

CONDITIONS OF APPOINTMENT

1. The terms of our Appointment shall be governed by these Conditions of Appointment unless otherwise agreed by us in writing. Unless we hear to the contrary within the next seven days, these terms shall be deemed acceptable to you and our relationship shall proceed on this basis. The seven day period is for individually negotiated terms. At the expiry of the seven days the terms of this contract shall be deemed to be individually negotiated as defined by the Unfair Terms in Consumer Contracts Regulations 1999. Any clauses which are found to be or deemed to be inoperative do not affect the rest of the agreement.
2. **Services to be Performed ("Services").** Details of your stated Requirements and the Services which we will provide to fulfil those Requirements under this Agreement are as our fee quotation letter or our records of other communication. Unless described on our invoice we have not provided that service. If additional services become necessary or are required by you, additional fees will be payable. Additional services need only be described when the fee invoice is prepared. Where the Staff act as an Expert in any matter, the Model Terms of Engagement published by the Expert Witness Institute shall apply in addition to these conditions but Prior Associates Conditions of Appointment shall take precedence.
3. **Duty of Care.** We agree to exercise all reasonable skill, care and diligence in the performance of the Services and shall discharge our duties in a timely manner provided we receive all necessary data and information within a reasonable time. All of the services and all of our obligations under our Conditions of Appointment shall be subject to the exercise of such reasonable skill, care and diligence and every clause in these Conditions of Appointment shall be deemed to be subject to the exercise of reasonable skill, care and diligence. We shall have no liability to you, whether in contract, tort or otherwise, unless there is a breach of this obligation to exercise reasonable skill, care and diligence. The Client shall hold the Principal Contractor and/or other contractors appointed to undertake construction works and not Prior Associates responsible for the management and operation methods, for the proper carrying out and completion of the Works in compliance with the Building Contract and all relevant Building Legislation without prejudice to Clause 4.5 and for health and safety provisions on the Site.
4. **Terms of Appointment.**
- 4.1 Our Services are personal to you and shall be limited to those matters expressly stated herein. No advice is offered or implied with regard to asbestos, its presence, effects or any actions required by the Client with relation to asbestos.
- 4.2 We will only undertake inspection of the works if expressly stated. Unless otherwise agreed in writing, inspections will be limited to periodic visits to the Works in order to check that they are proceeding generally according to our design intention provided that this duty shall not include any responsibility for the quality of materials or workmanship.
- 4.3 If it becomes clear that additional consultants or specialists are required then they will be directly appointed by you. However, if so instructed, we will act as your agent (disclosing you as principal) in the appointment of such consultants or specialists after receiving your prior approval.
- 4.4 Where consultants or specialists are appointed either directly or by us as your agents, we will co-ordinate and integrate their work, only if requested by you, but cannot accept any responsibility whatsoever for the performance of their duties.
- 4.5 As defined by the Construction (Design & Management) Regulations 2015 we act as Designers only for our element of the Works. We undertake to make available reasonable information as required by your Principal Designer as and when requested by him to do so. Our designs are based on the employment of a competent contractor to carry out the Works. As our client you must make yourself aware of your duties to all parties under CDM regulations. Unless specifically instructed in writing we will not act as Principal Designer.
- 4.6 Subject to Clause 4.7 our maximum liability hereunder shall be limited to the reasonable cost of repair arising from any defect in the Works by reason of our breach of duty hereunder and shall exclude any other economic or financial loss whatsoever provided always that any liability for personal injury or death resulting from our or our employees' negligence shall not be excluded. This maximum liability is reduced to a lesser amount if that lesser amount is prescribed by law. Unless agreed otherwise in writing our maximum liability is further restricted to 20 times our fee received for that project or the maximum cover provided by our Professional Liability Insurers whichever is less.
- 4.7 Our liability for repair costs hereunder shall be limited to that proportion of your losses which it would be just and equitable to require us to pay having regard to the extent of our responsibility for the same and on the basis that the Contractor and all consultants and specialists appointed in relation to the Works shall be deemed to have provided contractual undertakings on terms no less onerous than ours in respect of the performance of their services in relation to the Works and shall be deemed to have paid you such proportion which it would be just and equitable for them to pay having regard to the extent of their responsibility.
- 4.8 Notwithstanding the foregoing paragraphs 4.1 to 4.7 of these Conditions of Appointment, Prior Associates shall not be liable for any losses incurred by the Client, or his successors, in respect of pollution or contamination and/or arising out of or in connection with pollution or contamination.
- 4.9 Further and notwithstanding anything to the contrary contained in these Conditions of Appointment and without prejudice to any provision in these Conditions of Appointment whereby liability is excluded or limited to a lesser amount, any liability under or in connection with the Conditions of Appointment, whether in contract or in tort, for breach of statutory duty or otherwise, for any claim for loss or damage wholly, partly, directly or indirectly arising out of or resulting from or associated in any way with asbestos or any product or waste that contains asbestos (including without limitation the costs of testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any asbestos or product or waste that contains asbestos) shall not exceed the amount, if any, recoverable by Prior Associates by way of indemnity against the claim in question under professional indemnity insurance taken out by Prior Associates and in force at the time the claim or the circumstances giving rise to the claim is notified to and accepted by the insurer in question.
- 4.10 No action or proceedings under or in respect of these Conditions of Appointment whether in contract or in tort or for breach of statutory duty or otherwise shall be commenced against Prior Associates after a date six calendar years from the date of our instruction or such earlier date as may be prescribed by law.
- 4.11 Prior Associates is not responsible under these Conditions of Appointment or otherwise for designing or advising on or otherwise taking measures to prevent or mitigate the effect of Terrorism or any action that may be taken in controlling preventing suppressing or in any way relating to Terrorism and Prior Associates shall have no liability under or in connection with these Conditions of Appointment whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim arising out of any consequences whatsoever resulting directly or indirectly from or in connection with Terrorism or any such action (regardless of any other contributory cause or event) save to the extent that the claim is covered by professional indemnity insurance taken out by Prior Associates and in force at the time the claim or the circumstances giving rise to the claim is notified to and accepted by the insurer in question.
In this clause "Terrorism" shall mean any act or acts including but not limited to (i) the use or threat of force and/or violence, and/or (ii) harm or damage to life or to property (or the threat of such harm or damage) including but not limited to harm or damage by nuclear and/or chemical and/or biological and/or radiological means caused or occasioned by any person(s) or group(s) of persons or so claimed in whole or in part for political religious ideological or similar purposes.
- 4.12 Prior Associates is not responsible under these Conditions of Appointment or otherwise for warning about or preventing or mitigating any loss or damage wholly or partly arising out of, resulting from or caused or contributed to directly or indirectly, by or associated in any way with any fungus or spore or any substance, vapour or gas produced by or arising out of any fungus or spore and shall have no liability under or in connection with these Conditions of Appointment whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim for such loss or damage (including without limitation the costs of testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any fungus or spore) save to the extent that the claim is covered by professional indemnity insurance taken out by the Consultant and in force at the time the claim or the circumstances giving rise to the claim is notified to and accepted by the insurer in question. For the purpose of these Conditions of Appointment, the term "fungus" includes (but is not limited to) any form or type of mould, mushroom or mildew and the term "spore" means any reproductive body produced by or arising out of any fungus.
- 4.13 Our services will continue until Practical Completion of the Works or earlier as described above or until our Conditions of Appointment is terminated by reasonable notice given to either side.
- 4.14 In respect of the Services, you will pay us fees and expenses as our invoice, in the absence of a formal fee quote our charges as assessed at our hourly rates. Prior Associates grant to you a licence to use all documents, design details, etc., that are issued to you or your agents. You may not withhold or reduce any sum payable to Prior Associates by reason of any claims or alleged claims against Prior Associates. All rights of set-off which you may otherwise exercise in common law are hereby expressly excluded.
- 4.15 Copyright in all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, and any other documents or Materials provided by Prior Associates ("the Materials") shall remain invested throughout in Prior Associates. Prior Associates grant you, subject to payment of all outstanding fees, a royalty-free, non-exclusive licence to use the Materials for all purposes relating to the project to which the Conditions of Appointment relates. Prior Associates shall have no liability for any use of the Materials other than that for which the same were originally prepared and provided. The licence granted does not permit the reproduction or copying by any means of any Materials. No Materials may be published in any form including uploading to any website without Prior Associates' written permission.
- 4.16 Where Prior Associates is requested to provide warranties or enter into other third party agreements and the terms of these documents have not already been agreed Prior Associates is prepared to negotiate the terms of such documents and the additional fee that should be paid to Prior Associates for entering into them. The Client shall not withhold payment of fees pending agreement to such documents.
- 4.17 Prior Associates can accept no liability whatsoever for the transmission of any viruses or other cyber based hazard. Further Prior Associates may restrict access to its websites and mail service at its own discretion.
- 4.18 Unless specifically agreed in writing Prior Associates will use reasonable endeavours to retain information for 10 years from the date of instruction. This information may be retained in either electronic or paper form at the discretion of Prior Associates.
- 4.19 No claims may be pursued against an individual employee and each individual employee of Prior Associates shall have no personal liability for his actions on behalf of Prior Associates. This clause does not exclude employee liability for criminal action.
- 4.20 Any dispute or difference arising out of this Agreement shall be governed by and construed in accordance with English law and both parties agree to submit to the exclusive jurisdiction of the English Courts. If any dispute is referred to adjudication under The Housing Grants, Construction and Regeneration Act 1996, the Adjudicator's decision is to be based on legal not commercial grounds and is to refer to these standard conditions. The Adjudicator's decision is not to be final and binding.
- 4.21 These Conditions of Appointment contain the whole agreement between us and supersedes any other statements made. Nothing in these Conditions of Appointment confers or purports to confer on any Third Party any benefit or any right to enforce any term of these Conditions of Appointment.

(dated 6th June 2011)
(updated 6th April 2015)
(updated 18th January 2016)