

## TERMS AND CONDITIONS OF ENGAGEMENT

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### **A1. Generally**

These Terms of Engagement set out the conditions upon which Antony Patrick Associates (APA) will accept instructions and will apply in all cases unless any other arrangement is confirmed in writing by us.

Our instructions will continue until either party formally terminates / concludes the instruction in writing. Likely circumstances warranting dis-instruction:-

- we consider there is or may be a conflict of interest;
- we consider that it is not in your or our best interest that we should continue to represent you;
- failure to reimburse fees.

If you or we terminate our instructions, you will only be liable for fees and other payments we have incurred on your behalf:

- up to the date of the termination; and
- if applicable, for work necessary to complete any aspect of your instructions already in hand.

The scope of the service provided will vary with your instructions but will be confirmed in writing together with the fees to be charged. If during the course of the instruction, matters arise that may require alteration of or additional services to the basis of our appointment, then we will advise you accordingly in writing. This will include details of any additional fees or charges.

If there is any conflict, contradiction or discrepancy between these Terms of Engagement and the mutually agreed contents of any forms of correspondence between ourselves after the date of these Terms, then the Terms as stated in previous forms of correspondence will prevail and be effective.

We will assume that you accept these Terms unless otherwise stipulated in writing before commencement of our service(s).

### **A2. Fees**

Fees will be calculated on the basis of time spent fulfilling instruction brief. The fees will reflect the complexity or seriousness of the instruction, its urgency and importance to you the client, the value involved or the skills required.

Where feasible certain instructions may be appropriately charged on basis of fixed fee or agreed percentage.

The hourly rate(s) to be charged will be advised within correspondence at outset of our instructions and your agreement will be assumed unless we hear from you in writing to the contrary. The hourly rates are subject to review annually on the 1st January. Any changes to the rates will be advised.

Where our fees are expressed as a percentage of total construction costs, that total shall include:

- Adjustments consequent upon variations and fluctuations.
- Expenditure of provisional, prime cost sums or contingencies.
- Value of materials, labour or services provided by you free of charge but shall exclude the value of any loss and expense claims.

Additional fees on a quantum meruit basis will be charged if building operations are delayed whether arising from bankruptcy or liquidation of the contractor or from any other claim beyond our control including adjudication, arbitration, contractor's non-performance, loss and expense claims and other protracted involvement.

If for any reason the works do not proceed, the fee will be up to and including the instalment due plus a quantum meruit charge for the works executed to date.

All services provided will be subject to confirmation of professional fees for each individual instruction.

Where possible and at your request we will estimate our anticipated expenditure to fulfil the instruction. Where expenditure cannot be determined, a fee ceiling will be provided. In such scenario the level of time expended will be recorded to update you, particularly where any previous estimates may be exceeded.

Each instruction will be subject to a minimum fee of £250.00 plus VAT unless otherwise agreed.

### **A3. Disbursements and Expenses**

Where necessary or upon your direction certain payments may be required on your behalf ("disbursements"). These may include for example Planning and Building Regulation fees, hire of specialist access facilities or specialist consultant charges. Disbursement payments made on your behalf will be included in your invoice as a separate item, or we may request you to make payment direct. No such charges or payments will be incurred on your behalf without your prior approval. Any disbursements may be subject to an administration charge of 15%.

Expenses will be charged in addition to the fee at net cost plus an administrative charge of 15% and may include:

- Printing and photocopying.
- Postage, couriers etc.
- Travel, including mileage @ 0.50p/mile.
- Purchase of maps, contracts or similar documents necessary for the proper completion of the service to you.

The level of disbursements and expenses are reviewed annually on 1st January. Any changes will be advised.

The level of expenditure for any instruction will be limited to £1,000.00 unless specific written instructions for greater expenditure is agreed and received from you.

### **A4. Value Added Tax**

VAT will be levied on charges for our services and some disbursements (and expenses) in accordance with the prevailing regulations at the time of preparing your invoice. Any rates quoted are exclusive of VAT.

### **A5. Payment Terms**

Invoices are to be paid in full within 14 calendar days from date of issue.

An invoice for the agreed professional fee will be raised and forwarded:

- when fees accruing reach an agreed specified amount; or
- at regular intervals (usually not less than monthly), or
- on conclusion of an instruction, or
- at suspension or termination of the instruction, or

- when work proves to be abortive, in respect of that instruction.

If you have any difficulty in paying an invoice please discuss this with us as soon as possible, so that we may try to work out a mutually satisfactory arrangement.

We offer flexible payment terms and will be happy to agree specific payment terms with you at any time.

#### **A6. Late Payment**

We reserve the right to charge interest at the rate of 2½% per month or part thereof (compounded monthly) if any sum remains unpaid for more than 14 calendar days from its date of issue.

If payment is outstanding at the due date, we may refer the matter to a debt recovery agency to obtain payment.

Should legal or other action be required to obtain payment or recover outstanding monies, any costs incurred may also be charged.

#### **A7. Insurance Cover and Limitation on Liability**

APA maintains Professional Indemnity Insurance as required by the Regulations of the Royal Institution of Chartered Surveyors. Our current level of cover is £5,000,000.00.

Our liability shall be limited to such sums as would be just and equitable for us to pay having regard to the extent of our responsibility for the loss or damage suffered on the basis that all other parties who have a liability shall be deemed to have provided contractual undertakings to you on terms no less onerous than those applying in the case of your instruction to us. They shall be deemed to have paid you such sums as it would be just and reasonable for them to pay having regard to the extent of their responsibility for such loss or damage.

#### **A8. Papers held by APA**

On completion of our work and payment of our fees, we will return to you any records or other documents that you have provided to us for that work on your request. We reserve the right to retain completed reports / documentation until all our invoices have been paid in full. We retain files for a minimum period of six years (other than for abortive work) but after that we may destroy them without further reference to you.

#### **A9. Copyright**

Unless otherwise agreed we shall retain copyright in and ownership of all specifications, or other documents, drawings, maps, photographs and other records prepared or commissioned by us.

#### **A10. Client Care**

We value your instructions and hope that you will be satisfied with the work completed. However, if you have any problem with the service we provide for you then please let us know in good time. We operate a complaints handling procedure in accordance with RICS Members' Conduct Regulations and will try to resolve with you any problem promptly. Initial contact should be made with the Managing Director Nick Herridge BSc (Hons) MRICS who is in charge of client care responsibilities.

We will acknowledge a written complaint within 7 working days of its receipt. You will be sent a reply within 7 working days of receiving your letter or be advised of any delay.

Should you be dissatisfied you have the right to:

- mediation, where we both agree; and
- If you remain dissatisfied with the result of our investigation or where the separate review has proved unsuccessful, you have the right to refer the matter to independent third party decision, further guidance on which can be obtained from the Royal Institution of Chartered Surveyors.

A copy of our complaints procedure is available on request.

#### **A11. Duty of Care**

We will use our best endeavours to advise on the matters set out in your instructions and in accordance with, where appropriate the Guidelines issued by the RICS. Where advice or opinions are required outside the reasonable professional skill and expertise of a Chartered Building Surveyor, we will advise you on the need for further specialist involvement where we consider this to be necessary for the completion of your instruction(s).

We shall, unless otherwise expressly agreed, rely upon information provided to us by the Client or the Client's legal or other professional advisers relating to relevant matters.

Any document resulting from a survey or other inspection of a building will not purport to express an opinion about or advise upon the condition of un-inspected or concealed parts and should not be taken as making any implied representation or statements about such parts.

#### **A12. Third Parties**

All reports, schedules and other documents are prepared for the sole use of the Client and no responsibility can be accepted to any third party for all or any part of the contents of such documents. Neither the whole nor part(s) of any such report, schedule or document, nor any reference thereto, may be included in any document, circular or statement without our written approval being first obtained as to the form and content in which it will appear.

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## Additional Terms and Conditions for Building Surveys & Inspections

### **B1. Content of the Report**

In accordance with these Terms and the scope of the Client's instructions the Surveyor will use his or her best endeavours to report upon the following items appropriate to those instructions:

- (a) The condition and standard of construction of the Property including assessing the site / location, the design, layout, structure, fabric and services both externally and internally.
- (b) The grounds, boundaries and environmental aspects considered to affect the Property;
- (c) Any requirements for further investigation or testing arising from the inspection.
- (d) The need for repair and future maintenance requirements, if instructed to by the Client.

The report, schedule or other document will include limitation clauses that reflect the Terms and Conditions below, or refer to these terms as applicable.

### **B2. Assumptions**

Unless otherwise expressly agreed the Surveyor while preparing the Report will reasonably assume that:

- (a) The Building(s) is offered with vacant possession; or other occupation arrangement as advised by the Client.
- (b) The Building(s) is connected to mains services with appropriate rights on a basis that is known and acceptable to the Client; and
- (c) Access to the Building(s) is as of right upon terms known and acceptable to the Client.

### **B3. Scope of the Inspection**

#### **(a) Generally**

The Surveyor will:

- (i) make an inspection so far as the nature, design, structure of and access to the Building(s) and conditions of occupancy and fittings / furnishing allow.
- (ii) consider his or her advice carefully but is not required to advise on any matter the significance of which in relation to the Building(s) is not apparent at the time of inspection from the inspection itself.
- (iii) inspect diligently but not undertake any action that would risk damage to the Building(s) or injury to himself, herself or any other party.
- (iv) not undertake any structural or other calculations.
- (v) not produce a repair schedule, planned maintenance report, feasibility report or advise on design, procurement or project management unless expressly agreed with the client.
- (vi) not take measurements or undertake a building reinstatement cost assessment unless expressly instructed by the Client.

#### **(b) Accessibility**

- (i) The Surveyor will inspect as much of the internal and external surface area of the Building as is practicable from ground level, upper floor levels, working platforms, roofs where safe and accessible using a 3 metre long ladder or where other access arrangements (builders' ladders, hydraulic hoists etc.) have been previously agreed with the Client but will not inspect those areas which are covered, unexposed or not reasonably accessible from within the site, or adjacent public areas.
- (ii) The Surveyor is not required to move any obstruction to inspection including, but not limited to, fixtures, fittings and floor coverings.
- (iii) The Surveyor will not open up or cut into the building fabric without specific directions from the Client. Such

intrusive investigations, if instructed by the client, will be at risk and liability of the Client and must be with the express permission of the building owner.

- (iv) Voids, ducts or other concealed spaces where hazardous materials or gases may be present will not be inspected if the surveyor considers a health risk exists.

**(c) Floors**

The Surveyor will lift accessible floor access panels, floorboards etc. and trap doors, if any, which are not covered by heavy furniture, ply or hardboard, fitted carpets or other fixed floor coverings. The Surveyor will not attempt to cut or lift fixed floorboards or other floor fabric without the express permission of the building owner.

**(d) Fixed Covers or Housings**

The Surveyor will not attempt to remove securely fixed covers or housings without the express permission of the building owner.

**(e) Roofs**

The Surveyor will inspect the roof spaces if there is a safe working platform available to work from and adequate lighting. Where no safe working platform or access is available, roof spaces will not be inspected. Similarly, outer surfaces of the roof or adjacent areas will be inspected using binoculars, but will be excluded if they cannot be seen.

**(f) Boundaries, Grounds and Outbuildings**

Where reasonable access is available the inspection will include boundaries, grounds and permanent outbuildings but will not include temporary buildings or structures. Unless specific information has been provided to us regarding property boundaries prior to our inspection, we will assume the boundary positions to be those reasonably apparent on site.

**(g) Services**

The Surveyor will carry out a visual inspection of the service installations where reasonably accessible. Drainage inspection covers will be lifted where they are reasonably accessible and it is safe and practical to do so. No tests of any of the service installations will be carried out unless previously agreed, although general overall comments will be made where reasonably possible and practicable but we cannot accept responsibility for any latent defects in the services installations which would only result from such specialist tests. The Surveyor will report if it is considered that tests or investigations are advisable and can make arrangements for Specialists to be employed for this purpose if so agreed by the Client. Where such tests are carried out, the related reports prepared by the Specialist are for the Client's direct use and may not necessarily represent the opinion of Antony Patrick Associates. Specialist inspection of electrical installations or gas mains will not be undertaken.

**(h) Areas not inspected**

The Surveyor will identify any areas which would normally be inspected but which he or she was unable to reasonably inspect. Therefore we will be unable to report that such parts are entirely free from rot, beetle attack or other defects.

**(i) Environmental and Other Issues**

- (i) Particular noise, dust, flooding or contaminated land and disturbance affecting the Property will only be noted if it is reasonably significant at the time of the inspection or if specific investigation has been agreed between the Surveyor and the Client and confirmed in writing.
- (ii) The Surveyor will report on any reasonably obvious health and safety hazards to the extent that they are apparent from elements of the Property considered as part of the inspection.

- (iii) The Surveyor will not undertake a Fire Risk Assessment or consider fire safety risks to determine compliance with legislation regarding owners and/or occupiers duties thereunder, but will comment on any shortcomings or concerns from a building surveyors viewpoint to the extent that they are apparent from elements of the Property considered as part of the inspection.
- (iv) We will not undertake an audit of the Property to ascertain compliance with the Disability Discrimination Acts, unless expressly instructed by the Client, but comments will be made on possible shortcomings or concerns as appropriate.
- (v) No audit or risk assessment in respect of obligations under Health and Safety legislation will be undertaken unless specifically instructed by the Client but attention will be drawn to hazards or risks to Health and Safety where appropriate.
- (vi) No investigation or testing for the presence of asbestos or assessment of the compliance with the Control of Asbestos legislation will be undertaken unless specifically instructed by the Client.

#### **B4. Deleterious / Hazardous Materials**

- (a) We will not carry out tests to establish whether high alumina cement, calcium chloride, asbestos, wood wool slabs as in-situ structural framework, or other such restricted materials have been incorporated into the Building's construction and, unless otherwise expressly stated in the Report, the Surveyor will assume that no deleterious or hazardous materials or techniques have been used in the construction of the Property. However, the Surveyor will advise in the Report if, in his or her view, there is likelihood that deleterious material has been used in the construction and if specific enquiries should then be made or tests carried out by a specialist.
- (b) Subject to clause B3(b) and B3 (i) the Surveyor, based upon a limited visual inspection, will note and advise upon the presence of lead water supply pipes and asbestos.
- (c) The Surveyor will advise in the Report if, to the best of his or her knowledge, the Property is in an area where, based on information published by the National Radiological Protection Board, there is a risk of radon. In such cases the Surveyor may advise that tests should be carried out to establish the radon level.
- (d) The Surveyor will endeavour to advise if there are transformer stations or overhead power lines which might give rise to significant Electro and Magnetic fields (EMFs) either over the subject Property or visible immediately adjacent to the Property but will not undertake tests for the presence of EMFs. The Surveyor will not assess any possible effect on health or report on any underground cables.

#### **B5. Ground Conditions**

The Surveyor will not comment upon the possible existence of noxious substances, landfill or mineral extraction implications, or other forms of contamination, nor will the Surveyor advise on the adequacy of the substratum for any particular purpose unless geotechnical tests or specialist advice are commissioned by the Client.

#### **B6. Title, Consents, Approvals and Searches**

The Surveyor will assume that:

- (a) The Building or site is not subject to any unusual or onerous restrictions, obligations, rights of way, easements or covenants which apply to the Property or affect the reasonable enjoyment of the Property.
- (b) All Planning, Building Regulations and other consents required (such as Licences to Alter, Party Wall Agreements etc.) in relation to the Property have been obtained. The Surveyor will not verify whether such consents have been obtained. Any enquiries should be made by the Client or the Client's legal advisers. Drawings and specifications will not be inspected by the Surveyor unless otherwise previously agreed.
- (c) The Property is unaffected by any matters which would be revealed by a Local Search and replied to the

usual enquiries, or by a Statutory Notice, and that neither the Property, nor its condition, its use or its intended use, is or will be unlawful.

- (d) The Client's legal advisors will report on ownership and title, but in case of leasehold properties, the Surveyor will comment and advise on the repairing and other covenants relevant to the inspection, provided a copy of the lease is made available to him prior to inspecting the Property.

**B7. Guarantees, Warranties, Operation and Health & Safety Manuals**

No formal enquiries or examinations will be made as to the existence of guarantees, warranties, operation & maintenance manuals, Health & Safety, Asbestos Registers or other such documents applicable appropriate to the building and therefore no comment will be made as to their validity or suitability for the Client's needs unless expressly instructed by the Client and made available to the Surveyor.

## Previous Terms of Engagement

### **C1. Previous Terms of Engagement**

These Terms and Conditions of Engagement supersede all previous Terms and Conditions in respect of all new instructions – even from existing Clients with effect from the date set out below.

#### **Prepared by**



**Nicholas Herridge BSc (Hons) MRICS Managing Director**

*For and on behalf of*  
**Antony Patrick Associates Ltd.**

**Date: 17<sup>th</sup> April 2015**

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