

T 108: TERMS AND CONDITIONS BUSINESS

Application

The provision of the services will be subject to the general conditions of sale and any special conditions of sale ("Special Conditions") agreed in writing by GDS, and supersede any terms, representations or other provisions incorporated or referred to in GDS literature or elsewhere. These terms of business together with our quotation for professional services also contain certain information required by Royal Institution of Chartered Surveyors (RICS) to give to clients. Where any such terms and conditions and/or Special Conditions are in conflict with these Conditions of Sale, such other terms and conditions and or/Special Conditions will prevail.

In these conditions unless the context otherwise requires:

- a. "Contract "means the contract for the sale and /or supply of professional services hereunder between GDS and the client.
- b. Services include any part or parts of the goods, works or services to be supplied hereunder but exclude all contractors' materials or services.

Instructions and Specifications

- a. Instructions will only become binding on GDS when accepted in writing.
- b. The client will be responsible for ensuring the accuracy of the terms of any instruction (Including any applicable specifications or special circumstance) and for providing GDS with any necessary information relating to the provision of the Services within sufficient time to enable GDS to perform its obligations.

Approval and Authority

Oral or written approval by the client, of quotations/estimates will be taken by GDS as authorisation to proceed, and such approval will be taken as authorisation to enter into contracts with suppliers on the basis of those quotations or estimates.

Inspection and Acceptance of Services

The client will notify GDS in writing of any claim regarding any defect in the quality of any Services and associated elements within 48 hours of delivery. If no such notice is given, so far as concerns those matters the Client shall be deemed to have accepted the Services and that they are in accordance with the provision of the Contract.

Price

- a. Except as otherwise agreed in writing by GDS, the price of the services shall be specified in GDS' quotation. All prices quoted are valid for 30 days only or (unless otherwise previously withdrawn by GDS) until earlier acceptance by the client. All prices shall be subject to any applicable value added tax and other taxes or duties that may be prevailing at that time and shall be payable at the same time as the price for the services.
- b. GDS reserves the right, by giving notice to the client any time before delivery, to increase the price of its services to reflect any increase in the cost of contractors services, labour or other costs to GDS in carrying out its obligations to provide the client with a service.
- c. Failure of the client to ensure previously agreed access to all applicable areas for whatever reason, resulting in GDS not being able to discharge its obligations to carry out a service under the contract will incur additional charges - on a pro-rata basis.

Payment

- a. GDS may invoice the client at any time under the contract on or at any time after delivery of the service. Where applicable specific payment terms and conditions, such as delivery, stage payment, credit limits and credit periods, shall be stated.
- b. Unless otherwise agreed percentage based fees for project work will be charged as follows:
50% of fee upon completion of survey, design and specification
60% of fee upon completion of tender documentation
70% of fee upon completion of tender report
Up to 100% of fee during execution of works and upon agreement of final account with principal contractor

Percentage based fees will be subject to change during the life of a project. Reconciliation of the fee will occur at each of the stages indicated above.

- c. The client shall pay GDS's invoices in full within 30 days of issue, unless specified in writing. If the client fails to make any payment by the due date then without prejudice to any of their rights or remedies, GDS may terminate the supply of services or suspend those services (this would include the provision of any and all reports, and other records appertaining to the contract). Where this is the case, the ownership of any reports not paid for shall remain with GDS.
- d. Continued late or non-payment of invoice(s) may be regarded as a breach in contract, and GDS reserve the right to end any agreement and demand full and final settlement of all outstanding payment. GDS also reserve the right to commence legal proceedings in relation to debt recovery with all reasonable costs being added to the outstanding debt amount payable by the client.
- e. *As GDS think fit we reserve the right, under the Late Payment of Commercial Debts (interest) Act, to charge the client an interest charge of 1.5% per month for any outstanding until payment is made in full.*

f. Time spent travelling in connection with work outside of an inclusive lump sum fee will be chargeable as out of pocket expenses are reimbursed at cost. Mileage will be charged at 55p per mile.

New Client Payments

a. GDS reserve the right to obtain contact and bank details, including registered office and registered numbers, together with full names and addresses of all partners if a partnership for all new clients, prior to carrying out any Service.

b. GDS reserve the right to obtain credit references from all existing and new clients' banks and key suppliers prior to carrying out any Service.

e. GDS reserve the right to issue a pro-forma invoice in the sum of £500.00 or 50% of the total fee value (whichever is the lesser), and shall require full payment of this invoice prior to beginning any services.

Accelerated Payment

Without prejudice to its other rights and remedies, if GDS has serious doubts about the clients ability to pay any sum payable under the Contract on the due date, GDS may give written notice to the client requiring them to pay, and the client shall pay, within seven days the full price of the Services and all other sums payable under the contract.

Storage

Our practice is to retain our client files (stored in any format) for six years from the date on which our work was effectively completed. This is the length of time that we are required to do so by the Royal Institution of Chartered Surveyors (RICS) Rules. After this time, client files may be destroyed in accordance with our archiving policy. Please let us know in writing if you have any objection to this. This does not apply to documents, which we reasonably consider to be of continuing significance, estate records or title deeds, but does include documents that belong to you.

Performance of Services

a. We shall use all reasonable skill and care in providing services to you and unless a specific timescale is agreed we shall provide the services to you in a reasonable time.

b. We may sub-contract any incidental part or parts of any services to be supplied to you, such as the preparation of plans, photography, we will not sub-contract any part of the services to be performed for you without your express consent.

c. We will be entitled to determine the location at which the services to be supplied to you will be supplied and will be entitled to determine that different individuals within our organization based in different locations should supply different parts of the services for you.

Copyright, Confidentially and Third Party Rights

a. Copyright and other intellectual property rights in any original material (including correspondence), document, drawing, plan, model or report produced by us for you shall remain vested in us and we grant to you only a non-exclusive, non-assignable license to use any such copyright work only for the purposes for which it was prepared. We may also provide copies of other material, the copyright and/or intellectual property rights in which may belong to third parties. We do not authorize you to copy or otherwise use any third party material in any manner, which might amount to an infringement of the copyright and/or intellectual property rights of any third party.

b. We will not disclose to any third party other than your other professional advisors and consultants any confidential information we obtain concerning you or your affairs unless we are obliged to disclose such information by law or by the requirement of any regulatory body to which we are subject. This duty of confidentiality shall not apply to any information which enters the public domain or which we wish to disclose to our professional indemnity insurers or advisers and is subject to the limitation in relation to money laundering compliance.

c. We will accept no liability to any third party to whom or which you may disclose our advice or purport to transfer the benefit of any services supplied by us or to whom or which you may show any document, drawing, plan, model or report produced by us for you.

Money Laundering and Compliance

a. Under the Proceeds of Crime Act 2002 or the Money Laundering Regulations 2003 we may be required to make a disclosure to the appropriate government authorities and may then be unable to advise you either immediately or at all that such a disclosure has been made. You agree to our taking such steps should they in our reasonable view become necessary.

b. To ensure compliance with the anti-money laundering legislation we reserve the right to decline cash receipts in excess of £5,000. We also reserve the right to pay to any third party money due to you.

Limitations of Liability and Exclusions

a. The limit on our professional indemnity insurance cover may vary from time to time and will be disclosed to you upon request (but will not at any time be less than £2m). If you require us to accept liability in respect of a larger potential loss than for which we have insurance cover, you must notify such requirement to us and we will ascertain the cost of obtaining (if possible) additional insurance protection and thereafter notify you the additional fee or charge that would be payable by you to enable us to accept that higher level of liability.

b. Upon request we will supply you with copies of our current policies held in respect of Professional Indemnity Insurance (PII), Employers Liability (EP) and Public Liability (PL).

Force Majeure

GDS shall not be deemed in breach of contract or otherwise be liable to the client for any delay in performing or failure to perform any of their obligations under the contract by reason of any

event or cause being out of GDS's reasonable control (including without limitation failure by any Contractor to supply contractors materials, strike or industrial dispute, shortage of materials or failure or delay to deliver a contracted service). In the, event of any disruption beyond the control of GDS any additional time required to complete the work would be charged pro rata.

Health & Safety Requirements

GDS requires that the client provide our members of staff on their site, with any instruction, equipment or any other item required under Health and Safety legislation that is exceptional to those circumstances pertaining to that site that would not be provided during the normal course of our business services, as if those staff were their own employees.

Complaints Handling

a. GDS has a complaints handling procedure (CHP) in place, in accordance with The Royal Institution of Chartered Surveyors. A copy of these procedures can be supplied upon request and is issued directly to any valid complainant (one to whom the Company owes a duty of care).

Legal Liability

a. The Contracts (Right of Third Parties) Act 1999 shall not apply to any contract between GDS and the client.

b. The client warrants to GDS that in purchasing the services they are not dealing as a consumer (as defined in the Unfair Contract Terms).

c. Although GDS's professional advice is prepared with all reasonable skill care and diligence within the terms of the contract incorporating Terms of Engagement, and taking account of the manpower and resources devoted to it by agreement with the client GDS will be entitled to rely on the information supplied by the client and will not be obliged to make further enquiry into the accuracy of such information. Therefore GDS does not warrant or guarantee that any professional advice whether verbal or written can be fully comprehensive and accurate, the client has the responsibility to check and be satisfied with any professional advice and the accuracy and veracity of statements contained therein.

d. GDS disclaims any responsibility to the client and others in respect of any matter outside the scope of the above. The client agrees that they accept the limitations on and exclusion from liability contained in these conditions as reasonable, and that if they had not been included, the price of the services would have to be materially increased.