

Halebank Parish Council

21st January 2026

By email

Our Ref: E9510-H-LT-002-R1

Your Ref:

For the Attention of Christine Southern

Dear Christine

Re: Inspection of Ditton Brook Bridge

Thank you for inviting us to quote for the above works. Following discussions, we understand that our scope of works would be as follows:

- (i) Carry out a principal inspection of Ditton Brook Bridge (masonry arch bridge) in accordance with CS 450, providing a written report detailing the inspection findings with photos. Within the report, include a short section discussing the condition of the bridge and how this may affect its ability to carry highway traffic (note this would not be a numerical assessment).
- (ii) Arrange and provide access for the inspection, comprising of a small inflatable boat with engine in the watercourse provided by our subcontractor, Northern Divers.

We have made the following assumptions:

- a) The inspection can be undertaken during normal working hours, Monday to Friday.
- b) No special permissions are required to obtain access to the watercourse.
- c) Based on our current workload, we would require a period of 4 weeks following an order being placed to undertake the inspection, and a further 2 weeks to produce the inspection report. However, please note this may increase if we receive orders for other works prior to receiving an order for the above works, particularly if there is a long time between issue of this quote letter and receiving an order. To assist with this, please keep us updated if an order is likely to be placed, and we can advise if lead in times have changed.

Our fee quotation for providing the above is as follows:

Items (i) & (ii)	£4,974-50 + VAT
Total	£4,974-50 + VAT

Our fee, however, excludes the following:

- 1) Intrusive investigation works; the inspection will be visual only.
- 2) Inspection of any areas which are covered, buried or unsafe to access.
- 3) Vegetation clearance; we will inspect any areas which are covered with dense vegetation as best we can, however the vegetation particularly on the east elevation (which includes Japanese knotweed) may obscure inspection of some elements in that location.
- 4) Site investigations, including ground investigations, topographical surveys, CCTV drainage surveys, asbestos, environmental and ecology, heritage and arboriculture surveys.
- 5) Inspection of the adjacent Network Rail owned bridge. This would require access to the railway track, which in our experience can take at least 12 months to arrange with Network Rail. The Network Rail 2024 examination report which we have been provided is sufficiently detailed, as such we would consider little benefit from trying to inspect that structure.
- 6) Numerical assessment of Ditton Brook Bridge (masonry arch bridge) to calculate its load carrying capacity. We would be happy to provide a price for doing this if required.
- 7) Providing general ongoing advice relating to the bridge structures, which we would continue to charge on an hourly rate basis as per our previous quote letter E9510-H-LT-001-R0.
- 8) Liability in delivery of our services, in respect of Advice or Design in any Fire Safety. Any liability whatsoever, in delivery of our services, in respect of any losses, whether direct or indirect, or in any way connected to the combustibility of any composite panels and or external wall systems and any associated core/filler insulation material and or ancillary fixing systems. We shall not be liable for that part of any claim including, but not limited to, waking or walking watch costs, loss of profits, loss of use, loss of rent, loss of production, loss of contracts, liquidated damages, or for any cost of decamping, or rehousing, or bodily injury.

Client Duties with CDM Regulations

The CDM Regulations will apply to this project. We have not priced to act as Principal Designer under the CDM-2015 Regulations. We will, however, carry out our duties of Designer under the Regulation requirements. **A CDM Principal Designer must be appointed** for any project where there will be more than one contractor or if it can be reasonably foreseen there may be more than one contractor. We attach an industry standard leaflet to help you understand a client's responsibilities under these regulations.

Please issue us with any pre-construction information available at this stage. Please also give us the name and contact details of the Principal Designer so that we may commence liaising with them.

Should you require a separate quotation for the role of CDM Principal Designer for the pre-construction phase, please contact us to request this and we will be pleased to help you in this respect.

Contract Terms

Our appointment is to be on the basis of the latest Mason Clark Associates Terms and Conditions.

Our quotation is open for acceptance for a period of 30 days

We can enter into collateral warranties in favour of the employer, funder and tenant, provided that the Construction Industry Council (CIC) collateral warranty is used. Any bespoke warranties have to be drafted on an equitable basis, acceptable to our professional indemnity (PI) insurers and will be subject to a management fee of minimum £1000.

We thank you for the opportunity to tender for this project and trust we have interpreted your requirements correctly. If you have any further queries or require any additional information, please do not hesitate to contact me.

Acceptance

Should you wish to instruct us to proceed with the work, please can you provide a completed and signed copy of this letter appointing us, as an instruction and e-mail it to us by return. We look forward to receiving your reply and appropriate arrangements will then be made to carry out our scope of services.

Yours sincerely



Grant Bellis MEng (Hons), CEng, MICE
Associate – Bridges

For and on behalf of Mason Clark Associates Ltd

Enclosed. Mason Clark Associates Terms and Conditions

I hereby instruct Mason Clark Associates Ltd, to proceed with their quotation in accordance with the above details quotation reference E9510-H-LT-002-R1, and will follow up this instruction to proceed with a formal order number.

Signed

Date

Name

Position

For and on behalf of : -

Company
(Whom will be paying MCA invoices)

Address

.....

.....

It is intended that this document form the basis of an agreement for the appointment of Mason Clark Associates Ltd.

1. Basis of contract

- 1.1 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.2 The Contract shall come into existence when we issue a confirmation of instructions and remain in place until such time as a formal appointment document is agreed and executed.
- 1.3 The Contract cannot be altered or varied except in writing. No variation whether by conduct, orally or otherwise shall be effective unless signed by the parties.

2. Entire agreement

- 2.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 2.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

3. Introduction

- 3.1 In general, our fees are structured to suit the particular professional service we provide, i.e., including without limitation, Civil/Structural Engineering, Project Management, Building Surveying, Quantity Surveying and Principal Designer (Services). These fees may be based either on time spent, an agreed percentage of construction cost or a fixed fee. This will incorporate all aspects of our appointment including inspections of property, meetings, time spent on the telephone, travel time, dealing with correspondence and documents, entering into research, in order to deal with your instructions. In these Terms and Conditions "Deliverables" means any drawing, calculations, reports or other information in whatever way recorded.

- 3.2 It is our intention that our fee be fair and reasonable to both parties, to provide you with the highest quality of advice and services, handling your instructions with professional skill, care and attention. Our objective is to build a long-term relationship with you. We take the view that it is appropriate to provide you at the outset with a description of the terms on which we provide all our services.

- 3.3 These are the terms which, subject to any specific terms set out in our letter of engagement with you, apply to all services carried out by Mason Clark Associates Ltd unless otherwise agreed in writing by a director of Mason Clark Associates Ltd. In these terms of business "we", "us" and "our" refer to Mason Clark Associates Ltd and "you" and "your" refer to our Client.

- 3.4 The Parties agree and acknowledge that we shall not have any liability or obligation and give no duty or care in respect of your customers (except when it has been agreed between the parties in advance in writing). We shall have no direct contractual link or duty of care with your customer, and you agree that you will procure that your customers are aware of the provisions in these Conditions and shall ensure that your customers are happy to comply with and shall be bound by these Terms and Conditions in full.

- 3.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Services that is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions or any other information and or instructions that are relevant to the supply of the Services. We agree to provide our Services within a reasonable time.

- 3.6 In providing the Services, we shall:

- 3.6.1 co-operate with you in all matters relating to the Services, and comply with your instructions;
- 3.6.2 perform the Services with reasonable care, skill and diligence in accordance with good practice in our industry, profession or trade.

4. Interpretation

- 4.1 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 4.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 4.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 4.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 4.5 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 [and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:
- 4.5.1 another person (or its nominee) by way of security or in connection with the taking of security; or
- 4.5.2 its nominee.

- For the purposes of determining whether a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

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

- 4.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 4.8 This Agreement shall be binding on, and endure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

- 4.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 4.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

- 4.11 A reference to writing or written includes fax and email.

- 4.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

- 4.13 References to a document in agreed form are to that document in the form agreed by the parties and initialed by them or on their behalf for identification.

- 4.14 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

- 4.15 A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

- 4.16 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

- 4.17 Where any statement is qualified by the expression so far as Party 1 is aware or to Party 1's knowledge (or any similar expression), that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.

- 4.18 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

5. Fixed Fees

- 5.1 Where works can be precisely defined, we are pleased to quote a fixed fee, exclusive of disbursements and VAT. Where a fixed fee is agreed, this will specifically exclude works outside of the agreed scope of services and unless otherwise agreed, these will be charged on a time spent basis.

- 5.2 Our fees are calculated taking into account that our charges are to be fair and reasonable having regard to all the circumstances. As time and expertise are the core elements of our services, our charges are calculated by reference to the hourly rates of the members of staff concerned. Other factors may also be taken into account, notably complexity, value or urgency, and fees amended accordingly. Hourly rates vary according to the level of seniority of each member of staff. Your instruction will be carried out at the level of seniority appropriate to providing an efficient and economic service.

- 5.3 If we provide a fee estimate to work, it is our indication of our likely fees for carrying out the work concerned bases on our information at the time the estimate is given. An estimate is subject to revision and does not amount to a contractual commitment on our part to carry out the work for that fee. We will advise you promptly if it becomes apparent that our fees are likely to vary from an estimate that we have given.

- 5.4 If we provide a fee quotation, it is a proposal by us to carry out specified work for a stated fee. If you accept that quotation it then becomes a contractual obligation commitment including these terms and conditions. If we carry out work in excess of the work which was specified, our fees for that additional work will be charged at our current hourly rates or such other rates or sums as shall be agreed. We shall also be entitled to charge additional fees on the same basis for additional work arising from circumstances which were not reasonably foreseeable by us when we provide our quotation.

- 5.5 Where we are acting on behalf of more than one client then all clients are liable jointly and severally to us.

- 5.6 For a variety of reasons some engagements are not completed. In these circumstances, we will charge for the work done (either on the basis of the hours worked or as a proportion of the overall fee relative to the stage of the

commission completed unless otherwise agreed by us.

- 5.7 We shall invoice for payment and the due date for payment shall be 28 days from the date of invoice or earlier if stated in our quotation for services. The final date for payment shall be 35 days after the date of invoice. If you intend to pay less than the sum invoiced, you must advise us within five days before the final date for payment. Time of payment is of the essence.

- 5.8 If you fail to make any payment due to us under the Contract by the due date for payment (due date), then you shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount. In addition to our other remedies in the event that any sum in excess of £5000 is outstanding at anytime we reserve the right to terminate our contract with you on seven days notice in writing and to recover from you as a debt the sum outstanding, interest and loss of profit on the element of unperformed services.

- 5.9 The parties agree that the remedy for late payment in clause 5.8 is another substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

6. Suspension

- 6.1 In the event that you fail to pay any sum due by the final date for payment and have not served a valid payless notice we shall without prejudice to any other right or remedy we have, have the right to suspend provision of the services on 7 days notice of intention to suspend.

7. Hourly Charges

- 7.1 Hourly rates will be as stated in our fee quotation. Any other works will be based on the following hourly charges: -

- Expert witness £195 for Directors & Consultants, £165.00 for Associates
- Directors: £90 - £120
- Associates: £75 - £90
- Principal £65 - £75
- Senior £65
- Qualified Personnel: £50 - £65
- Graduates £40 - £50
- Senior Technician £55
- Technicians: £40 - £55

- 7.2 Our hourly rate charges are reviewed at the beginning of April of each successive year. All the above fees are exclusive of VAT and disbursements.

8. Disbursements

- 8.1 Disbursements are costs that we incur on your behalf and these include buried services searches, specialist testing, equipment hire, photography, printing, photocopying, binding, postage, travel and subsistence and cost of couriers, where specifically agreed. Generally, our disbursements include an associated administration charge on items such as printing and binding etc.

- 8.2 We will request the Client to provide cheques to accompany Planning & Building Regulations Applications in respect of any Local Authority's fees

- 8.3 Our fees are quoted exclusive to Value Added Tax which will be added at the applicable rate to all invoices.

9. Specialist Consultants

- 9.1 Generally, we would ask our Client to appoint specialist consultants directly in order to provide a separate contractual relationship. Where Mason Clark Associates are required to co-ordinate specialist consultants and this is over and above our initial instruction, we would wish to charge an additional fee on a time-spent basis.

- 9.2 Where we are asked to provide a specialist consultant as part of our service, our charges will include additional on costs for appointing, managing and financing these persons direct.

10. General Terms and Conditions

- 10.1 Either party may terminate the appointment by giving seven days written notice. In this instance, we reserve the right to invoice for services provided on a time-spent basis. Fees will be charged in general on a monthly basis. Where fees are quoted based on a specified stage being reached, we will invoice monthly for fees on account towards that sum.

- 10.2 Fee quotation is open for acceptance for a 30 day period after which Mason Clark Associates reserves the right to withdraw or revise the quotation.

11. Confidentiality and Conflicts

- 11.1 Our directors and staff are under an obligation not to disclose to third parties confidential information relating to our Clients and their business except in the proper course of their duties or as required by law.

- 11.2 The reports, documents and information and advice we provide to you during the work concerned are given in confidence solely for the purpose of the work concerned and are provided on the condition that you undertake not to disclose these, or any other confidential information made available to you by us during the course of work, to any third party without prior consent and any disclosure is subject to the payment of our fees.

- 11.3 An actual or potential conflict between your interests and the interests of our Clients may arise during the course of a matter. If this situation arises we will discuss the position with you promptly and agree the appropriate course of action.

- 11.4 A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

- 11.5 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.6.

- 11.6 Each party may disclose the other party's confidential information:

- 11.6.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

- 11.6.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 11.7 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

12. Data Protection Act 2018 and GDPR

- 12.1 Both parties will comply with all applicable requirements of the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679.

- 12.2 In acting for you we may have access to personal data of which you are the data controller (both "personal data" and "data controller" being as defined in the Data Protection Act 2018 or any modification replacement or amendment). In having access to and processing such personal data we shall be acting as your data processor and will only use the personal data in connection with providing you with our Services. We confirm that we have in place and are maintaining appropriate technical and organisational measures to protect and authorise unlawful processing of personal data and to prevent accidental loss and destruction of or damage to the personal data, as required by the terms of the Seventh Data Protection Principles.

- 12.3 We will use personal data which we hold about you or individuals within your business for the purposes of contacting you about other services we may offer from time to time.

- 12.4 You will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to us for the duration and purposes of this agreement.

13. Client Documents

- 13.1 If we have custody of any documents belonging to you, those documents will be retained during the course of our appointment (unless their return is requested) and returned to you at the end of our appointment.

- 13.2 Our working materials, all correspondence between you and us and other material generated by us in that work will remain our property.

- 13.3 We retain all copyright and other intellectual property rights in all reports, written advice and other materials provided by us to you.

14. File Retention

- 14.1 It is our normal practise to retain documents relating to services provided for ten years after the end of the relevant engagement. Thereafter, and subject to legislation, the documents may be destroyed by us without reference to you.

- 14.2 We shall, in the event of non-payment of our fees, outlays and disbursements, be entitled to exercise a lien over any documents belonging to you which may be in our possession.

15. Services Improvement and Complaints

- 15.1 If at any time you would like to discuss with us how our services to you could be improved or if you are dissatisfied with the service you are receiving from us, you may take the issue up with the Client Contact Director responsible for your work if you prefer an alternative route please contact our Managing Director, for the complaints procedure.

- 15.2 We undertake to consider any complaint fairly, carefully and promptly and to provide you with a written response or such other form as may be agreed. If you have been given less than satisfactory service by us we undertake subject to clause 17 to do everything reasonable to put it right and if you are not satisfied you may take matters up with the

- relevant professional body, a copy of our procedure is available on request.
- 16. Insolvency or incapacity**
- 16.1 If you become subject to any of the events listed below, or we reasonably believe that you are about to become subject to any of them and notify you accordingly, then, without limiting any other right or remedy available to us, we may cancel or suspend all further deliveries under the Contract or under any other contract between you and us without incurring any liability to you, and all outstanding sums in respect of Services delivered to you shall become immediately due.
- 16.2 For the purposes of this clause, the relevant events are:
- 16.2.1 you suspend, or threaten to suspend, payment of your debts, or are unable to pay your debts as they fall due or admit inability to pay your debts, or (being a company) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 16.2.2 you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors other than (where you are a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of you with one or more other companies or your solvent reconstruction;
- 16.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up, other than for the sole purpose of a scheme for your solvent amalgamation with one or more other companies or your solvent reconstruction;
- 16.2.4 (being an individual) you are the subject of a bankruptcy petition or order;
- 16.2.5 a creditor or encumbrancer of yours attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 16.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over you;
- 16.2.7 (being a company) a floating charge holder over your assets has become entitled to appoint or has appointed an administrative receiver;
- 16.2.8 a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;
- 16.2.9 any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 1 to clause 8 (inclusive);
- 16.2.10 you suspend, threaten to suspend, cease or threaten to cease to carry on all or substantially the whole of its business;
- 16.2.11 your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 16.2.12 (being an individual) you die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing your own affairs or becomes a patient under any mental health legislation.
- 16.3 A Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 17. Limitation of liability**
- 17.1 Nothing in these Conditions shall limit or exclude our liability for:
- 17.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 17.1.2 fraud or fraudulent misrepresentation;
- 17.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or Consumer Rights Act 2015;
- 17.1.4 defective products under the Consumer Rights Act 2015;
- 17.1.5 any matter in respect of which it would be unlawful for us to exclude or restrict liability; or
- 17.1.6 wilful default.
- 17.2 Subject to 17.1.1 to 17.1.6 above:
- 17.2.1 our total aggregate liability to you arising out of or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, without limitation, shall not exceed an amount equal to the total fees paid and payable for the Services and we shall not be liable for any loss or damage arising from any delay in performance or delivery of the Services howsoever caused and
- 17.2.2 without prejudice to the generality of the foregoing excluded from our liability is any liability in respect of Advice/Design in any fire safety to the structure and/or any liability whatsoever in delivery of our services in respect of any losses whether direct or indirect or in any way connected to the combustibility of any composite panels and/or external wall systems and any associated core/filler insulation material and/or ancillary fixing systems.
- 17.2.3 we shall not be liable for that part of any claim including but not limited to making or walking watch costs, loss of profits, loss of use, loss of rent, loss of production, loss of contracts, liquidated damages or for any cost of decamping or rehousing, or bodily injury
- 18. Force majeure**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, currency fluctuations, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics, pandemic, covid-19 or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 19. General**
- 19.1 Assignment and subcontracting**
- 19.1.1 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.1.2 You may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without our prior written consent.
- 19.2 Notices**
- 19.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier or e-mail.
- 19.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- 19.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 19.2.4 Any written notice by you to us may be delivered in person, by letter to Church House, 44 Newland Park, Hull, HU5 2DW and sent by email to consultants@masonclark.co.uk. Any written notice by us to you may be similarly delivered or sent to your address which was last notified by you to us. All such notices shall be deemed to have been received at the times when in the ordinary course they would have been received.
- 19.3 Severance**
- 19.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) 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 Contract shall not be affected.
- 19.3.2 If any invalid, unenforceable or illegal provision of the Contract 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.
- 19.3.3 Waiver. A waiver of any right or remedy under the Contract 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 Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further 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.
- 19.4 Third party rights**
- A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 19.5 Intellectual property rights**
- 19.5.1 In respect of the Services and any goods that are transferred to you as part of the Services under this Contract, including without limitation the Deliverables or any part of them, we warrant that we have full clear and unencumbered title to all such items, and that at the date of delivery of such items to you, we will have full and unrestricted rights to sell and transfer all such items to you.
- 19.5.2 We licence you a right to use all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 19.5.3 We shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 19.5.4 Where plans, designs and intellectual solutions are prepared the copyright will remain the ownership of Mason Clark Associates Ltd. All digital information is the sole property of Mason Clark Associates Ltd.
- 19.5.5 We will retain the intellectual property rights in any precedents or style documents issued or used by us in the course of our appointment by the Client. The retention of such intellectual property rights shall include the right to issue or use precedents or style documents for any other purpose in connection with our business.
- 19.5.6 We shall, promptly at your request, do (or procure to be done) all such further acts and things and the execution of all such other documents as you may from time to time require for the purpose of securing for you the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to you in accordance with this clause. Your Materials are your exclusive property.
- 19.5.7 Subject to payment of any outstanding invoices we will at your request issue to you copies of final construction issue drawings either in hard copy or electronic form as you require.
- 19.6 Insurance**
- For the duration of the Contract and for a period of 6 years thereafter, we shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on your request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 19.7 Governing law and jurisdiction**
- Either party may refer any dispute arising under this Agreement for Adjudication in accordance with TeCSA Adjudication Procedure at any time.
- The Contract, 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 non-exclusive jurisdiction of the courts of England and Wales.
- 19.8 Dispute resolution procedure**
- 19.8.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (Dispute), then the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Managing Director of [Party 1] and Managing Director of [Party 2] shall attempt in good faith to resolve the Dispute;
- (b) if the Managing Director of [Party 1] and Managing Director of [Party 2] are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Director of [Party 1] and Director of [Party 2] who shall attempt in good faith to resolve it; and
- (c) if the Director of [Party 1] and Director of [Party 2] are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 28 days after the date of the ADR notice.
- 19.8.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 19, which clause shall apply at all times.
- 19.9 Compliance with relevant requirements**
- 19.9.1 We shall:
- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) comply with your Ethics, Anti-bribery and Anti-corruption Policies as you may update them from time to time (Relevant Policies);
- (d) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 19.9.1(b), and will enforce them where appropriate;
- (e) promptly report to you any request or demand for any undue financial or other advantage of any kind received by you in connection with the performance of this Agreement;
- (f) immediately notify you (in writing) if a foreign public official becomes an officer or employee of us or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Agreement);
- (g) within two months of the date of this Agreement, and annually thereafter, certify to you in writing signed by an officer of us, compliance with this clause 19.9 by us and all persons associated with it under clause 19.9.2. We shall provide such supporting evidence of compliance as you may reasonably request.
- 19.9.2 We shall ensure that any person associated with us who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on us in this clause 19.9 (Relevant Terms). We shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to you for any breach by such persons of any of the Relevant Terms.
- 19.9.3 Breach of this clause 19.9 shall be deemed a material breach under clause 16.
- 19.10 Rights and Remedies**
- Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 19.11 Third Party Rights**
- 19.11.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 19.11.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.
- 19.12 Consumer Protection**
- If you are a consumer, you have the right to cancel this Contract within 14 days and we are required to provide you with certain information which cancellation rights and information are set out in the documents attached to these conditions.