business client, the Contract constitutes the entire agreement between the Client and OSG and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Client acknowledges and agrees that it has not relied on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

18.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

18.8 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

18.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

18.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

**19 Liability Limitation Clause for Delays Arising in HRB Projects**

19.1 **Scope of Responsibility.** The Consultant undertakes to provide design and lead design services with due skill, care, and diligence in accordance with the applicable laws and standards, including the Building Safety Act. However, the Consultant’s liability shall be limited in respect of delays caused by circumstances beyond their direct control.

19.2 **Delays Caused by Third Parties.** The Consultant shall not be liable for delays or consequential costs arising from:

- Third parties (including but not limited to contractors, subcontractors, or consultants) failing to provide timely, accurate, or complete information necessary for the Consultant to perform their duties;
- Third parties’ failure to perform their obligations, which directly or indirectly impacts the Consultant’s performance or the project programme.

19.3 **Regulatory Rejection on Minor Grounds.** The Consultant shall not be held liable for delays caused by the rejection of information, documentation, or submissions by the Health and Safety Executive (HSE) or other regulatory authorities due to minor technicalities or administrative discrepancies that:

- Do not materially affect the overall compliance of the design or submission;
- Could not have been reasonably foreseen or mitigated by the Consultant acting with due skill and diligence.

19.4 **Project Management Obligations.** While the Consultant will exercise reasonable care in coordinating and managing the flow of information and submissions:

- The Consultant’s role in managing such processes does not transfer liability for delays arising from third-party errors, omissions, or regulatory rejections.
- The Client acknowledges that the Consultant’s management role is dependent on the cooperation and performance of all parties involved in the project.

19.5 **Mitigation and Notification.** The Consultant shall make reasonable efforts to mitigate delays, including prompt notification to the Client when:

- Delays occur due to third-party actions or inactions;
- Submissions are rejected by the HSE or regulatory bodies.  
The notification shall detail the cause of the delay, anticipated impacts, and proposed actions to resolve the issue.

19.6 **Limitations of Financial Liability.** The Consultant’s financial liability for delays attributable to the causes listed in Clauses 2 and 3 above shall be excluded. For the avoidance of doubt:

- Liquidated damages or penalties shall not apply where the delay is demonstrably outside the Consultant’s reasonable control;
- The Consultant shall only be liable for delays directly resulting from their own negligence or failure to meet the agreed standard of care.

19.7 **Dispute Resolution and Insurer Approval.** Any disputes relating to this clause shall be resolved in accordance with the dispute resolution process specified in the Agreement. The Consultant reserves the right to amend this clause subject to review and approval by their professional indemnity insurers.

I confirm I have understood and accept the above terms and conditions.

Signature.....

Date.....