



## Terms and Conditions of Appointment

**You acknowledge that in instructing Symmetrys Limited to commence the services described in our fee proposal (the 'scope of works') you agree to the terms and conditions below (the 'appointment') to the exclusion of any other terms or conditions that have been proposed to you.**

- 1.0 We shall exercise reasonable skill, care and diligence in the performance of the services and any other programme agreed in relation thereto. In the event that you request a variation to the services we shall notify you as soon as is reasonably practicable of the impact of such variation on the cost and programme of the services.
- 2.0 You shall supply us with all relevant data and information available to you in relation to the services and shall give such assistance, decisions and access as may be reasonably required by us and in sufficient time to enable the performance of the services in accordance with any agreed programme.
- 3.0 Unless otherwise agreed in writing, we shall issue invoices for services performed during the preceding calendar month and on termination or completion of the services. For the purposes of this appointment, the payment due to us shall be the sums set out in the invoices. The due date for payment shall be two (2) days following the issue of the invoices. The final date for payment shall be thirty (30) days after the due date.
- 4.0 In the event of late payment, we may (a) charge default interest calculated in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 or default interest at three (3) per cent above the relevant Barclay's Bank plc. base rate (whichever is the higher) on all amounts remaining unpaid after the final date together with all other costs reasonably incurred by us and/or (b) suspend the Services until payment of the arrears plus applicable interest is received in cleared funds, without prejudice to Clause 13.
- 5.0 We shall maintain professional indemnity insurance for an amount no less than that described in Clause 6.0 below, provided always that such insurance remains available in the market on commercially reasonable rates and terms.
- 6.0 Our liability under or in connection with this Appointment whether in contract, tort (including negligence), breach of statutory duty or otherwise shall not exceed the lesser of (a) ten (10) times our aggregate fee for the Services or (b) two hundred and fifty thousand (£250,000) in the aggregate, provided always that nothing in this Appointment shall exclude or limit our liability for death or personal injury caused by our negligence or for fraudulent misrepresentation.



- 7.0 Without prejudice to Clause 6.0, our liability shall be further limited to such sums as we ought reasonably to pay having regard to our responsibility for the loss and damage suffered on the assumptions that any other consultants, contractors and sub-contractors who also have a liability to you shall be deemed to have provided you with contractual undertakings on terms no less onerous than those set out in Clause 1.0 and paid you such proportion of loss and damage which it would be just and equitable for them to pay having regard to the extent of their responsibility and also on the assumption that there are no exclusions of or limitations of liability nor joint insurance or coinsurance provisions between you and any other party to *[the Project]* and that any such other party who is responsible to any extent for the loss or damage is contractually liable to you for the loss or damage.
- 8.0 In the event that any claims, demands or proceedings are advanced by any person against us under or in connection with this Appointment which result in us paying any amount in excess of the limit of our liability described in Clause 6.0, you shall indemnify and hold us harmless in respect of any and all amounts in excess of the limit of our liability.
- 9.0 Save in respect of death or personal injury, you shall only look to us, Symmetrys Limited (and not to any individual employee of ours) for redress if you consider that there has been any breach of this Appointment. You agree not to pursue any claims in contract, tort (including negligence), statute or otherwise against any individual employee of ours as a result of them carrying out the Services.
- 10.0 No action or proceedings under or in respect of *the Appointment* whether in contract, in tort, in negligence, for breach of statutory duty or otherwise shall be commenced against us after the expiry of six years from the date of completion of Services or the termination of the Services if earlier."
- 11.0 Copyright in all drawings, designs, documents and materials of any nature prepared by us for you (the "Intellectual Property") shall remain vested in us but you shall have a licence to use the Intellectual Property for the purposes for which it was prepared by us, subject always to us having received full payment for the Services in accordance with this Appointment. We shall not be liable for the use of any Intellectual Property for any purpose other than that for which it was originally prepared by us.
- 12.0 Either party may by written notice terminate this Appointment immediately if the other party has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or enters into liquidation (whether voluntary or compulsory) or if any proceedings are commenced relating to its insolvency or possible insolvency.
- 13.0 Either party may by written notice terminate this Appointment if the other fails to perform its obligations under this Appointment, provided that the terminating party has first given the other party not less than fourteen (14) days written notice served by recorded delivery to the other specifying the default and referring to this Clause and the default has not been remedied prior to termination taking place.



- 14.0 In the event of termination for any cause whatsoever, we shall be entitled to be paid for all Services performed up to the date of termination and not yet paid for by you.
- 15.0 Your Payment of Invoices represents your confirmation that work has been completed to your satisfaction. Your payment of the final invoice represents the satisfactory closure of the business.
- 16.0 This Appointment is personal to you and non-assignable. This Appointment shall not confer and shall not purport to confer on any third party any benefit or any right to enforce any term of this Appointment for the purposes of the Contracts (Rights of Third Parties) Act 1999 or otherwise. The provision of collateral warranties to third parties is excluded.
- 17.0 If at any time a dispute arises under this Appointment which cannot be settled amicably between the parties, either party may refer the dispute to adjudication in accordance with the Construction Industry Council ("CIC") Model Adjudication Procedure current at the date the dispute arises. The parties shall agree a sole adjudicator or failing such agreement, the CIC will nominate a sole adjudicator. The adjudication shall be conducted in English under the laws of England and Wales. This Appointment shall be governed by and construed in accordance with the laws of England and Wales
- 18.0 This Appointment represents the entire agreement and understanding between the parties relating to the subject matter of this Appointment. You acknowledge that you have had an opportunity to negotiate the terms and conditions of this Appointment prior to the commencement of the Services