

Terms & Conditions

DEFINITIONS & INTERPRETATION

1. The following definitions and rules of interpretation apply in the Terms & Conditions:

1.1 Definitions

"Additional Fee" means the VAT-exclusive amount payable by the Client to TSL (if any) in respect of the proper performance and completion of the Additional Services in accordance with the Agreement.

"Additional Services" the additional services agreed in writing by the Parties.

"Agreement" has the meaning ascribed to it in paragraph 2.

"Bank Holiday" means a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.

"Basic Fee" means the VAT-exclusive lump sum amount set out in the Order or such other sum calculated in accordance with the Agreement and agreed by TSL.

"Basic Services" means the services set out in the Order.

"Building Safety Act" means the Building Safety Act 2022 as may be amended and/or supplemented from time to time.

"Building Safety Legislation" means the Building Safety Act; the Defective Premises Act 1972; the Building Act 1984; the Building Regulations 2010 (SI 2010/2214); any statutory instrument, regulation, rule, order, code of practice or guideline made under the Building Safety Act, the Defective Premises Act 1972, the Building Act 1984 or the Building Regulations having the force of law which affects the Project; any guidance issued by a government department, the Building Safety Regulator and/or the Health and Safety Executive in connection with the Building Safety Act, the Defective Premises Act 1972, the Building Act 1984, the Building Regulations and/or any statutory instrument, regulation, rule, order, code of practice or guideline relating to the Building Safety Act, the Defective Premises Act 1972, the Building Act 1984 and/or the Building Regulations; and any building safety laws and regulations from time to time in force which affects the Project or performance of any obligations under the Agreement.

"Business Day" means a day other than a Saturday, Sunday or a Bank Holiday, when banks in London are open for business.

"Client" means the person(s), firm, company or other entity engaging TSL under and in connection with the Agreement.

"Confidential Information" means information in any form that is expressed to be confidential or a reasonable person would regard as confidential in nature, including information concerning the Project or the business, affairs, customers, clients or suppliers of TSL and the supply chain to TSL.

"Construction Products Regulations" means the UK Construction Products Regulation 2011 and the Construction Products Regulations 2013 (SI 2013/1387).

"Fee" means the Basic Fee and, if any, the Additional Fee.

"Force Majeure" means any circumstances beyond the control of TSL (which, for the avoidance of doubt, includes any pandemic and/or epidemic) which prevents or significantly impedes the performance of the Services.

"HGCRA" means The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

"Insolvent" has the meaning ascribed to it in section 113 HGCRA.

"Key Personnel" means TSL's personnel (if any) identified in the Order.

"Material" means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bill of quantities, budgets and any other materials prepared or provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs or inventions incorporated or referred to in them for any purpose relating to the Project.

"Notified Sum" has the meaning ascribed to it in paragraph 24.

"Order" means (as the case may be):

- the Client's order for the Services (as set out in the Client's order form) as supplemented and amended by TSL's written acceptance of the same; or
- the Client's written acceptance of TSL's proposal.

"Parties" means the Client and TSL together.

"Pay Less Notice" has the meaning ascribed to it in paragraph 25.

"Permitted Uses" means the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, building information modelling and repair of the Property and the Project.

"PI Insurance Amount" means professional indemnity insurance for an amount of at least £5,000,000 in respect of each and every claim and in the aggregate inclusive of costs unless provided otherwise in the Order.

"Prescribed Period" has the meaning ascribed to it in paragraph 25.

"Project" means the project described in the Order.

"Required Standard" means the reasonable skill, care and diligence to be expected of a member of TSL's profession undertaking the Services on works similar in scope and character to the Project.

"Services" means the Basic Services and the Additional Services (if any).

"Statutory Requirements" means all applicable statutes, statutory instruments, regulations, rules or orders made under any statute or directive having the force of law that affects the Project or performance of any obligations under the

Agreement and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Project, each and all as it is in force as at the date of the Order.

"TSL" means Tennyson Suite Limited (company number 06309956).

"Time Charges" means the following hourly and/or daily rates applicable in respect of specific roles/positions:

	Hourly Rate (£)	Daily Rate (£)
Director	350.00	2800.00
Senior Advisor	250.00	2000.00
Advisor	125.00	1000.00

"UK Construction Products Regulation 2011" means the UK version of Regulation (EU) No 305/2011 as it forms part of English law under the European Union (Withdrawal) Act 2018.

1.2 Headings shall not affect the interpretation of the Agreement.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.4 A reference to legislation or a legislative provision is a reference to it in force as at the date of the Order.

1.5 A reference to writing or written excludes fax but includes email.

1.6 A reference to the Property or the Project is to the whole and any part of it.

1.7 The obligations and liabilities of the persons forming the Parties under the Agreement are joint and several.

1.8 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

INCORPORATION

2. These Terms & Conditions are incorporated into every Order. The Client's acceptance of an Order and/or its carrying out of any act consistent with acceptance of an Order constitutes its unconditional acceptance of these Terms & Conditions (as supplemented and amended by the Order) which together amount to the "Agreement".

3. Regardless of the form the Order takes, it shall not legally bind the Parties until it has been accepted in writing by TSL, at which point it shall be deemed to create a separate binding contract.

4. TSL is an independent contractor dealing at arm's length and the professionals carrying out the Services are the employees of TSL (and not the Client) or are self-employed persons engaged by TSL. Nothing in the Agreement constitutes a partnership, joint-venture, co-ownership or any employment relationship between TSL and the Client.

5. The Agreement constitutes the entire agreement between the Parties. These Terms & Conditions (as supplemented and amended by the Order) apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

6. The Client shall notify TSL as soon as reasonably practicable if the Client or any party engaged by it has been subject to a serious sanction in respect of the Building Safety Legislation (whether in relation to the Project or otherwise).

7. The Client acknowledges that:

- it has not relied on any statement, promise, or representation made or given by or on behalf of TSL which is not set out in the Agreement; and
- TSL has relied on each statement, promise and representation made or given by or on behalf of the Client and each survey, report or other document supplied to it by the Client, the accuracy and completeness of which the Client hereby warrants.

8. A proposal for the Services given by TSL shall not constitute an offer and shall only be valid for a period of 30 days from its date of issue or such other period of time for which TSL provides in writing.

9. The Agreement is to be read as a whole save that if there is any conflict or inconsistency between the documents comprising the Agreement, these Terms & Conditions (as supplemented and amended by the Order) shall prevail.

GENERAL OBLIGATIONS

10. TSL warrants and undertakes that subject to paragraph 11 it shall exercise the Required Standard:

- when performing the Services;
- to comply with the Statutory Requirements insofar as the Services so require; and
- to perform the Services and prepare all Material for those elements of the Project for which TSL is responsible in sufficient time to facilitate the reasonable progress of the Project.

11. The Client shall:

- provide such information in its possession or which is reasonably obtainable and which TSL reasonably advises is necessary; and
- make decisions and give approvals as necessary, for the proper and timely performance of the Services in accordance with the Agreement.

12. Where the Order provides that the Services include that of lead consultant for the Project, TSL shall act as lead consultant for the Project and:

- co-ordinate the services of the Client's professional team;

- (b) give instructions to the Client's professional team as reasonably necessary to coordinate their services;
- (c) schedule the activities of the Client's professional team to enable efficient progress of the Project;
- (d) notify the Client of any failure by a member of its professional team to facilitate efficient progress of the Project; and
- (e) notify the Client if the Project is delayed or is likely to be delayed, setting out the cause of the delay and its likely duration.

13. Where the Order provides that the Services do not include that of lead consultant for the Project, TSL shall:

- (a) cooperate with the other members of the Client's professional team;
- (b) comply with the reasonable instructions of any lead consultant identified by the Client for the coordination of the Client's professional team; and
- (c) notify the Client if its performance of the Services is delayed, or is likely to be delayed, setting out the cause of the delay and its likely duration.

14. Notwithstanding any other provision of the Agreement, other than in an emergency or with the prior written consent of the Client, TSL has no authority to:

- (a) make (or instruct the Client's contractor or any member of the Client's professional team to make) any material alteration to the Project or the Services;
- (b) vary, terminate or waive compliance with the terms of any contract between the Client and third parties (such as its contractor or any member of the Client's professional team);
- (c) enter into any contract, commitment or undertaking on behalf of the Client; or
- (d) without prejudice to paragraph 8(e), issue any instruction or notice under any contract between the Client and third parties (such as its contractor or any member of the Client's professional team) that delays the Project or increases the cost of the Project.

15. The Client's representative is the person identified in the Order or any replacement notified to TSL by the Client from time to time. The Client's representative has full authority to act on the Client's behalf in connection with the Agreement.

16. TSL shall ensure that where Key Personnel are identified in the Order they shall devote sufficient time and attention to fulfilling their respective roles.

PAYMENT

17. The Client shall pay:

- (a) the Basic Fee as full remuneration for the Basic Services; and
- (b) the Additional Fee as full remuneration for any Additional Services.

18. The Client shall reimburse TSL for all expenses and disbursements TSL incurs. TSL shall include these in the next invoice after they are incurred and the Client shall pay them in accordance with the following paragraphs 19-26 (inclusive).

19. The Fee shall be calculated and paid in instalments at stage intervals as set out in the Order. If not set out in the Order, the Fee shall be paid at monthly intervals beginning one month after TSL begins performing the Services.

20. TSL shall submit to the Client an invoice for each instalment of the Fee which shall specify the sum that TSL considers will become due on the payment due date in respect of the instalment of the Fee, and the basis on which that sum is calculated.

21. Payment shall be due on the date the Client receives each invoice.

22. No later than five days after payment becomes due, the Client shall notify TSL of the sum that the Client considers to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated.

23. The final date for payment shall be 14 days after the expiry of the Payment Due Date.

24. Unless the Client has served a notice under paragraph 25, the Client shall pay TSL the sum referred to in the Client's notice under paragraph 22 (or, if the Client has not served notice under paragraph 22, the sum referred to in the invoice to which paragraph 20 refers (namely, the "notified sum") on or before the final date for payment of each invoice.

25. Not less than seven days before the final date for payment (namely, the "prescribed period"), the Client may give TSL notice that it intends to pay less than the notified sum (namely, a "pay less notice"). Any pay less notice shall specify:

- (a) the sum that the payer considers to be due on the date the notice is served; and
- (b) the basis on which that sum is calculated.

Where a pay less notice is given in accordance with this paragraph 25, the obligation to pay the notified sum applies only in respect of the sum specified in that pay less notice.

26. If the Client fails to pay an amount due to TSL by the final date for payment and fails to give a pay less notice, then the Client shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the final date for payment until actual payment of the overdue amount, whether before or after judgment. The Client shall pay interest together with the overdue amount. The Parties acknowledge that the Client's liability under this paragraph 26 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

ADDITIONAL SERVICES & ADJUSTMENTS TO THE FEE

27. TSL shall notify the Client in writing if it becomes apparent that Additional Services are likely to be required, identifying the required services.

28. TSL shall perform an Additional Service on receipt of a written instruction to do so by the Client.

29. Unless the Parties agree otherwise, the Additional Fee shall be a reasonable amount calculated by reference to the Time Charges, provided that no Additional Fee shall be payable if the requirement for an Additional Services arises from TSL's default or negligence, or the default or negligence of TSL's sub-consultants or suppliers (if any). Any Additional Fee payable by the Client shall be included in the next invoice following performance of the Additional Service to which it relates.

30. If TSL is delayed in completing the Services by the occurrence of Force Majeure, it shall notify the Client in writing and the Client shall make such extension of time for performance as is reasonable.

31. The Fee shall be increased if the performance of the Services is materially delayed or disrupted due to a change in the scope, size, complexity or duration of the Project, provided that TSL shall not be entitled to any increase to the Fee where delay or disruption arises from TSL's default or negligence.

32. TSL shall notify the Client of its intention to claim an adjustment to the Fee under paragraph 31 as soon as reasonably practicable after it becomes aware of any material delay or disruption to the Services. TSL's notice shall include a written estimate of the proposed adjustment to the Fee and the likely effect of the delay or disruption on the Services. Unless the Parties agree otherwise, the Fee shall be adjusted by a reasonable amount by reference to the Time Charges.

SUSPENSION & FORCE MAJEURE

33. TSL may upon the occurrence of any Force Majeure, without prejudice to any other remedy and upon the giving of seven days' notice to the Client, suspend for a period of up to 6 months the performance of the Services in respect of all or part of the Services affected. For the avoidance of doubt, TSL shall not be in breach of this Agreement and shall have no liability under or in connection with this Agreement as a result of:

- (a) any act, omission or default;
 - (b) any failure to perform the Services in accordance with this Agreement; and/or
 - (c) any prolongation or delay to the Services,
- where and to the extent that the same is caused or contributed to by any Force Majeure.

34. The Client may, at any time, suspend performance of all or part of the Services by giving 30 days' written notice to TSL. Subject to paragraph 38, TSL shall resume performance of the Services as soon as reasonably practicable after receiving a written notice to do so from the Client.

35. If:

- (a) the Client fails to pay in full the notified sum to TSL under the Agreement by the final date for payment; and

- (b) the Client has not given a pay less notice comply with paragraph 25,

TSL may suspend the performance of any or all of its Services and other obligations under the Agreement by giving not less than seven days' notice to the Client of its intention to do so and stating the ground or grounds on which it intends to suspend performance.

36. In the event of a suspension in accordance with the Agreement, the Client shall pay TSL:

- (a) a reasonable amount in respect of costs and expenses reasonably incurred by TSL as a result of any exercise of its right referred to in paragraph 35; and

- (b) (taking into account any sum paid under paragraph 36(a)) any adjustment to the Fee due under paragraphs 31-33 (inclusive).

TERMINATION

37. TSL may terminate TSL's engagement under the Agreement at any time by giving 10 Business Days' notice in writing to the Client.

38. If:

- (a) a suspension of the Services in accordance with paragraph 34 continues for a continuous period of three months; and

- (b) the Client does not instruct TSL to resume the Services within five Business Days of receiving a written notice from TSL requiring it to do so,

TSL may immediately terminate its engagement under the Agreement by giving written notice to the Client.

39. Either Party may immediately terminate TSL's engagement under the Agreement by giving written notice to the other Party if:

- (a) the other Party is in material breach of its obligations under the Agreement and fails to remedy that breach within ten Business Days of receiving written notice requiring it to do so; or

- (b) the other Party becomes Insolvent.

40. On termination in accordance with paragraphs 37-39 (inclusive) the Client shall pay TSL:

- (a) any amount properly due for payment under the Agreement at the date of termination; and

- (b) a fair and reasonable proportion of the next instalment of the Fee commensurate with the Services properly performed at the date of termination.

41. If TSL's engagement under the Agreement is terminated by TSL in accordance with paragraph 38, paragraph 39(a) or paragraph 39(b) then the Client shall also pay any expenses and disbursements necessarily incurred by TSL as a direct result of termination.

42. Payment under paragraphs 40 and 41 (if any) shall be claimed by TSL as if it was a payment under paragraphs 19-26 (inclusive).

43. Termination of TSL's engagement under the Agreement 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 Agreement which existed at or before the date of termination.

ASSIGNMENT

44. TSL may assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.

45. The Client shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement without TSL's prior written consent.

46. TSL owns all intellectual property rights (including copyright) relating to the Material it produces.

COPYRIGHT

47. Subject to TSL having been paid all sums due and payable to it, TSL grants to the Client, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on

behalf of, TSL for any purpose relating to Project, the Property and the Services, including any of the Permitted Uses.

48. The licence in paragraph 47 carries the right to grant sub-licences and is transferable to third parties without the consent of TSL. TSL will not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

49. The Client shall provide TSL promptly upon request with copies of photographs of the completed Project and such other information related to the completed Project as TSL may reasonably require.

50. The Client grants to TSL, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence (carrying the right to grant sub-licences and transferable to third parties without the Client's consent) to copy and make full use for any purpose of all photographs of the completed Project prepared by, or on behalf of, the Client.

CONFIDENTIALITY

51. The Client shall at all times:

- (a) keep TSL's Confidential Information confidential;
- (b) not disclose any Confidential Information to a third party, other than to such of its employees, operatives and officers (and those of its servants or agents or any party involved in the supply chain to the Client) employed in the execution of the Project on a need to know basis for the performance of the Client's obligations under the Agreement;
- (c) ensure that its employees, operatives and officers (and those of its servants or agents or any party involved in the supply chain to the Client) comply with this paragraph 51.

52. The Client agrees that damages may not be an adequate remedy for any breach of paragraph 51 and that TSL shall be entitled, without prejudice to its other rights, to seek injunctive and other equitable remedies in the event of any breach by the Client of paragraph 51.

PROFESSIONAL INDEMNITY INSURANCE

53. TSL shall maintain professional indemnity insurance at not less than the PI Insurance Amount for 6 years after the date of practical completion of the Services provided that the same is available to TSL at commercially reasonable rates and terms.

54. TSL shall inform the Client if TSL's required professional indemnity insurance ceases to be available at commercially reasonable rates and terms so that TSL and the Client can discuss how best to protect their respective positions regarding the Project without that insurance.

55. TSL shall, following the Client's request, provide written evidence that the insurance required under the Agreement is in force.

MISCELLANEOUS

56. If any court or competent authority finds that any provision (or part of any provision) of the Agreement is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

57. If any invalid, illegal or unenforceable provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

58. Where under the Agreement an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, Good Friday or a Bank Holiday, that day shall be excluded.

59. A waiver of any right or remedy under the Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the future exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

60. Any notice required to be given by either party under the Agreement may be served by any effective means and shall be treated as effectively served if it is addressed, pre-paid and delivered by post to the addressee's last known principal business address or (where the addressee is a body corporate) to the body's registered or principal office. This paragraph 60 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

61. A person who is not a party to the Agreement shall not have any rights under or in connection with it.

62. Either party may at any time refer any dispute or difference arising under the Agreement to adjudication in accordance with the provisions of Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 except that the adjudicator nominating body shall be The Royal Institution of Chartered Surveyors.

63. The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

LIMITATIONS EXCLUSIONS & SET-OFF

64. Nothing in the Agreement limits any liability which cannot legally be limited, including (but not limited to) liability for:

- (a) death or personal injury caused by negligence; and
- (b) fraud or fraudulent misrepresentation.

65. Subject to paragraph 64, TSL shall in no circumstances be liable for any claims, circumstances, loss or damage arising from any EWS1 inspection or completion of the EWS1 form (or equivalent).

66. Subject to paragraph 64, TSL's total aggregate liability under or in connection with the Agreement shall be limited to £1,000,000 in the aggregate or such other sum for which the Order provides, which limit shall apply however that liability arises including a liability arising by breach of contract, arising by tort (including the tort of negligence) or arising by breach of statutory duty or otherwise.

67. Subject to paragraph 66, TSL's liability shall be limited to such sum as would be just and equitable for TSL to pay having regard to the extent of TSL's responsibility for the loss or damage suffered on the basis that all of the other consultants, contractors and suppliers with liability shall be deemed to have:

(a) provided contractual undertakings to the Client that they have and will perform their services/works in connection with the Project in accordance with the terms of their consultancy agreement/contract and that there are no limitations on liability as between them and the Client; and

(b) paid to the Client such proportion of their losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss or damage.

68. No actions or proceedings arising out of or in connection with the Agreement may be commenced after the expiry of six years from the date of completion of the Services.

69. The Consultant may at any time, without notice to the Client (other than pursuant to a payment notice or pay less notice) set-off any liability of the Consultant to the Client against any liability of the Client to the Consultant, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Agreement or under another agreement or contract between the Consultant and the Client/its group companies/affiliates. Any exercise by the Consultant of its rights under this paragraph 69 shall not limit or affect any other rights or remedies available to it under the Agreement or otherwise.