

Terms & Conditions

Unless otherwise agreed, these terms of business apply to any future instructions from you.

Your continued instructions will amount to your acceptance of these terms and conditions of business.

Any fee proposal/quotations we provide you with remain open for a period of three months, after which we reserve the right to amend them to reflect current market conditions.

Consultancy Services

1.0 360 Design Solutions Ltd [hereinafter referred to as 360DS] shall:

1.1 Exercise reasonable skill and care in performing the services in accordance with the normal standards of the consultant's profession.

1.2 As consultants we are registered with the Royal Institute Chartered Surveyors and Chartered Institute Building Services Engineering.

We are required to practice in accordance with the professional codes of conduct of these institutions.

1.3 In addition this practice being registered as Chartered Surveyors operates and upholds the quality management procedures set out by the RICS.

1.4 As Surveyors we act as the Client's representative and act fairly when dealing between Client and any other party.

1.5 Provide advice on compliance with statutory requirements.

1.6 Co-operate with other persons appointed, co-ordinate and integrate their work and pass relevant information to them.

1.7 Make no material alteration to the Services or the approved design without the consent of the Client, except in an emergency or where required to do so by statutory bodies.

1.8 Advise on progress in the performance of the Services and of any issue that may affect the programme, the cost, or quality of the project;

1.9 Subject to matters beyond 360DS's reasonable control, 360DS shall use reasonable endeavours to perform the services in accordance with an agreed programme and any changes to the services or programme agreed with 360DS from time to time. The Consultants cannot

guarantee that any programme will be fully adhered to where external forces, consultants, Local Authority, Regulatory Bodies, Specialists, Manufacturers etc. are required to feed into this programme.

Target and Cost

2.0 The Consultants cannot guarantee that any target or budget cost, or the timetable will be met, particularly where approvals from other parties, such as planning permission, building regulation approval, listed building and conservation consent are required, nor the performance, work or the products of others.

Clients Responsibilities

3.0 The Client shall:

3.1 Advise the Consultant of the requirements and of any subsequent changes required;

3.2 Shall supply to 360DS in a timely fashion, without charge, all necessary and relevant information in the possession of the Client or any of the Client's Agents, consultants or contractors

3.3 Give decisions and all necessary instructions, consents or approvals necessary for the performance of the Services.

3.4 We normally ask for staged sign offs during the design stage of the project, at least.

3.5 Have authority to issue instructions to the Consultants, subject to the Consultants right of reasonable objection.

3.6 The Consultants shall rely on such information provided by the Client as above.

360DS shall not be liable for the consequences of any delays to the services arising from any failure by the Client to comply with these obligations.

3.7 Appoint and pay any consultants, or contractors required under separate agreements.

Unless they are appointed as part of a Framework Agreement which we are leading, in which case Clients will be required to pay fees within 30 days [the statutory terms] of the Framework Agreement to ensure that onward payment of consultants fees can be implemented.

3.8 Any delay in payment of fees can and is likely to result in a delay to the flow of information on projects. We reserve the right not to move onto a subsequent stage of a project where fees for previous work stages are outstanding.

3.9 Clients should not deal with the contractor or contractors directly or interfere with the Consultants duties or actions under the building contract, where a Building Contract is in place and we are the Contract Administrator.

3.10 Hold the contractor or contractors responsible for the proper carrying out and completion of construction works and for health and safety provisions on the site. It is expected that contractors/builders appointed will be competent members of their profession.

3.11 Where we are working with Sub consultants under a Framework agreement they will be required to provide us with copies of their Professional Indemnity Insurance cover and other insurances on an annual basis to comply with the terms of the Framework agreement.

Copyright and Licence

4.0 The Consultant owns the copyright in the drawings and documents (including material in electronic format) produced in performing the Services, this shall remain vested in 360DS

4.1 The Client shall have a licence to copy and use the drawings only for purposes related to this Project providing that all fees and/or other amounts due are paid in full.

The Client will only have a licence to use drawings for their intended purpose, i.e. drawings prepared for a Planning Application would only be valid for this purpose and should not be used for construction, as it will be necessary to add additional information to the drawings for the purposes of Building Regulation Approval, other Regulatory Approvals and Construction information.

Drawings produced for one Client are not transferable to another Client as our Appointment would rest with the original client.

4.2 In the event of the Client being in default of payment of any fees or other amounts due, 360DS will revoke the licence herein granted. 360DS shall not be liable for the use by any person of such drawings or other documents for any purpose other than that for which the same were provided by 360DS.

4.3 Neither party shall disclose to any other person any private or confidential information concerning the business of the other party unless so authorised by the other party.

Liability and Insurance

5.0 We are required to set the limit of our liability to you in contract, tort or statutory duty for any one claim or series of claims arising from one event on any project by the Consultants Registration Board.

5.1 Notwithstanding anything to the contrary the total liability of 360DS under or in connection with this appointment whether in contract or in tort or in negligence or breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed the sum of £5m.

5.2 Subject to clause 5.1 but not withstanding otherwise anything to the contrary such liability of 360DS for any claim or claims shall further be limited to such sum as it would be just and equitable for 360DS to pay having regard to the extent of 360DS responsibility for the loss or

damage suffered as a result of the occurrence or series of occurrences in question (“the loss and damage”) and on assumptions that:-

- i. All other consultants and all other contractors and sub-contractors appointed in connection with the project in question shall have provided contractual undertakings on terms no less onerous than those set out to the client in respect of the carrying out of their obligations.
- ii. There are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party referred to in this clause and any such other party who is responsible to any extent for the loss and damage is contractually liable to the Client for the loss and damage; and
- iii. All such other Consultants and all such contractors and sub-contractors have paid to the Client such proportion of the loss and damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.

5.3 For small works contracts (below £1m contract value), such liability of 360DS for any claim or claims shall further be limited to an amount apportioned to the amount of the target cost for the building work relating to consultants elements of the Design, and be superseded by the tendered agreed and signed contract sum once the contract for Building Work is signed between the Client and Contractor.

5.4 For larger contracts in excess of £1m construction value, such liability for any claim or claims shall be limited to an amount apportioned to the Consultants elements of the Design, and liability for all other elements should be set against the Designer associated with that element.

5.5 No action or proceedings whether in contract or in tort in negligence or for breach of statutory duty or otherwise shall be commenced against the consultant after expiry of six years where instigated as a contract and twelve years where the contract is signed in tort, which shall commence from the date of the offer letter.

5.6 Where the client has not issued a contract for signature, our statutory duty shall be limited to six years.

5.7 The consultants and any specialist advisers shall maintain professional indemnity insurance in an amount sufficient to cover the Consultants liabilities hereunder, and public liability insurance provided always that such insurance is available at commercially reasonable rates and terms.

5.8 Save in respect of death and personal injury the Client shall look only to 360DS (and not to any individual) for redress where the Client considers that there has been any breach of 360DSs duties. The Client agrees not to pursue any claims in contract, tort, or statute (including negligence) against any individual as a result of carrying out its obligations at any time whether named expressly or not.

5.9 “Individual” shall mean an employee or member of 360DS. Any such employee or member includes any Staff member, Principal, Director or Consultant of 360DS.

5.10 We shall maintain professional indemnity insurance cover for this amount until the expiry of our liability. We should be pleased to provide documentary evidence of our professional indemnity insurance, if required.

5.11 Professional liability will relate to consultancy Design Items, any liability for other design elements will be carried by other appointed Consultants, or Specialist manufacturers and the like.

Target Cost of Construction

6.0 The Target Cost for a new build based on the floor area of a property of this size /type set at current cost/m² standard construction basis will be identified in the fee letter if applicable/required [where we are appointed to provide these services], or Construction Cost advised by the Quantity Surveyor, or Building Contract Sum.

Limits of Liability

7.0 360DS is not responsible under this agreement or otherwise for advising on matters wholly, partly, directly or indirectly arise out of or result from asbestos or other deleterious material (including without limitation the costs of testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any products or waste that contain such deleterious materials).

7.1 360DS is not responsible under this agreement or otherwise for designing or advising on or otherwise taking measures to prevent or mitigate the effect of any act of terrorism or any action that may be taken in controlling preventing, suppressing or any way relating to an act of terrorism.

Quality Management

8.0 As a registered RICS Chartered Surveyors practice, we are required to follow the RICS Quality Management procedures, this gives you the comfort that all dealings with this practice will be in accordance with the Professional Standards and Codes of our governing bodies and to stringent Quality Management procedures.

Local Authority Dealings

9.0 The Consultant cannot guarantee that, Planning, Listed Building, Conservation Area Consent/ approval will be achieved on any project.

9.1 There are occasions where a client's specific requirements are at variance with planning or design policy in a particular area, and subsequent amendments have been necessary following the submission of the scheme to the Local Authority, or indeed another application may need to be submitted.

9.2 We would use our best endeavours to avoid this at design stage, and would try to advise when difficulties could be anticipated. We do, however, reserve the right to charge for our time amending or redrawing the proposal should it ultimately prove a necessity.

9.3 We would draw your attention to the fact that Local Authorities now request an increasing amount of supporting documents to be submitted with Planning Applications, the exact extent of this information is subject to both National and Local requirements; but is also subject to the demands of Planning Authorities and officers. What one Local Authority may demand is not necessarily what an adjacent authority would equally demand.

The consultants cannot therefore guarantee that all supporting documents or information requirements will be known at the time an application is submitted.

9.4 The consultants will liaise with other consultants to assist in obtaining supporting documentation, but cannot be held responsible for the time and extent that gathering such information may entail. The Client should note that the Planning Authority will not register a planning application until all supporting documentation is received.

9.5 Where it becomes necessary to Appeal a Planning or Listed Building Consent Decision we will advise you of the implications and would need to charge for the time to prepare any appeal and the supporting documents and statements necessary to submit the Appeal.

This may include recommending the appointment of a Planning Consultant to deal with specific Planning Policy issues, there are projects where policy issues would warrant this additional service.

Building Regulation and other Statutory Approvals

10.0 The consultants cannot guarantee that Building Regulation Approval will be achieved on any project; it should be noted that additional costs may be incurred. This practice has experience constructing buildings in many sectors and working with and anticipating the likely difficulties a project may attract. However, the Building Regulations and Other Statutory regulations are open to interpretation by each officer. Policy and regulation changes can affect the final outcome of a project, as well as the constraints of the Building, Environment, Site Conditions, Services, Other Consultants input.

10.1 It should be noted where dealing with the refurbishment, extension and alteration of existing buildings, that there can be many factors which can develop during the course of a project which would require additional detailing, or changes to the specification and detailing initially envisaged. This can be as a result of many factors such as cost, specification, manufacturer's requirements, LA requirements, site conditions, unforeseen elements, building condition or construction uncovered during the works, and interpretation of the regulations.

Fees

11.0 The consultant's fees shall be calculated and charged as set out in the offer letter or quotation.

11.1 The Client shall pay 360DS the fee stated in the offer letter /Fee Schedule/ Appointment Agreement for the performance of the services.

11.2 The Client shall pay the consultants accounts, including any additional fees, expenses, disbursements or VAT in accordance with payment terms stated in the offer letter / Invoice issued.

11.3 Payment terms: Payment shall become due on submission of 360DSs invoice thereafter and the final date for payment shall be:-

- i. 7 days for contracts less than £250,000 in construction value.
- ii. 14 days for contracts of less than £500,000.
- iii. and within 28 days for contracts in excess of £500,000 in value.
- iv. Calculated from the date of issue of invoices for work (not receipt).
- v. The payment terms will be clearly stated on any invoice.

11.4 We will not submit Planning and Listed Building Applications until the fee for Stage 3 of the project has been paid in full.

We will not submit applications for Building Regulation approval until the fee for Stage 4A of the project has been paid in full.

We will not release Building Regulation Plan Check Approval and/or Construction issue drawings until the fee for this stage of the project has been paid.

We will not release any Reports or other Schedules, Specifications or Documents on any project until the relevant fee associated with the production of the report is paid in full. Where reports are issued they will be heavily edited as DRAFT format.

11.5 The Client is responsible for the separate payment of Consultant, Specialist, Local Authority/Approved Inspector fees for each project. We will advise you of the fee at the appropriate stage of the project.

Late Payment Interest

11.6 Payment is due on delivery of our invoice to you.

If the bill is not paid within the period stated on the invoice 30 days from delivery date. Interest shall be added to all amounts remaining unpaid thereafter and shall be calculated in accordance with the Late Payment Commercial Debts (interest) Act 1998 as amended and supplemented by the Late payment of Commercial Debts Regulations 2002 and the relevant reference rate plus the statutory rate of interest.

11.7 We reserve the right to charge [and will charge] interest on ALL overdue amounts because we are required to pay VAT and Framework charges on all Sales, as well as expenses and overheads on an Accounts basis from point of sale.

11.8 We would also reserve the right to place any debt into the hands of a debt recovery agency following failure to pay within the specified period.

11.9 The client may not withhold payment after the final due date for payment of any sum unless the Client gives not later than seven days' notice before such final date a notice specifying the amount proposed to be withheld and the grounds for withholding payment or if there is more than one ground each ground and the amount attributed to it.

11.10 Where a Fee is calculated on a percentage basis, the percentage or percentages stated in the offer Letter or Quotation shall be applied to the final cost of the building work, excluding VAT, fees and any claims made by or against the contractor or contractors. The percentages will be applied to the current cost estimate, or accepted tender, or the contract sum until the final contract sum has been ascertained.

11.11 The Consultants reserves the right not to continue with Services for the next stage of the project until the fee for the previous stage of the project has been paid by the Client. The consultant also reserves the right not to proceed with work on a separate project, where the fees/or proportion of same for another project with the same Client remain unpaid.

Additional Work

12.0 If 360DS has to carry out additional work and/or suffers delay or disruption in the performance of the Services for reasons beyond their reasonable control the Client shall make an additional payment to 360DS in respect of the additional work carried out and the additional resources employed and/or the delay and disruption suffered.

12.1 Additional fees shall be payable if the consultant for reasons beyond the consultant's control, is involved in extra work or incurs extra expense, including requests by clients to amend layouts, details and design.

Any additional payment shall be calculated on a time basis in accordance with either a supplied schedule of rates or shall be accompanied by an analysis report in accordance with the hourly rates set out in the offer letter issued prior to commencement.

12.2 The Consultants shall be entitled to payment of any part of the fee for services satisfactorily performed together with any other amounts due at the date of any notice suspending or ending performance of any or all of the Services.

VAT

13.0 All sums due in connection with the appointment are exclusive of value added tax, the amount of which shall be paid by the Client to be at the rate and in the manner prescribed by law.

13.1 VAT will be charged at the standard rate at the time of invoice, and is applicable to all our fees.

Invoicing

14.0 We will submit an invoice on account for the fees and any expenses and disbursements due [plus VAT] monthly, or at completion of each work stage whichever is sooner.

Expenses

15.0 The Client shall reimburse expenses and disbursements, these will be itemised on Invoices.

15.1 Printing: We include within our fee all reasonable A4 and A3 printing costs.

Large volume A4 and A3 printing will be chargeable.

Copies of any A2 and Above Colour prints will be charged at cost +5% handling fee.

Copies of any A1/A0 prints will be chargeable at cost + 5% handling fee.

All prints at A2 and above and any specialist printing are carried out by an outsourced printing company.

15.2 We include travelling costs up to a 20 mile radius of this office, where a specific no of visits areas stated in the letter of appointment.

Mileage will be charged for all travel and additional Meetings, Site Visits, over and above those stated in the initial appointment letter.

Mileage over and above the fee agreement we charge a mileage rate of 0.50p per mile. Such mileage rate will change if fuel costs/published fuel rates rise beyond this rate.

15.3 Any additional expenses incurred will be quoted at the time they are instructed, required or raised, such as OS maps, historic mapping, sewer mapping, promotional material, brochure's, visual presentation images, mounted presentations, models etc.

Expenses will be charged at net cost plus a handling charge of 10% to cover administration to obtain documents.

Disbursements

16.0 Our fee excludes disbursements.

16.1 Any disbursements made on your behalf, such as payments to the local authority for planning submissions or Building Regulations submission/inspection fees, should we pay these on your behalf, they will be charged at net cost plus a handling charge of 10%.

16.2 We do not include in our fee proposals the fees of Local Authority submission/inspection fees, and such like, these are to be paid by the Client.

16.3 We also do not include for the fees of any specialist advisers and reports i.e. arboricultural reports, protected species survey, energy efficiency calculations, EPC certificates, Pressure testing. SAP calculations, SBEM calculations and such like; which may be requested by the local authority during the application process. We will advise you of the requirements for these during the scheme design and detail design stages of the project.

Records

17.0 The consultants shall keep and make available on request records of any expenses and disbursements to be reimbursed at net cost and/or of time spent on Services charged on a time basis.

17.1 If you require time records to be kept on any projects, this needs to be advised at the outset of a project. We use an hours tracker application to record any time records where this service is requested.

Email Policy

18.0 Unless you withdraw your consent we will communicate with you and others, where appropriate, by email, but cannot be responsible for the security of correspondence sent by these means.

It is your responsibility to check that an incoming email and attachments (if any) do not contain viruses.

Storage of Paper and Documents

19.0 After completing your project we are entitled to keep all your papers and documents whilst there is money owing to us for our charges and expenses. We will once all charges are paid send you the originals of any important documents for safe keeping. We will keep only electronic copies of any drawings and documents after this time.

19.1 Clients should keep any Planning, Listed Building and Building Regulation Approval documents and Completion certificates safely as these will be required as part of the sale of any property/land for which they relate.

19.2 This office operates a paperless policy. We will only keep paper copies of documents whilst the stage of the project to which they relate is in progress. After this, documents are stored electronically until all fees are paid and the limit of our liability has expired.

19.3 We are required by the RICS to keep drawings and documents for two years after completion of the Contract Limitation, which is 6 years where a contract is executed under standard terms, and twelve years where a contract is executed as a deed. After this period has expired we have the right to destroy them.

Should you request copies of any documents a charge will be made for any retrieval from archive, printing and copying.

Assignment of the Agreement

20.0 Neither the Client or the Consultant shall assign or transfer any benefits or obligation conferred by the Appointment of 360DS without the prior written consent of the other. Such consent shall not be unreasonably withheld or delayed.

20.1 Save in respect of the benefits or rights conferred on individuals pursuant to confer or any third party any benefit or any right enforce anything these terms under the Contracts (Rights of Third Parties Act 1999.

20.2 Unless any part or all of the Agreement is transferred with consent to another person, nothing in this Agreement shall confer or purport to confer on any third party, and benefit or right to enforce any term of this Agreement.

Suspending or Ending the Agreement

21.0 The Client or the Consultant can suspend or end performance of any or all of the Services by giving at least 7 days' written notice of the intention and stating the reason for doing so.

Termination

21.1 If the reason for the notice arises from a default and the recipient does not remedy the matter, the agreement will end on expiry of the notice period.

21.2 Where Services are suspended by the Client and not resumed within 3 months the Consultant shall have the right to treat performance of the Services affected as ended on giving written notice to the Client.

21.3 Where services are suspended or terminated, we will be entitled to keep any papers, drawings, and other documents, whilst there is money owing to us for our fees and expenses.

21.4 If at any stage you do not wish us to continue doing work or suspend working for a period of time, you must tell us clearly in writing.

21.5 If we decide to withhold services from you; for example, if you do not pay an interim invoice or comply with a request for payment on account, we will tell you the reason and give you notice in writing (refer to clause 8.3).

21.6 360DS/The Client may terminate the appointment in the event of breach of these terms by the other party or in the event of insolvency by providing two weeks written notice.

In these terms 'insolvency' shall mean either party becoming bankrupt, going into liquidation (either voluntarily or compulsory except as part of an amalgamation), being dissolved

compounding with its creditors or having a receiver, administrative receiver appointed of the whole or part of its assets.

21.7 If circumstances arise for which 360DS are not responsible and which 360DS considers make it irresponsible for them to perform any part of the service, they shall be entitled to terminate the appointment by two weeks' notice.

21.8 In the event of any termination the Client shall pay 360DS a fair and reasonable amount on account of the fees due under clause section 9 commensurate with the Services performed to the date of such termination and any outstanding expenses.

21.9 Termination of 360DS's appointment shall not prejudice or affect the accrued rights or claims of either party.

Dispute Resolution

22.0 In the event of a dispute or difference arising under this Appointment, this should be in writing.

We hope we shall be able to settle the matter by negotiation or mediation. Alternatively, either of us can start court proceedings to settle the dispute at any time.

22.1 Or either of us can have disputes decided within 21 days by an adjudicator appointed under the Consumer Adjudication scheme.

22.2 The parties shall attempt in good faith to settle any dispute of mediation.

22.3 Where the appointment of 360DS is deemed to be a construction contract within the meaning of the Housing Grants, Construction and Regeneration Act 1996 either party may refer any dispute arising to adjudication in accordance with the Construction Industry Council Model Adjudication Procedure.

Consultants Continuing Liability

23.0 Consultants are subject to the disciplinary sanction of the Consultants Registration Board in relation to unacceptable professional conduct or serious professional incompetence.

23.1 The Consultants shall be liable for any consequences of failing to keep to this Agreement for six years from completion of the Services.

Notice in Writing

24.0 Any notice given in connection with 360DSs appointment shall be in writing and given by sending the same by first class letter to the Client or 360DS at the address shown.

Collateral Warranties

25.0 No allowance has been made for the provision of Collateral Warranties under this appointment. Should warranties be required an additional charge will be made for the time spent in vetting and completing these at a rate of £95 per hour, or other such hourly rate as advised by our PI Insurers at the time the request for vetting is made.

Governing Law

26.0 The law applicable to this Agreement shall be the law of England.

GDPR Privacy Policy

27.0 Privacy is important to us. Our Privacy Policy covers what data we collect and how we use it, disclose, transfer, and store your information.

27.1 Information We collect: We collect information about you if you make an enquiry as a potential client, or we do business with you as a Client, Consultant, Contractor, Sub-contractor, Supplier, Manufacturer.

27.2 Use of Information: Any information we collect may be used to:-

Respond to you via your supplied contact details, you may choose to be contacted via email, or post.

Respond to you about projects by email or telephone.

The information you provide us with will be used to personalise our services to suit your individual or company's needs, for instance we Design Buildings to suit our client's needs and aspirations.

To improve our website - we aim to improve our website and the information we publish so that it provides information on our projects and the services we provide.

From time to time we may send emails or correspondence about our practice, news, or service information.

27.3 Personal Information We Use

We use a variety of personal information depending on the services we deliver to you. For all our services we need your name, address, contact details, to allow us to locate your premises /land. For some services we might need additional information for example:-

- i. Bank details for payments
- ii. Information to allow us to check your identity and information about your credit history.
- iii. Proof of identity – and money laundering.
- iv. Fraud prevention, and to meet legal obligations.
- v. Any other information that is relevant to be able to provide the contracted services to you, meet or enforce legal obligation or where it is fair and reasonable for us to do so.

- vi. On some projects we may ask for information relating to medical or disability conditions for instance where we are designing buildings that need to be tailored to suit those needs, and the needs of occupants and visitors to a building we are designing.

27.4 Protection of Information: Enquiries submitted via our website form: (from our contact page).

Data is not stored on our website. This data is transferred via the form and emailed to us to allow us to respond to specific project enquiries.

27.5 Disclosure of Information: We do not sell, trade or otherwise transfer to other parties any personal information.

This does not include trusted third parties who act as regular consultants, or who assist us in the operation of our business, website, or services we provide to you.

Such trusted third parties may have access to personally identifiable information on a need to know basis and will be contractually obliged to keep your information confidential.

We may also release your information when we believe it appropriate to comply with the law, or protect other rights, property or safety.

27.6 Consent and Legal Basis: By appointing this practice and the services we provide you are consenting to us contacting you and using the information you provide us to carry out the Services you are appointing us to carry out.

27.7 We only use your personal information where permitted by law. Where:-

- i. We have your consent (if consent is needed).
- ii. We need to use the information to comply with our legal obligations.
- iii. We need to use the information to perform a contract with you: and/or.
- iv. It is fair and reasonable to use your personal information either in our interests or someone else's interests where there is no disadvantage to you. This can include where it is in our interests to contact you about services, market to you, or collaborate with others on a project or to improve our services.

Where we have your consent, you have the right to withdraw it.

Further details relating to our privacy policy can be found on our website.

Contacting Us

28.0 If there are any questions about our Privacy Policy or the Services we are providing you may contact the practice at:

Three Sixty Design Solutions, The News Building, London Bridge, London SE1 9SR

0800 0129122

Your continued instructions to us will amount to an acceptance of these terms and conditions.