

CONDITIONS OF APPOINTMENT

Governing law/interpretation
The law applicable to this agreement shall be the law of England and Wales.

Consultants' Services

The Consultant shall, in providing the Services and discharging all the obligations set out hereunder, exercise reasonable skill and care in conformity with the normal standards of their profession.

Sutcliffe Consulting Engineers Ltd shall act on behalf of the Client in the matters set out or necessarily implied in the Appointment.

The Client shall advise Sutcliffe Consulting Engineers Ltd of the relative priorities of the Clients requirements, and shall inform Sutcliffe Consulting Engineers Ltd if any changes or variations to the Clients requirements, budget or timetable.

Sutcliffe Consulting Engineers Ltd shall co-operate with any other Designers or CDM Coordinator if appointed, and as appropriate pass relevant information to them.

Sutcliffe Consulting Engineers Ltd shall make no material alteration, addition to or omission from the Services, or from the approved design, without the knowledge and consent of the Client and shall confirm such consent in writing. In and emergency Sutcliffe Consulting Engineers Ltd may make such an alteration addition or omission without the knowledge and consent of the Client, but shall inform the Client without delay and subsequently confirm such action in writing.

Sutcliffe Consulting Engineers Ltd shall in providing the Services make such visits to the Works as they at the date of appointment reasonably expected to be necessary.

The Client shall, free of charge, supply Sutcliffe Consulting Engineers Ltd with accurate information necessary to the proper and timely performance of the Services, and Sutcliffe Consulting Engineers Ltd will rely on such information.

The Client shall give decisions and approvals necessary for the proper and timely performance of the Services.

The Client shall have the authority to issue instructions to Sutcliffe Consulting Engineers Ltd, subject to their right of reasonable objection. Such instructions and all instructions to any consultants or contractors shall be issued through Sutcliffe Consulting Engineers Ltd.

Neither Sutcliffe Consulting Engineers Ltd nor the Client shall assign the whole or any part of the benefit or in any way will transfer the obligation under the Appointment without the consent of the writing of the other.

Subject always to the provisions of Clause 2, Sutcliffe Consulting Engineers Ltd does not warrant results or outcomes beyond their control, specifically:

That the Services will be completed in accordance with any programme or timetable for the Project;
That planning permission will be granted;
The performance, works or products of others;
The solvency of any other appointed body whether or not such appointment was made on the advice of Sutcliffe Consulting Engineers Ltd.

Statutory Requirements

The Client shall instruct the making of applications for planning permission and approval under building acts, regulations and other statutory requirements, and applications for consent by freeholders and all others having an interest in the Project. The Clients shall pay and statutory charges and fees, and any expenses and disbursements made in respect of such applications.

Other Appointments

The Client shall appoint and pay any consultants and other persons as may be required under separate agreements.

The Client, in respect of any work or services in connection with the Project performed or to be performed by any person other than Sutcliffe Consulting Engineers Ltd, shall:

Hold such person responsible for the competence and performance of his services and for visits to the site in connection with work undertaken by him; Hold the principal Contractor where applicable, and/or other contractors responsible for his management and operational methods, for the proper carrying out and completion of the Works, and for health and safety provisions on the Site.

Construction (Design and Management) Regulation 2015 (CDM 2015)

Where applicable, the Client shall comply with his obligations under the CDM Regulations, including the appointment of a competent CDM Coordinator as soon as practicable.

As a CDM Dutyholder Sutcliffe Consulting Engineers Ltd shall hold responsibility under 'Designer'. Sutcliffe Consulting Engineers shall when preparing or modifying designs, eliminate, reduce or control foreseeable risks that may arise during:

- Construction
- The maintenance and use of a building once it is built
- Provide information to other members of the project team to help fulfil their duties.

As a CDM Dutyholder, you the client shall hold responsibility under Commercial or Domestic client. For the purpose of this agreement, the client shall accept their responsibility under the Construction (Design and Management) Regulations 2015 (CDM 2015). Further information can be found in document 'Managing Health and Safety in Construction' on the HSE website.

Copyright

Sutcliffe Consulting Engineers Ltd owns the copyright in the work produced by them in performing the Services and generally asserts the right to be identified as the author of the Building Services Engineering Design Consultancy work comprising the project.

Rights of Third Parties

For the avoidance of doubt, nothing in this Agreement shall confer or purport to confer on any third party any benefit or right to enforce any term of this Agreement.

Fees and Payments

Sutcliffe Consulting Engineers Ltd fees shall be calculated and charges as set out in either a Letter of Appointment, formal agreement or fee offer as appropriate.

Where a percentage basis is to be used, the Consultants fees shall be calculated as a percentage of the total Construction Cost, excluding Way, when the final valuation has been ascertained and agreed. By total Construction Cost is meant the cost as certified by Sutcliffe Consulting Engineers Ltd of all works including site works executed under Sutcliffe Consulting Engineers Ltd direction and control. For calculating percentage fees before the final cost has been ascertained, the following bases shall be used:

Before the contract is let – the cost estimate by Sutcliffe Consulting Engineers Ltd or the appointed consultant;

After the contract is let – the contract sum.

Time-based fees shall be ascertained in accordance with Sutcliffe Consulting Engineers Ltd rates set out below:

Lump sums specifies in the Appointment, time charge rates and mileage rates shall be reviewed every 12 months from the date on which Sutcliffe Consulting Engineers Ltd commenced performance of the services and may be revised in accordance with the Retail Price Index.

Perrins House, 11 Caroline Place, Hull, HU2 8DR

T: 01482 226 444

E: reception@sutcliffeconsulting.co.uk

W: www.sutcliffeconsulting.co.uk

Additional Fees

Additional fees shall be payable if Sutcliffe Consulting Engineers Ltd, for reasons beyond their control, are involved in extra work or incur extra expenses, such as where:

The scope of services by the Client;

It is necessary to vary any item of work commenced or completed due to the nature of the project or changes interpretation, or enactment or of revisions to laws;

Services by others are not provided or are delayed; Sutcliffe Consulting Engineers Ltd are to provide additional services relating to the settlement of disputes in connection with the project.

Expenses and Disbursements

The Client shall pay any expenses specified under the terms of appointment. Expenses other than those specified shall only be charged with the prior authorisation of the Client. The Client shall reimburse Sutcliffe Consulting Engineers Ltd for any disbursements made on the Clients behalf at cost plus 10%. Where appropriate the following charges will apply:

Mileage rate		50p pm
Plan Prints and Copying		
B&W/Colour		
	A0	£5.50/10.50
	A1	£4.00/£6.50
	A2	£3.00/£5.00
	A3	£2.50/£3.50

Sutcliffe Consulting Engineers Ltd shall maintain records of time spent on Services carried out on a time basis, and of expenses and disbursements, and shall make these available to the Client on reasonable request.

Specialist Consultants

The Client shall appoint specialist consultants directly in order to provide a separate contractual agreement. Where Sutcliffe Consulting Engineers Ltd are required to co-ordinate specialist consultants and this is deemed over and above our initial instruction, we reserve the right to charge an additional fee on a time-spent basis.

Where Sutcliffe Consulting Engineers Ltd are asked to provide a specialist consultant as part of our initial instruction, fees shall be calculated to include additional costs for appointing, managing and financing these persons direct.

Payments by Client

Payments under the agreement shall become due to Sutcliffe Consulting Engineers Ltd on issue of their accounts. The final date for such payments by the Client shall be 28 days from the date of issue of an account. Sutcliffe Consulting Engineers Ltd's accounts shall be issued at intervals of not less than one month and shall include any additional fees, expenses and disbursements and state the basis of calculation of the amount due.

Instalments of the fees shall be calculated on the basis of Sutcliffe Consulting Engineers Ltd's estimate of the percentage of completion of the Work Stage or other Services or such other method specified in the Appointment.

Sutcliffe Consulting Engineers do not accept retention held relating to fees unless agreed in writing prior to the commencement of any works.

Payment Notices

A written notice from the client to Sutcliffe Consulting Engineers Ltd:

1. May be given within 5 days of the date of issue of an account specifying the amount the Client proposes to pay and the basis of calculation of that amount; and/or
2. Shall be given not later than 5 days before the final date for payment of any amount



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due to Sutcliffe Consulting Engineers Ltd if the Client intends to withhold payment of any part of that amount stating the amount proposed to be withheld and the ground for doing so or, if there is more than one ground for doing so, each ground and the amount attributable to it.

If no such notices are given the amount due shall be the amount stated as due in the account. The Client shall not delay payment of any undisputed part of an account.

Any sums remaining unpaid 30 days after the Client's receipt of an account from Sutcliffe Consulting Engineers Ltd shall bear interest at 8% over Bank of England Base Rate.

Insurance

In order to cover any liabilities that may occur, Sutcliffe Consulting Engineers shall maintain in force, with a reputable insurance company, Professional Indemnity Insurance, Public Liability Insurance and Employers Liability Insurance for the duration of the contract and for a period of 6 years thereafter. Details of such insurances shall be issued upon request.

Licence

The Client shall have a licence to copy and use and allow other consultants and contractors providing services to the Project to use and copy drawings, documents and bespoke software produced by Sutcliffe Consulting Engineers Ltd in performing the Services, hereinafter called "the Material" but only for purposes related to the Project on the Site or part of the Site to which the design relates.

Such purposes shall include its operation, maintenance, repair, reinstatement, alteration, extending, promotion, leasing and/or sale but shall exclude the reproduction of Sutcliffe Consulting Engineers Ltd's design for any part of any extension of the Project and/or for any other project. Provided that:

1. Sutcliffe Consulting Engineers Ltd shall not be liable if the Material is used for any purpose other than that for which it was prepared;
2. In the event of any permitted use occurring after the date of the last Service performed under the Agreement and prior to practical completion of the construction of the Project, the Client shall;

Where Sutcliffe Consulting Engineers Ltd has not completed Detailed Proposals (Work Stage D) obtain Sutcliffe Consulting Engineers Ltd's consent, which consent shall not be unreasonably withheld; and/or

Pay Sutcliffe Consulting Engineers Ltd a reasonable license fee where no licence fee is specified in the appointment;

3. In the event of the Client being in default payment of any fees or other amounts due, Sutcliffe Consulting Engineers Ltd may suspend use of the license on giving 7 days' notice of the intention of doing so. Use of the licence may be resumed on receipt of outstanding amounts.

Suspension and Termination

Either the Client or Sutcliffe Consulting Engineers Ltd may be giving reasonable notice to the other to suspend or terminate performance of the whole part of the Services. If the performance of any or all of the Services suspended is not resumed within 6 months, Sutcliffe Consulting Engineers Ltd may by notice in writing to the Client terminate the Appointment.

In the event of the Client being in default of payment of any fees or other amounts due, Sutcliffe Consulting Engineers Ltd may suspend obligations under the Agreement giving at least 7 days' notice in writing to the Client of the intention to suspend the performance stating the grounds for doing so and the Services affected. Sutcliffe Consulting

Engineers Ltd shall resume performance of the affected Services on receipt of the outstanding amounts.

Dispute resolution

Mediation - In the event of any dispute or difference arising out of this Agreement, the Client and Sutcliffe Consulting Engineers Ltd may attempt to settle such difference or dispute by mediation.

Adjudication - Any dispute or difference arising out of this Agreement may be referred to adjudication by the Client or Sutcliffe Consulting Engineers Ltd at any time. The application procedures and the Agreement for the appointment of and Adjudicator shall be set out in the "Model Adjudication Procedures" published by the Construction Industry Council current at the date of the reference. When either the Client or Sutcliffe Consulting Engineers Ltd require any dispute or difference to be referred to arbitration the requiring party shall give notice to the other to such effect and the dispute or difference shall be referred to arbitration. The final decision of a person to be agreed between the parties, failing agreement within 14 days of the date of the notice, to a person appointed by the Association for Consulting Engineering. Provided that the Client or Sutcliffe Consulting Engineers Ltd may litigate any claim for pecuniary remedy which does not exceed £3,000 or such other sum as is provided by statute pursuant to Section 91 of the Arbitration act 1996.

Data Protection and GDPR

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

Upon appointment Sutcliffe Consulting Engineers Ltd may have access to personal data of which you the client are the data controller. 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 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, personal data as required by the Seventh Data Protection Principles.

For the purposes of the agreement between Sutcliffe Consulting Engineers and you the client, you will ensure that all necessary and appropriate consents and notices are in place to enable the lawful transfer of the personal data to us for the duration and purposes of the contract.

Further information on the collection and retention of data can be issued upon request.

Services Improvement and Complaints

In the event the client is dissatisfied with the service you may take your issue up firstly with the Engineer responsible for undertaking your contract. Alternatively complaints can be directed to the Managing Director. Sutcliffe Consulting Engineers Ltd shall consider any complaints filed fairly, carefully and promptly and provide the client with a written response or such other form as agreed. Should you deem the response unsatisfactory, you may take up matters with the relevant professional body as stated in 'Dispute Resolution'.

Parties to initial

As referred to in the Letter of Appointment dated between (Client) and Sutcliffe Consulting Engineers Ltd.