

Vale Consultancy.

Terms of Engagement

Based on the Association of Consulting Engineers Standard Conditions

1. General

- 1.1 These Terms of Engagement and attached fee letter to the Client together with the Client's written acceptance thereof shall constitute the contract between the Client and Vale Consultancy ("the Agreement").
- 1.2 This Agreement shall apply in preference to and supersede any previous terms and conditions referred to, offered or relied upon by the client, whether in writing or otherwise.
- 1.3 This Agreement shall be governed by and construed and interpreted in accordance with the law, and the parties submit to the non-exclusive jurisdiction of the courts.
- 1.4 These Terms of Engagement have been based upon and reflect the main provisions of the ACE Conditions of Engagement.

2 Definitions

The following definitions shall apply to this Agreement:

"Client" means the organisation to whom the attached fee letter is addressed.

"Consultant" means Vale Consultancy.

"Works" means the Works, Project or Scope set out in the attached fee letter in connection with which the Client has engaged the Consultant to perform the Services.

"Services" means the services described in the attached fee letter.

"Additional Services" means any services undertaken by the Consultant beyond those defined in the attached fee letter.

"Fee" means the fees for the performance of the Services and Additional Services if any stated in the attached fee letter.

"Insolvency" means either party becoming bankrupt, going into liquidation (either voluntary or compulsory unless as part of a bona fide scheme of reconstruction or amalgamation), being dissolved, compounding with his creditors or having a receiver or administrative receiver or administrator appointed of the whole or any part of his assets.

3. Obligations of the Consultant

- 3.1 The Consultant shall exercise reasonable skill, care and diligence in the performance of the Services and the Additional Services if any. If in the performance of his services the Consultant has discretion exercisable as between the Client and any contractor, the Consultant shall exercise that discretion fairly.
- 3.2 The obligations of the Consultant do not include a duty to advise as to the actual or possible presence of pollution or contamination or as to the risks of such matters having occurred, being present or occurring in the future unless the provision of such advice is specifically detailed within the Services.
- 3.3 The Consultant may with the prior written approval of the Client sub-contract the performance of any of the Services to a sub-consultant. The Consultant shall be responsible for the performance and the payment of any such sub-consultant.
- 3.4 Subject always to conditions beyond his reasonable control the Consultant shall use reasonable endeavours to perform the Services in accordance with the programme agreed between the Consultant and Client and any subsequent programmes agreed between the two parties.

4. Obligations of the Client

- 4.1 The Client shall use his reasonable endeavours to provide to the Consultant without charge and in such time so as not to delay or disrupt the performance of the Services by the Consultant all necessary and relevant data and information in the possession of the Client, his agents, servants, other consultants or contractors and give such assistance and make such decisions as shall reasonably be required by the Consultant in the performance of the Services.

5 Payment

- 5.1 Payment by the Client to the Consultant for the performance of the Services shall comprise the Fees and if so agreed expenses.
- 5.2 Fees for the performance of the Services and the Additional Services if any shall be paid in accordance with the attached fee letter.
- 5.3 Payment due to the Consultant under this Agreement shall become due for payment on submission of the Consultant's invoice therefore and the final date for payment shall be 28 days thereafter. Interest shall be added to all amounts remaining unpaid thereafter at the rate of 2% above the base rate of Lloyds Bank plc.
- 5.4 Where time based fees are to be paid, they shall be paid by installments as set out in the attached fee letter and calculated by multiplying the hourly or daily rates applicable to the persons concerned by the number of hours or days (as the case may be) spent by such persons in performing the Services or Additional Services including time spent in traveling on connection with the Works.
- 5.5 The Client shall not later than five days after the date on which payment becomes due give a notice specifying the amount (if any) of the payment made or proposed to be made and the basis on which that amount was calculated.
- 5.6 The Client may not withhold any payment after the final date for payment of any sum due under this Agreement unless the Client 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.
- 5.7 All Fees are exclusive of Value Added Tax, the amount of which, at the rate and in the manner prescribed by law, shall be paid by the Client to the Consultant.

6 Additional Payment

6.1 If the Consultant has to carry out additional work and/or suffers delay or disruption in the performance of the Services for reasons beyond the Consultant's control the Client shall make an additional payment to the Consultant in respect of the additional work carried out and the additional resources employed and/or the delay or disruption suffered. The additional payment shall be calculated on a time basis at the hourly rates (£80/hour) unless noted in the attached fee letter and shall be paid monthly. The Consultant shall where practicable and if so requested by the Client give an initial estimate of the additional payment likely to be incurred.

7 Limitation of Liability

7.1 Notwithstanding anything to the contrary contained elsewhere in this Agreement the total liability in the aggregate of the Consultant under or in connection with this Agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed the sum of:
For Fees less than £10,000 total liability is limited to £250,000.00 (two hundred and fifty thousand pounds)
For Fees between £10,000 and £50,000 total liability is limited to £5,000,000 (five million).
For Fees in excess of £50,000 total liability is limited to £5,000,000 (five million), except for claims in respect of pollution or contamination where total liability in the aggregate is limited to £1,000,000 (one million).

7.2 Subject to paragraph 7.1, but notwithstanding otherwise anything to the contrary contained in this Agreement, such liability of the Consultant for any claim or claims shall be further limited to such sum as the Consultant ought reasonably to pay having regard to his responsibility for the loss or damage suffered as a result of the occurrence or series of occurrences in question, on the basis that all other consultants and all contractors and sub-contractors shall be deemed to have provided contractual undertakings on terms no less onerous than those set out in paragraph 3.1 to the Client (whether or not they shall have been so provided to the Client) in respect of the carrying out of their obligations and shall be deemed to have paid to the Client such proportion which it would be just and equitable for them to pay having regard to the extent of their responsibility.

8 Insurance's

8.1 The Consultant shall maintain professional indemnity insurance sufficient to cover the Consultant's liabilities hereafter for any one occurrence or series of occurrences arising out of this Agreement (other than for claims arising out of pollution or contamination which will be in the aggregate) and for the period of six years after completion of the Services, provided always that such insurance is available at commercially reasonable rates.

9 Contracts (Rights of Third Parties) Act 1999

9.1 Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

10. Copyright, License and Publicity

10.1 The copyright in all drawings, reports, specifications, bills of quantities, calculations and other documents provided by the Consultant in connection with the Works shall remain vested in the Consultant, but the Client shall have a license to use all completed drawings and other documents issued to the Client, other consultants or contractors for the purpose of the construction, completion, maintenance and repair of the Works. In the event of the Client being in default of payment of any Fees or other amounts due to the Consultant under this Agreement, the Consultant may revoke the license herein granted on seven days' written notice to the Client. The Consultant shall not be liable for the use by any person of any such drawings or documents for any purpose other than that for which the same were prepared on behalf of the Consultant.

10.2 The Consultant shall not without the written consent of the Client publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Works.

11. Adjudication

11.1 Where this agreement is a construction contract within the meaning of the Housing Grants, Construction and Regeneration Act 1996, either party may refer any dispute arising under the Agreement to adjudication in accordance with the statutory scheme.

12. Termination

12.1 In the event of a material breach of this Agreement by either party or in the event of the Insolvency of one of the parties the party who is not in breach or is not insolvent may terminate this Appointment upon not less than two weeks' written notice to the other party.

12.2 Upon such termination the Client shall pay the Consultant all monies accrued due to the Consultant up to the date of such termination following submission of the Consultant's invoice therefore and the provisions of paragraph 5 of this Appendix shall then apply to such payment.

12.3 Termination of the Consultant's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either party.

13 Assignment

13.1 Neither party may assign or transfer any benefit or obligation under this Agreement without the prior written consent of the other party.