
TERMS AND CONDITIONS OF BUSINESS

1.1 Terms and Conditions

These terms and conditions are to form the basis of the appointment between the Client and Foreman Roberts.

1.2 The Client

The Client is the person or Company who has appointed Foreman Roberts to carry out the services given in the Service Proposal.

1.3 Appointment Agreement and Terms

Foreman Roberts' appointment with the Client will be in accordance with the appropriate and latest Association of Consulting Engineers Agreement unless otherwise stated.

1.4 Foreman Roberts obligations

Foreman Roberts will exercise in the performance of the services such reasonable skill, care and diligence as may be expected of a properly qualified and competent Consultant experienced in carrying out work of a similar size, scope and complexity. Foreman Roberts will render the necessary services and resources to suit the projects information flow and programme provided necessary and relevant information essential for the execution of these obligations has been provided by the Client or his authorised representative.

1.5 Client's obligations

The Client shall pay to Foreman Roberts the fees and other costs together with any local tax properly chargeable in the manner and at the times set out. The Client shall not enter into any agreement with Foreman Roberts, or other parties, which affects the payment or other terms of this agreement without the prior consent of Foreman Roberts. The Client shall, when requested by Foreman Roberts, provide in a timely manner any necessary and relevant data or information in his possession or which may only be obtained by the Client.

1.6 CDM

Foreman Roberts will undertake the Designer Duties noted within Regulation 9 of the CDM Regulations 2015.

Principal Designer Duties noted under Regulation 11 of the CDM Regulations 2015 will be undertaken by others appointed by the Client as required under their Regulations 4 & 5.

1.7 Alterations to the scope of services

The scope of service may be expanded or reduced in future such that further or less work is required from Foreman Roberts. This extra or reduced work will be added or deleted as an addendum as with by agreement between the Client and Foreman Roberts, an appropriate alteration to the fee agreement and where appropriate the invoicing schedule.

1.8 Additional services

For services other than those confirmed in the agreement or due to changes in the scope of services, Foreman Roberts will perform such services on a lump sum or timecharge basis. Prior to the commencement of any additional services Foreman Roberts will within 10 working days provide written advice as to the scope of the additional services together with notification of the monthly fees involved and obtain written instruction to proceed with the services.

1.9 Relevant application of the Client/Foreman Roberts agreement

It is intended that the services and requirements of the Client/Foreman Roberts agreement will apply to any sub-consultants appointed by Foreman Roberts.

1.10 Project stage milestones

Foreman Roberts will carry out their duties in a timely manner proceeding from stage to stage as set out in the Service Proposal to suit the programme and the instructions given by the Client, project manager or lead consultant. Once each stage has been completed any subsequent changes to the work completed during the stage shall be regarded as additional services as set out in this Agreement.

1.11 Extensions to programme

If the programme for any given stage is extended and is outside the control of Foreman Roberts whilst work is underway, any additional resourcing due to non productive time, additional meetings etc shall be regarded as additional services as set out in this Agreement.

1.12 Payment

Foreman Roberts will invoice the Client as per the cashflow schedule for the services rendered under this Agreement. The cashflow schedule shall be agreed at the outset of the project based on the project programme. The cashflow schedule may be varied from time to time if the project programme or scope of service is altered. Subject to legitimate notice of 'Withholding Payment' payment of any invoice shall be no later than 30 days from the date of invoice (final date for payment). Payments shall be in sterling (GBP). In the event that two invoices remain unpaid for 60 days where notice of 'Withholding Payment' has not been provided Foreman Roberts reserve the right to cease working on the project until the overdue payments have been received. The period of suspension shall be added to the programme for deliverables.

1.13 Notice of Withholding

The Client may not withhold any payment after the final date for payment of any sum due under this Agreement unless he gives not later than seven days before such final date, a Notice specifying the amount proposed to be withheld and the ground for withholding payment or if there is more than one ground each ground and the amount attributable to it. Furthermore, no set off or abatement will be permitted to any sum claimed to be due under one or more other contracts, or due to an insurance claim against Foreman Roberts.

1.14 Rate of Interest

Where payments due to Foreman Roberts as per the cashflow schedule and the payment terms remain overdue, interest shall be compounded monthly and calculated at an annual rate of 8% additional to the base rate of the Bank of England.

1.15 Collateral warranties (including assignment by the Client)

Foreman Roberts is prepared to negotiate an agreement with the Client based on the CIC Standard Form of Collateral Warranty, subject to Foreman Roberts professional indemnity insurer's approval. Liabilities will be limited to the scope of services required of Foreman Roberts up to a maximum value of the professional indemnity insurance. A maximum of two assignments will be granted. Joint and several liabilities with any other party to the design and construction process are not accepted.

1.16 Assignment by Foreman Roberts

Foreman Roberts shall not assign or transfer any rights or obligations under this agreement to any person without the proper written consent of the Client.

1.17 Novation

Any novation of Foreman Roberts contemplated is to be agreed and shall be no more onerous than the CIC Standard Novation Agreement. All fees owed by the Client shall be paid prior to any Novation Agreement taking place. The contents of this Agreement shall be transferred in full to the Company to which Foreman Roberts are to be novated.

1.18 Third Party Rights

A person who is not party to this appointment shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this appointment. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

1.19 Copyright (including intellectual copyright)

Foreman Roberts grants the following rights solely in connection with the project contemplated herein and to the extent that any fees and expenses due to Foreman Roberts have been paid in full, except as detailed in iii:

- i. Copyright in all documents to be prepared by Foreman Roberts shall remain the property of the Foreman Roberts.
- ii. The Client is entitled for whatever purposes for the project contemplated herein this Agreement at any time to use and reproduce Foreman Roberts work without the approval of the Foreman Roberts.
- iii. The Client will not disclose Foreman Roberts documentation to a third party who is not connected with the project contemplated herein this Agreement without the prior consent of the Foreman Roberts.

1.20 Confidentiality

Foreman Roberts shall not disclose involvement to any third parties or use any material prepared under this contract for any publicity or marketing purposes without the prior written permission of the Client.

Foreman Roberts shall not at any time during this appointment (save in the proper course of his duties or as required by Law) disclose to any person or otherwise make use of any information provided by others relating to the project contemplated herein this Agreement whatsoever without the prior written consent of the Client.

1.21 Termination

The Client and Foreman Roberts shall each be entitled to terminate this agreement for any just cause. Any termination shall require 7 days notice. Notice must be given in writing. In the event there is a termination, Foreman Roberts shall be entitled to payment for all services performed under this agreement up to the time of termination (and 30 days thereafter to allow time for team demobilisation if terminated by the client), including all expenses incurred to that time. Under these circumstances payments as detailed within the cashflow schedule will apply. In the event of termination being due to default by one of the parties, the defaulting party shall indemnify the other party fully and effectual against all costs, claims, damages and demands by third parties arising from the M&E Works as defined in the Service Proposal completed prior to the termination howsoever arising.

1.22 Suspension

Upon the occurrence of any circumstance beyond the control of Foreman Roberts which is such as to prevent or significantly impede the performance by Foreman Roberts of the services under this Agreement, Foreman Roberts may without prejudice to any other remedy and upon not less than four weeks' notice suspend for a period of up to 26 weeks the performance of the services under this Agreement or if it is still prevented from performing such services for reasons beyond its control determine its appointment forthwith by a further notice in respect of all or any part of the services affected.

1.23 Insolvency

The appointment of Foreman Roberts may be determined in the event of insolvency of either party. Notice of determination must be given to the party which is insolvent by the other party.

1.24 Obligations after expiry or termination

The expiry or earlier termination of this agreement, or the appointment there under shall not affect:

- i. Such of its provisions as are expressed to operate or have effect afterwards
- ii. Any right of action already accrued to either party in respect of any breach of this agreement by the other party

1.25 Applicable law

Unless otherwise agreed this agreement shall be governed by English Law.

1.26 Settlement of Disputes

Attempt to resolve: The parties shall seek to resolve in good faith any dispute or difference arising between them in respect of any matter connected with this Agreement. If the parties cannot resolve any such dispute or difference within 14 days, or such a period as the parties may subsequently agree, then it shall be submitted to their respective designated representatives under this Agreement. If the designated representative of the parties is unable to reach agreement on any matter referred to them, within 14 days or any such period as the parties may subsequently agree, then that matter or those matters shall immediately be referred to a mutually agreed neutral mediator. The parties shall, within 14 days, jointly meet with mediator, to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations. All negotiations shall be conducted in confidence and are not to be referred to in any concurrent or subsequent proceedings, unless they conclude with a written legally binding agreement. Any written acceptance once signed by the designated representatives, shall be binding on the parties. If no agreement is reached, either party may invite the mediator to provide to both parties a non-binding opinion in writing. Such opinion shall not be used in evidence in any concurrent or subsequent proceedings, without the prior written consent of both parties. The parties will bear their own costs of preparing and submitting evidence to the mediator; if the mediator finds that the mediation has been initiated or conducted frivolously or vexatiously, then he shall have the power to order the party so initiating or conducting the mediation to pay the reasonable costs of the other party for preparing for and attending the mediation. If these costs cannot be agreed, they will be assessed by the mediator, whose decision shall be binding on the parties. If the parties fail to reach agreement within 28 days of the mediator being appointed, or such other period as the parties may agree, then both parties shall be entitled to submit the dispute to arbitration under the terms of the Arbitration clause below.

1.27 Arbitration

If mediation fails, the mediator will record those facts that the parties have agreed. All other matters in dispute will be referred to an arbitrator, who will be allowed access to the recorded and agreed facts only. The mediator's role will cease on the appointment of the arbitrator. He will not be available to appear as a witness in the arbitration, or to provide any additional evidence obtained during the mediation. The arbitration will be conducted in accordance with the Civil Procedure Rules in force at the effective date of the agreement on the basis that the parties agree to waive their rights to any form of appeal, in so far as such waiver can validly be made.

1.28 Exclusion of partnership

Nothing contained within this agreement shall be constructed or have effect as constituting any partnership between the parties.

1.29 Professional indemnity insurance

Foreman Roberts shall hold in force a Professional Indemnity insurance policy suitable for the adequate cover of services carried out by Foreman Roberts on this project. Foreman Roberts shall use reasonable endeavours to keep in force (promptly paying all premiums) such insurance during the period of the carrying out of the Project and for a further seven years after the date of Practical Completion.