

# 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 and Wales under Companies House 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 invoiced.

*Work or Works* : means the services 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, after which date they are invalid.
- 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 at its total discretion, negotiate a fixed fee for additional work.
- 2.4 Additional works, alterations and variations and method of payment shall be agreed in writing unless otherwise stated 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 their Client notified 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 Client will be obliged to pay the increased cost of external services and surveys and the Company will provide the necessary evidence to substantiate the increased cost.

- 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 be subject to VAT. Reimbursement of costs and expenses are reviewed annually and charges may be varied from time to time. The Company shall still be entitled to payment.

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

Mileage :	60p / mile
Printing :	A0 : £6.00 / drawing A1 : £4.00 / drawing A2 : £2.00 / drawing A3 : 50p / 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 (all rates are reviewed annually).
- 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 be commenced 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 agreed 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 Clients behalf.

- 3.2 These terms shall not be treated as varied or waived unless otherwise 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. The Contract (Rights of Third Parties) Act 1999 shall not apply.
- 3.5 The Client agrees that any order raised for works to be undertaken by the Company will be based on the applicable proposed fee and these Terms and Conditions of Engagement.
- 3.6 The Client must inform the Company if the Company is being instructed to replace any existing 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 Cooling Off)

- 4.1 As the Client, you are entitled to cancel your agreement with the Company without being penalised provided this is done within seven days from the date you enter into it. Please note that you may be required to pay for services supplied if you do not cancel before works have commenced in performance of the Contract.

## 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, the Company 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.

## Calvert Brain & Fraulo Limited Terms & Conditions of Engagement Continued

- 5.4 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.
- 5.5 Our design will be undertaken in accordance with the prevailing 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. Any works undertaken without such approval is at the Client's own risk.
- 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, the Company will always follow up with written confirmation of any verbal advice given whilst on site.
- 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.
- 6.4 If, when we attend the property, our original brief is varied then the Company will charge on the basis of time charges at our standard hourly rates plus disbursements for mileage to and from site which will be calculated from the office that the surveyor travels from / to. If the original brief has a reduced scope then the time charges will not exceed the original quotation. If the original brief has an increased scope then the Company will confirm the additional fee before proceeding.
- 6.5 When asked to undertake a survey of a particular structural element, for example a roof structure, we expect the area concerned to be clear to facilitate our inspection. If the area is not sufficiently clear and we need to return to properly complete our inspection additional fees will be charged based upon the time required to undertake any additional inspection(s), at our standard hourly rates.
- 7. Design of isolated steel beams/lintels for new openings**
- 7.1 When engaged to design isolated steel beams/lintels for new openings in an existing structure we will endeavour to establish the direction of span of floors and other structural elements spanning onto the beam/lintel, from a visual inspection. If it is not possible to categorically identify the direction of span of

existing structure we will make sensible assumptions regarding the likely direction of spans in order to design the necessary steel beams/lintels, padstones and to check existing masonry and foundations where appropriate. If when building work commences the span of existing structure is different to that assumed in our calculations then it is possible that the steel beams or lintels designed may be the wrong size or may not be required. We recommend therefore in all cases that the structure is opened-up for inspection prior to ordering steel beams, lintels or any other new component required to form a new opening in order to check the validity of any assumptions made in the design. If the direction of span of any structure is different to that assumed in our calculations we must be advised immediately and we will undertake any necessary redesign work for which there will be additional fees. Please note we cannot be held responsible for the costs associated with the purchase and delivery to site and/or restocking of steel beams, lintels or other components if they are not required as a result of the direction of span of existing structure being different to that assumed in our calculations or for any other consequential or associated cost.

### 8. Consents not Obtained by the Company

- 8.1 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 before this can be done.

### 9. Cost Advice

- 9.1 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.

### 10. AutoCAD files

- 10.1 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.

### 11. Time for Completion

- 11.1 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 and / or any subsequent losses sustained by the Client.

### 12. Unforeseen Conditions

- 12.1 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).
- 12.2 The Company shall not be held liable for any losses or damage in the event that it is unable to carry out any service 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.
- 12.3 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.
- 12.4 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.
- 13. Commercial Charging Rates**
- 13.1 The Company's hourly charges are based on the time as recorded. The Company has a duty to record time and expenses accurately.
- 13.2 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.
- 13.3 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.
- 13.4 Where external specialist services and surveys are required and where the costs are substantial and are to be paid by the Company, we will charge an uplift in the costs of 10% to cover handling of these costs.
- 13.5 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.

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13.6 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.

13.7 Should emergency inspections and site visits be required on the same day as the enquiry is received, we will charge an enhanced fee for these emergency call-outs which will be twice our usual hourly rates.

### 14. Invoices

14.1 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.

14.2 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.

14.3 VAT will be added to all fees, disbursements and other reimbursable costs.

14.4 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.

14.5 Payment of invoices can be made by cheque or BACS.

14.6 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.

### 15. Interim Invoices

15.1 If the company decides interim invoices will be raised at month end or financial year end or at any other point that the company believes to be reasonable, during any given commission. The decision to raise an interim invoice will be entirely at the company's discretion, whether the client has specifically agreed to interim payments or not. The value of interim invoices will usually be based upon work in progress time valued on the basis of the stated hourly rates of charge for the appropriate member of staff as given elsewhere in these terms and conditions of engagement. Alternatively a percentage completion of the project will be applied to the agreed fee for the commission and invoices raised on the basis of the calculated amount.

### 16. Intellectual Property

16.1 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.

16.2 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.

### 17. Intrusive Investigation and Services

17.1 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.

### 18. Archiving

18.1 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 for a period of six years. 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 10 of these Terms and Conditions of Engagement.

### 19. Complaints

19.1 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.

19.2 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.

### 20. Statutory Rights

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

### 21. General Data Protection Regulation (GDPR)

21.1 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.

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- 21.2 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.
- 22. Vehicle Tracking Software Contribution**
- 22.1 Should we need to use specialist software to prepare a drawing to show vehicle tracking on a site, then we would make a one off charge per project of £50.00 + VAT.
- 23. New Build Warranties**
- 23.1 If you are constructing a new dwelling or converting an existing building into a new dwelling, you will need a Building Warranty in addition to Planning Permission and Building Regulations Approval. You must ensure that you make arrangements to put in place the Building Warranty in these circumstances. This is not something that we will arrange for you, nor is it something that we are able to advise you upon because it is effectively an insurance policy and we are not insurers brokers. It is your responsibility to make sure you have a Building Warranty in relation to the construction of a new dwelling as it will be required by anyone requiring a mortgage on the completed property within the first 10 years of completion of the property.
- 24. Waterproofing of Subterranean Structures**
- 24.1 The Company will not take responsibility for the waterproofing of any basement or other subterranean structures. Where below ground waterproofing is required we will require the appointment of a specialist waterproofing company to carry out the necessary risk assessments and designs in accordance with BS 8102:2009 : Code of practice for protection of below ground structures against water from the ground and all of our drawings and designs will refer to waterproofing by specialist.

- 25. Construction (Design and Management) Regulations 2015 (CDM Regulations)**
- 25.1 In April 2015, the Construction (Design and Management) Regulations changed to include domestic projects. Previous to this date the CDM Regulations only applied to commercial work or projects where demolition was occurring. If we are appointed to undertake design work, the Company will fully comply with their responsibilities and obligations as a "Designer" under the Construction (Design and Management) Regulations 2015, but they will not take on the role of Principal Designer in accordance with these Regulations.
- 26. Building Safety Act 2022**
- 26.1 From 1<sup>st</sup> October 2023 there have been some significant changes to the Building Regulations as a result of the introduction of the Building Safety Act 2022, which has come about due to the tragedy at Grenfell. It is now a requirement of the Building Regulations that all Clients including a domestic Client undertaking building work must appoint a Principal Designer and a Principal Contractor prior to a Building Regulations application being made, for even the smallest amount of building work.
- 26.2 These roles are in addition to similar appointments which are required in accordance with the CDM Regulations 2015.
- 26.3 On domestic projects where we only have a small role in the overall building works we will not accept the appointment as Principal Designer under the Building Safety Act and will require our domestic Client to appoint a separate Principal Designer who might need to be themselves, because we cannot be responsible for matters outside of our control.
- 26.4 On commercial projects we will also require the Client to appoint a separate Principal Designer, other than Calvert Brain & Fraulo Ltd, who should be a person or company with overall responsibility and control of the project. If Calvert Brain & Fraulo Ltd are running a project during the construction phase and up to the end of the defects liability period, as Contract Administrator, we will take on the role of Principal Designer in accordance with the Building Safety Act, but a specific appointment will be required and fees agreed as part of the appointment.