

Calvert Brain & Fraulo Limited Terms & Conditions of Engagement

Calvert Brain & Fraulo Limited provide services as Consulting Structural and Civil Engineers and in related disciplines. The following standard conditions of engagement apply to all work carried out by Calvert Brain & Fraulo Ltd.

1. Definitions

The Company : means Calvert Brain & Fraulo Limited; a company registered in England, No. 05378763; VAT registration No. 861 2388 20.

The Client : means the person or organisation that orders the work and to whom the work is usually invoiced.

Work or Works : means the services to be provided by the Company

2. Quotations & Fee Proposals

- 2.1 Quotations and fee proposals will set out the services to be provided by the Company and are open for acceptance for a period of 60 days from the date of the quotation or fee proposal.
- 2.2 Quotations and fee proposals may be submitted on the basis of a percentage of the total construction cost, a fixed price or time charges based upon our standard hourly rates. Where time charges are used and the Client requests an indication of likely total hours to be charged, we will often not be able to gauge accurately the amount of time needed for a consultancy task until the work is well underway. Therefore any estimate of likely hours chargeable given to a Client, before work begins, should be regarded only as a guide and not a fixed amount.
- 2.3 Additional works, alterations and variations to the original brief ordered by the Client subsequent to the acceptance of the original quotation or fee proposal shall be charged at the Company's standard hourly rates unless a cost was originally provided for a specific task in the quotation or fee proposal. Alternatively, the Company may agree with the Client to negotiate a fixed fee for the additional work.
- 2.4 Additional works, alterations and variations and method of payment shall normally be agreed in writing between the Company and the Client prior to the Company proceeding with the additional works. Where this is not practicable, the additional work shall be recorded by the Company and the method of reimbursement agreed between the Company and the Client as soon as practicable after the additional work has commenced
- 2.5 With respect to external specialist services and surveys which may be required in addition to the services of the Company, quotations and fee proposals will be prepared using the prevailing rates and schedules of prices of external specialists. Should such external services be subject to increased cost during the period between the date of the quotation or fee proposal and the date of the order to commence work, the Company will inform the Client of any such increases in writing prior to commencing the work.
- 2.6 Unless otherwise agreed, disbursements for reimbursable costs and expenses associated with, but not limited to travel, accommodation, subsistence and postage and the work for plan printing, photocopying and any other reasonable expenses will be added to invoices in addition to the agreed consultancy fees and will also be subject to VAT.

- 2.7 Disbursements are charged at our standard rates as follows :

Mileage :	60p / mile
Printing :	A0 : £4.25 / drawing A1 : £3.00 / drawing A2 : £2.00 / drawing A3 : 30p / copy A4 : 15p / copy
Photocopying – Black and White	A3 : £1.00 / copy A4 : 50p / copy
Photocopying – Colour	At cost
Postage	At cost
Travel by Rail / Taxi / Flights	At cost
Out of Pocket Expenses (subsistence overnight accommodation etc.)	At cost
Information burnt onto CD Rom	£5.00 per disc

- 2.8 Rates and prices included in quotations and fee proposals and noted in these Terms and Conditions are all exclusive of Value Added Tax which will be applied at the prevailing rate.
- 2.9 Unless otherwise stated, appointments will be based upon the appropriate Agreement in the Association of Consulting Engineers Conditions of Engagement.
- 2.10 The Client must accept quotations and fee proposals before the services outlined in the quotation or fee proposal can proceed by the Company.
- 2.11 If, following the receipt of our quotation or fee proposal, you instruct us to proceed or to continue with our services, we shall be entitled to assume your acceptance of the quotation / fee proposal and these terms.
- 2.12 Any work instructed and subsequently cancelled may attract abortive costs. Abortive costs will be charged at the Company's standard hourly rates plus reimbursable costs and expenses as appropriate. External specialist services and surveys will also be chargeable, or any part thereof, where costs are incurred prior to cancellation.
- ### 3. Acceptance of Quotations & Fee Proposals
- 3.1 Unless specifically agreed in writing to the contrary, the Client is the person, company, authority or other body to whom our proposal or fee quotation is addressed, unless the Client is specifically identified otherwise and the company, authority or other body to whom our proposal or fee quotation is addressed holds full legal agency to agree to enter into a contract with the Company on the Client's behalf.
- 3.2 These terms shall not be treated as varied or waived unless expressly agreed in writing by the parties to the contract that these terms are to be varied or waived. Subject to any agreement, these terms have precedence over any others contained in other documents, emails or letters.
- 3.3 These Terms and Conditions of Engagement are personal to the Client and the services and all written reports or other communications shall be for the Client's benefit and reliance only. No reliance, obligation or reliability is acknowledged to any other party unless specifically agreed in writing.

- 3.4 It is agreed that neither the Company nor the Client intends that any of these terms & conditions of engagement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person other than the Company and the Client.

- 3.5 The Company will assume that any order raised for works to be undertaken by the Company will be acceptance of both the proposed fee and these Terms and Conditions of Engagement.

- 3.6 The Client must inform the Company if the role they are appointing the Company to undertake is to replace a previously appointed Structural Engineer in order that the Company may contact the previous Structural Engineer to establish that their appointment was properly determined and the Client holds a license to use any information such as drawings etc. The Client must also inform the Company, for the same reasons, if the work which is to be undertaken is separate work within a project where another Structural Engineer is or has been engaged.

4. Notice of Right to Cancel (7 Day Colling Off)

- 4.1 As the Client, you have a legal right to cancel your contract, at no penalty. As such, a 7 day cooling off period shall apply to this contract. Please note that you may be required to pay for services supplied if the performance of the contract has already begun prior to the expiry of the cancellation period.

5. Services

- 5.1 We will exercise reasonable skill and care in carrying out our services.
- 5.2 Unless expressly agreed in writing as a qualification to this clause, we shall not be liable for the performance of any other person or company not engaged by us, nor responsible for checking or reporting on their performance.
- 5.3 Whilst we make every effort to check and validate information supplied by clients and third parties, we cannot be responsible for errors arising directly or indirectly from incorrect information supplied to us.
- 5.4 Our design will be undertaken in accordance with the Building Regulations and the relevant British Standards, subject to professional judgment. Normally calculations and drawings will be checked by Building Control or an Approved Inspector and occasionally, due to different interpretations of standards, modifications are required to our submitted drawings. We would therefore recommend that works on site are only commenced after receipt of approval from Building Control or the Approved Inspector.

6. Structural Surveys

- 6.1 Structural surveys will be carried out in accordance with our Standard Procedure for Structural Surveys, a copy of which can be provided on request.
- 6.2 When undertaking "walk around" inspections relating to specific defects in a structure or carrying out more comprehensive "walk around" surveys, we will always follow up with written confirmation of any verbal advice given whilst on site.

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- 6.3 When working on time charges for structural surveys described in 6.2, time will be charged for admin time setting up the project in the office, any investigation work at the office, travelling to site, time on site carrying out the visual inspection, travelling back to the office and any subsequent time spent in the office investigating the issues relating to the survey and preparing the written confirmation of verbal advice given during the course of the survey on site.
- 7. Consents not Obtained by the Company**
- 7.1 The Company does not obtain the following consents :
- Flood Defence Consent and Consent to Discharge from the Environment Agency,
 - Land Drainage Byelaw Consent and Consent to Discharge from an Internal Drainage Board
 - Surfacewater and Foul Drainage Consents from Anglian Water.
- The Company can instruct specialist sub-consultants to obtain the consents listed above, on behalf of Clients, but specific Client instruction is required for this to be done
- 8. Cost Advice**
- 8.1 The Company is unable to provide any accurate cost advice. If square metre build cost rates are discussed by the staff of the Company this information must be considered as approximate non- specific cost advice. If accurate cost advice is required then the Company will, at the request of the Client, obtain a quotation from a suitably qualified Quantity Surveyor to accurately cost the proposed works.
- 9. AutoCAD files**
- 9.1 Electronic AutoCAD (.dwg) files remain the property of the Company and will not be released under any circumstances. Drawings will be issued in electronic Adobe (.pdf) format for use by the Client.
- 10. Time for Completion**
- 10.1 Whilst every effort will be made to commence and complete the works in accordance with the agreed programme, the Company accepts no responsibility for delays occurring beyond the control of the Company.
- 11. Unforeseen Conditions**
- 11.1 If, during the execution of the works, conditions arise which could not have been reasonably foreseen, the Company will give written notice to the Client of the effect (if any) on the programmed completion of the works and a claim for additional payment (if such is considered justified).
- 11.2 We shall be under no liability if we are unable to carry out any of our services for any reason beyond our control including (without limiting the foregoing); act of God, acts of terrorism, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or any other action taken by employees in contemplation or furtherance of dispute. During the continuance of such a contingency either party may by written notice to the other terminate the services and the Client shall pay for work done and disbursements incurred up to that time.
- 11.3 Where the Company is appointed as Consulting Structural & Civil Engineers and not as Party Wall Surveyors, we accept no responsibility for any costs associated with the failure to advise on The Party Wall etc. Act 1996.
- 11.4 The Company takes no responsibility for any costs associated with the failure to advise on boundaries, easements, underground or overhead services and rights of light.
- 12. Commercial Charging Rates**
- 12.1 The Company's hourly charges are based on the time as recorded. The Company has a duty to record time and expenses accurately.
- 12.2 The Company's fees take into account the level of seniority and experience of the staff members who are working for the Client and also the degree of responsibility and skills needed.
- 12.3 The Company may be obliged to pay out fees and expenses on the Client's behalf such as specialist services or surveys which can be front loaded and substantial. Accordingly, the Company reserves the right to request payment from the Client on account for these services. The Company's hourly charging rates are available on request.
- 12.4 Where our services are charged on a time charge basis our standard hourly rates will be as noted below :
- | | |
|---------------------------------------|---------|
| Principal | £110.00 |
| Chartered Structural / Civil Engineer | £85.00 |
| Associate | £75.00 |
| Incorporated Structural Engineer | £65.00 |
| 3D Visualisation Specialist | £60.00 |
| Draughtsman | £52.50 |
| Administration | £30.00 |
- 12.5 When charging on the basis of time charges for a structural survey, we charge for our time travelling to and from site, time on site, time in the office preparing the report plus time considering the issues that we are appointed to report upon and time for the Principal to check the report prior to issue.
- 12.6 When charging on the basis of time charges for commissions that require travel for site visits, site meetings, meetings away from the office or for other reasons, we charge for our time travelling to and from site, time on site as well as the time in the office undertaking the work relating to the commission including time considering the issues that we are appointed to undertake and time for the Principal to check documentation prior to issue.
- 13. Invoices**
- 13.1 The Company will generally render invoices on completion of the design work or if more appropriate interim fee accounts will be rendered at appropriate stages in the design process. In particular if design co-ordination or Client approval is extended then interim accounts will be rendered to cover work in progress. Where the value of design or report work is small, the Company may request payment in advance of the work commencing.
- 13.2 Where fees are quoted on the basis of a percentage of the total construction cost initial and interim invoices will be based upon appropriate agreed estimates of the total construction cost. As design work proceeds and as actual construction costs are known, as a result of their calculation by a quantity surveyor or through tendering, further interim invoices and final invoices will be raised based upon the actual total construction cost and will include any uplift in the fee as a result of increased construction costs over and above the original estimate.
- Should a scheme be designed as instructed by the Client and then be subject to value engineering to reduce the total construction cost, invoices for work completed up to the commencement of the value engineering will be based upon the higher total construction cost prior to the value engineering commencing.
- Design work required to modify the original scheme for value engineering purposes will be charged as an additional fee on the basis of time charges at our standard hourly rates. Ongoing work after completion of the value engineering process will be based upon the reduced construction cost resulting from the value engineering process.
- Should the Company's appointment cease for any reason, such as tender returns exceeding the Client's budget, then fees up to the point at which the Company's appointment ceases will be based upon the lowest tender for the project obtained by the Company and will not be based upon any alternative construction costs obtained by the Client.
- 13.3 VAT will be added to all fees, disbursements and other reimbursable costs.
- 13.4 Payment of invoices is due 14 days in the case of individuals and 30 days in the case of companies following the date of the invoice.
- 13.5 Payment of invoices can be made by cheque, BACS, debit or credit card. Debit and Credit card payments incur a handling fee of 2.75%.
- 13.6 If the Client fails to make payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to :
- i) Decline to act further
 - ii) Charge the full value of work done
 - iii) Charge the Client interest on the amount unpaid at the rate of 3% per annum above Nat West Bank Base Rate on a monthly basis, until payment in full is received.
- 14. Intellectual Property**
- 14.1 The Company's work including reports, designs, drawings and other services is licensed to the Client for the purpose of the Client's current instructions. All other copyright and moral right is reserved and asserted. The Company's logo is a trademark and is hereby asserted.

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14.2 The Company's work will remain the exclusive property of the Company until the relevant invoice is paid in full, and the Company accepts no liability or obligation for any reports, designs, drawings or other services, for which our rendered invoices remain unpaid.

15. Intrusive Investigation and Services

15.1 In performing any intrusive investigation, the Company will fulfill its commitment to diligence and working safety by exercising all due care and attention with respect of the avoidance of services, including, where specifically instructed, the appointment of a specialist service tracing company. Any service drawings for the site must be provided by the Client to the Company, if available, prior to the intrusive works commencing. Should these not be available, the Company will be given sufficient time by the Client to seek to obtain statutory service plans prior to the works commencing. It is not however possible for the Company to accept liability for damage to underground services, or subsequent arising damages, unless their location is clearly defined to us by the Client prior to the commencement of works.

16. Archiving

16.1 The Company will store the original reports, designs, drawings and other documentation prepared for the Client in the Company's archive at no additional cost. However, should the Client (or the Company to enable the Company to deal with any further instructions from the Client) require further copies of the original reports, designs, drawings and other documentation, then the Company will charge the Client for the work necessary to comply with the Client's instruction at the Company's standard hourly rates plus disbursements. Note : Electronic AutoCAD (.dwg) files will not be released as Clause 12 of these Terms and Conditions of Engagement.

17. Complaints

17.1 In the event that the Client has a concern or complaint about the Company's services then the Client should approach a Director as soon as practicable after the concern or complaint has arisen.

17.2 Should the Client continue to be dissatisfied the matter shall be first referred to a Mediator to be agreed between the Company and the Client or in default of such agreement to be referred to Adjudication or Arbitration under the terms set out in the appropriate Agreement in The Association of Consulting Engineers Conditions of Engagement.

18. Statutory Rights

18.1 These terms and conditions do not affect the Client's statutory rights.

19. General Data Protection Regulation (GDPR)

19.1 The Company shall only hold personal information relating to the Client which it believes is necessary for The Company to provide the agreed services. The client has the right under GDPR to request the information The Company holds and to make any necessary changes to ensure that it is accurate and kept up to date. The Company will not, without prior consent by the Client, pass any personal information onto any third parties except pursuant to the agreed services being provided by the Company or where required to do so by statute, legal reasons or requested by the government.

19.2 The Company will hold personal information about you that it believes necessary to carry out the agreed services. This information may include : your name; your company name; your telephone number; your address; your email address(es); your bank details (as shown on any cheques received). This information will only be shared with third parties as necessary in order to carry out our agreed services. These third parties may include Local Council and Building Control Authorities, specific agencies such as Environment Agency, Highways Agency, IDB etc., Subconsultants and Subcontractors and Building Contractors and their Subcontractors if we are tendering a project on your behalf. The Company confirms that your personal information will not be passed to any third party not connected to the services that we have been appointed to provide.