

## David Cunningham Associates

### Conditions of Engagement for Building Surveying, Engineering & Architectural Services

*Note: Any reference to Surveyor shall be deemed to include Engineer &/or Architect and any reference to Employer shall also include Client or Customer.*

#### 1.0.0 The Surveyor's Obligations

- 1.1.0 The Surveyor shall perform the Services with reasonable skill, care and diligence, but:
- 1.1.1 no liability shall be attached to the Surveyor in respect of the Services except such liability as ought to be covered by the firm's professional indemnity insurance;
- 1.1.2 such liability shall be limited to the level of cover obtained by the firm and in no event shall the firm's liability exceed the fees paid to the firm whichever is the less. Details of the firm's level of cover are available on request from the firm's principal office.
- 1.1.3 where during the course of building works the Surveyor makes periodic visits to site to monitor the contractor's workmanship and progress, to check on the use of materials, the works' conformity to specification and to report generally on the progress and quality of the works, having regard to the Terms of Contract between the Employer and the Contractor, the Surveyor shall not be required to make exhaustive or continuous inspections and liability for the works shall be limited to that which is reasonably discoverable by the Surveyor undertaking periodic inspections of the site;
- 1.1.4 where frequent or constant inspection is necessary or required, a resident surveyor, clerk of works or resident engineer must be appointed to supervise the day to day execution of the Contract. The person will be nominated or approved by the Surveyor and operate under his control and direction. The expense of employing a resident surveyor, clerk of works or resident engineer shall be met by the Employer, and such an appointment will not be made without the consent of the Employer.
- 1.1.5 where the Employer employs a contractor under a separate agreement to undertake construction of other works, the Employer will hold the contractor, and not the Surveyor, responsible for the contractor's operational methods and for the proper execution of the works.
- 1.2.0 No liability shall attach to the Surveyor either in contract or in tort for loss, injury or damage sustained as a result of any defect in any material or the act, omission or insolvency of any person other than the Surveyor and the Surveyor shall not be liable to indemnify the Employer in respect of any claim made against the Employer for any such loss, injury or damage.
- 1.3.0 Where the services of specialists or other consultants are required, the Surveyor may recommend to the Employer that he engage directly such specialists or consultants as the Surveyor deems necessary. As an alternative, the Surveyor may instruct the aforementioned specialists or consultants on the Employer's behalf subject to the prior approval of the Employer.
- 1.3.1 The Surveyor will assume responsibility for the direction and integration of their work but, and it is hereby expressly agreed, will not be held responsible by the Employer for the design, inspection and performance of that work entrusted to such specialists and consultants. All fees and expenses, disbursements and Value Added Tax for the execution of such services shall be in addition to those set out in the Agreement and payable by the Employer to the Surveyor. The Employer, not the Surveyor, shall satisfy himself as to the adequacy of the professional indemnity insurance of such specialists and consultants referred to.
- 1.4.0 The Surveyor may recommend that main specialist sub-contractors and/or suppliers are retained by the Employer to design and execute any part of the work in which case the Surveyor shall be responsible to the Employer for coordinating this work. The Surveyor shall be responsible for the direction of integration of the work though the main contractor but does not undertake responsibility for the detail of design matters.

1.4.1 The Surveyor shall not in any way whatsoever be responsible for any loss, expense and/or damages or legal costs in connection with the recovery thereof incurred by the Employer in respect of failure of any design or work carried out by specialists, specialist consultants, specialist suppliers and/or specialist sub-contractors whether or not they are carrying on their normal business when any such claim the Employer may have arises.

### **2.0.0 Communication between the Employer and the Surveyor**

2.1.0 If the Employer's representative has ceased for any reason to act as such, the Employer shall promptly inform the Surveyor in writing of the identity of a new representative.

2.2.0 All instructions of the Employer to the Surveyor with regard to the Services (includes instructions to vary, add to or suspended the Services) shall be given through the Employer's representative to the Surveyor in writing or, if given orally, shall be confirmed in writing within seven days.

2.3.0 The Employer shall promptly upon request by the Surveyor convey to the Surveyor any decision or information that the Surveyor considers necessary for the proper performance of the Services.

2.4.0 It shall be sufficient service of any formal notice to send it by registered post to the address specified in the Agreement or the last known address of the person for whom it is intended.

### **3.0.0 Control of Costs**

3.1.0 The Surveyor shall not without the prior written consent of the Employer give to the main or any other contractor or any supplier or any person any instruction the necessary effect of which would be materially either to vary the works or to increase the cost of or the time taken to complete the works.

3.2.0 The Surveyor shall promptly inform the Employer in writing of anything the likely effect of which the Surveyor believes would materially either vary the works or increase the cost of or the time taken to complete the works.

### **4.0.0 Payment for the Surveyor's Services**

4.1.0 Within 28 days of the date of the Surveyor's account, the Employer shall pay all fees due to the Surveyor and shall reimburse any expenses and other disbursements due to the Surveyor, and shall pay any Value Added Tax due including in each case:

4.1.1 sums due on suspension or termination of the Services as provided in clause 8 below;

4.1.2 sums due in respect of work that in the event has proved abortive.

4.2.0 The Employer shall not be entitled to make any deduction or set-off in respect of any other claim.

4.3.0 If the Employer disputes in good faith that any item set out in the Surveyor's invoice is due, the Employer shall nevertheless pay all items which he does not dispute, in good faith.

4.4.0 The Employer shall pay interest on overdue invoices at a rate 4% above the NatWest base rate, in force from time to time.

4.5.0 The specified fees do not include, and the Surveyor shall be entitled to payment at the specified hourly rate for any work not specified in the Scope of Service and arising out of or in connection with:

4.5.1 preparing maintenance manuals or other documents, drawings, maps, photographic and other records, models and presentation materials;

4.5.2 varied instructions resulting in additional or abortive work;

4.5.3 defects in materials or in the work of others;

4.5.4 reinstatement of damaged work;

4.5.5 the appointment of new, main or other contractors;

- 4.5.6 assessment or arbitration of contractors' claims.
- 4.6.0 The specified fees do not include, and the Surveyor shall be entitled to reimbursement of expenditure not specified in the Scope(s) of Service and comprising:
  - 4.6.1 fees, other charges and disbursements of any main or other contractor, supplier, clerk of works, other surveyor, or other professional or consultant engaged with the prior written consent of the Employer whether directly or as agent for the Employer and whether or not working under the direction or supervision of the Surveyor;
  - 4.6.2 the reasonable cost of producing or reproducing documents, drawings, maps, photographic and other records and presentation materials.
  - 4.6.3 reasonable travel and hotel expenses (including mileage for car travel at the rate of 65p/mile);
  - 4.6.4 unit charges (but not standing charges) for communications by telephone, telex, facsimile transmission, post, messenger, etc;
  - 4.6.5 fees and advertising costs in connection with applications for local governmental consents such as planning permission and building regulations consent;
  - 4.6.6 any other fees or expenses which the Employer has authorised the Surveyor in writing to incur.
- 4.7.0 On written demand by the Employer, the Surveyor shall provide as appropriate:
  - 4.7.1 time-sheets;
  - 4.7.2 receipts or other appropriate evidence of expenditure;
  - 4.7.3 Value Added Tax invoices.
- 4.8.0 Where the Surveyor's fees are expressed to be a percentage of total construction costs, in calculating total construction costs.
  - 4.8.1 included shall be adjustments consequent upon variations, fluctuations, sums budgeted as provisional or prime cost sums, contingencies and the proper cost of materials, labour or services provided by the Employer free of charge;
  - 4.8.2 excluded shall be any claim, counterclaim, contra-charge or set-off for loss or damage attributed to defects in materials or work.
- 4.9.0 The Employer shall have the right to cancel a new instruction within 14 days of confirming the instruction unless the Employer has requested the service to be completed in full within this period. Where the Employer cancels the instruction within the 14 day 'cooling off' period and the instruction has not already been completed, cancellation fees will apply as follows:

Day 1	no penalty
Days 2-4	30% of the fee retained
Days 5-7	50% of the fee retained
Days 8-10	70% of the fee retained
Days 11-14	100% of the fee retained

## 5.0.0 Insurance

- 5.1.0 The Surveyor shall, on written request by the Employer, produce evidence by way of certificate of insurance, receipt of premium or otherwise as appropriate that the professional indemnity and public liability insurance referred to in paragraph (1.1.1) has been effected and remains in effect.

### **6.0.0 Suspension or Termination by the Employer**

- 6.1.0 The Employer may, at any time, suspend performance of the Services by serving on the Surveyor written notice to that effect, and with the consequences set out in clause 8 below (but the Surveyor will subsequently be entitled to serve notice terminating the Agreement in accordance with clause 7.5 below).
- 6.2.0 The Employer may, at any time, terminate the Agreement by serving the Surveyor written notice to that effect, and with the consequences set out in clause 8 below.

### **7.0.0 Suspension or Termination by the Surveyor**

- 7.1.0 The Surveyor shall be entitled to suspend performance of the Services or to terminate this Agreement only as set out in this clause 7, and with the consequences set out in clause 8 below.
- 7.2.0 If the Employer is in breach of this Agreement:
- 7.2.1 the Surveyor may serve on the Employer written notice specifying the breach or breaches and requiring them to be remedied within 14 days on pain of the Surveyor suspending performance of the Services or terminating the Agreement; and
- 7.2.2 if the Employer fails within 14 days of the service of such notice to remedy such breach or breaches; then
- 7.2.3 the Surveyor may suspend performance of the Services or may terminate the Agreement upon serving written notice to that effect on the Employer.
- 7.3.0 If the Employer is declared a bankrupt or has a receiving order made against him or makes any arrangement with his creditors or if distress or execution is levied or threatened upon any of the Employer's property or any judgement against the Employer remains unsatisfied for more than 14 days of being a limited company the Employer enters into liquidation whether compulsory or voluntary (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or has a receiver appointed in respect of any of his assets, the Surveyor may suspend performance of the Services or may terminate the Agreement upon serving written notice on the Employer to that effect.
- 7.4.0 When, at the instance of the Surveyor, performance of the Services has already been suspended for more than 14 days, the Surveyor may terminate the Agreement upon serving written notice on the Employer to that effect.
- 7.5.0 When, at the instance of the Employer, performance of the Services has already been suspended for more than six months:
- 7.5.1 the Surveyor may serve on the Employer written notice seeking a written instruction to resume performance of the Services within 14 days of such instruction, on pain of the Surveyor terminating the Agreement; and
- 7.5.2 if within 30 days of service of such notice the Employer has failed to give such an instruction; then
- 7.5.3 the Surveyor may terminate the Agreement upon serving written notice on the Employer to that effect.
- ### **8.0.0 Consequences of Suspension or Termination**
- 8.1.0 If performance of the Service has been suspended or the Agreement has been terminated, the Surveyor shall be entitled to send an invoice to the Employer for all outstanding fees earned by the Surveyor for the Services performed (whether wholly or in part), all expenses and other disbursements incurred, and Valued Added Tax due.
- 8.2.0 If the Agreement is terminated before the Surveyor has fully performed all of the Services, the Employer shall pay the Surveyor as agreed compensation (and in addition to any outstanding fees, expenses and other disbursements) one half of the fees that the Surveyor did not earn but would have earned if all of the Services had been fully performed, unless the Agreement has been terminated on account of a repudiatory breach of the Agreement by the Surveyor.

### **9.0.0 Copyright**

- 9.1.0 Unless otherwise agreed in writing (or unless the Employer is the Crown), the Surveyor shall retain copyright in and ownership of all specifications, maintenance manuals or other documents, drawings, maps, photographic and other records, models and presentation materials prepared by the Surveyor.
- 9.2.0 The Surveyor will retain all original documents which have been generated including computer files and these will not be released to the employer unless directed to do so by the Court.
- 9.3.0 The Surveyor may publish, or join in publishing, any description or illustration of the works, with the prior consent of the Employer.

### **10.0.0 Assignment**

- 10.1.0 The Employer may assign or transfer all (but not part) of this Agreement upon giving written notice to the Surveyor to that effect.
- 10.2.0 The Surveyor may assign or transfer all or part of this Agreement but only with the prior written consent of the Employer.

### **11.0.0 Waiver**

- 11.1.0 No indulgence shown by either the Employer or the Surveyor shall prevent the other subsequently insisting upon his rights and remedies under the Agreement.

### **12.0.0 Arbitration**

- 12.1.0 Any dispute between the Employer and the Surveyor arising out of the Agreement shall be referred to and determined by a sole arbitration to be agreed between the Employer and the Surveyor or, in default of agreement, appointed by the President or a Vice-President for the time being of The Chartered Institute of Arbitrators.

### **13.0.0 Complaint Handling Procedure**

- 13.1.0 The Surveyor shall operate a formal complaints handling procedure in accordance with the RICS Regulations, details of which are available on request from the Surveyor's principal office.

### **14.0.0 RICS Regulated Firm**

- 14.1.0 David Cunningham Associates is regulated by RICS for the provision of surveying services. This means we agree to uphold the RICS Rules of Conduct for Firms and all other applicable mandatory professional practice requirements of RICS, which can be found at [www.rics.org](http://www.rics.org). As an RICS regulated firm we have committed to cooperating with RICS in ensuring compliance with its standards.
- 14.2.0 The firm's nominated RICS Responsible Principal is David A Cunningham FRICS MCI Arb C.Build E FCABE MaPS MIQA CQP who may be contacted at this office.