



May 2018

Issue 6

TERMS AND CONDITIONS OF BUSINESS

1. INTERPRETATION

1.1 In these Conditions the following expressions have the following meanings: -

- “Contract” a contract for the supply of services on these Conditions;
- “Data” electronic and hard copies of images, photographs, plans, documents, emails, letters and reports; and
- “Fees” the amounts payable by you to us for the Services, as set out in the Proposal; and
- “Proposal” the letter from us to you outlining the scope of the Services and the Deliverables we agree to provide.

1.2 In these Conditions except where the context otherwise requires: -

- 1.2.1 any gender includes any other gender and the singular includes the plural and vice versa;
- 1.2.2 references to “we”, “us” or “our” are to Ethical Planning LLP (CRN: OC352734) trading as “Ethical Partnership”;
- 1.2.3 references to “you” or “your” are to the client named in the Proposal; and
- 1.2.4 reference to the “Contract”, the “Services”, the “Deliverables” includes any part of any of them.

2. APPOINTMENT

- 2.1 You agree to purchase, and we agree to provide the services and the deliverables described in the Proposal (the “Services” and the “Deliverables” respectively) subject to these Conditions, which supersede any other terms, and which govern the Contract to the exclusion of any terms and conditions which you purport to apply or which are implied by trade, custom or course of dealings.
- 2.2 No terms or conditions endorsed upon, delivered with or contained in your order or other document will form part of the Contract simply as a result of such document being delivered to us or referred to in the Contract.
- 2.3 Any variation to these Conditions is of no effect unless expressly agreed in writing by us, by an authorised representative.
- 2.4 We may update these Conditions from time to time and any changes will be notified to you. The changes will apply to any order you wish to make after we have given notice. If



you do not wish to accept the new Conditions, you should not make any further orders. If you make any further orders after the date on which the change(s) comes into effect, the making of such an order indicates your agreement to be bound by the new Conditions. For the avoidance of doubt, any change(s) made to these Conditions will not apply to any orders accepted by us prior to the date on which the change(s) comes into effect or to any disputes arising out of orders made by you prior to the date.

2.5 These Conditions and the Proposal constitute the entire agreement between you and us for the supply of the Services and the Deliverables.

2.6 Our employees, subcontractors or agents are not authorised to make any representation concerning the Services or the Deliverables unless confirmed by us in writing, and you acknowledge that you do not rely on, and waive any claim for breach of, any such unconfirmed representation (unless such representation is made fraudulently).

3. **COMMENCEMENT AND DURATION**

The Contract shall commence on the start date specified in the Proposal and will last for the specified term (if any) unless it is terminated earlier in accordance with these Conditions or we have completed the Services.

4. **PROPOSALS AND ORDERS**

4.1 Any Proposal provided by us is not an offer and we may withdraw or revise it at any time.

4.2 Your acceptance of our Proposal is an order and is an offer by you to purchase the Services subject to these Conditions.

4.3 No order submitted by you, is accepted by us and we have no obligation to supply the Services or the Deliverables until we confirm our written acceptance or (if earlier) we begin to provide the Services to or for you.

4.4 You must ensure that the terms of any order (including any instructions or brief) are complete and accurate and that it gives us any necessary information relating to the Services within a sufficient time to enable us to duly perform the Contract.

5. **REMUNERATION**

5.1 In consideration of us providing the Services, you agree to pay the Fees as set out in the Proposal. Fees are exclusive of mileage, other travel expenses, essential overnight accommodation, subsistence, printing, copying or dissemination of materials on your behalf, value added tax and all other applicable taxes, duties and levies.

5.2 While undertaking work on your behalf, we may need to pay outgoings to third parties. These are known as “disbursements” and will appear on our invoice as such. We reserve the right to request payment from our clients to cover any such disbursements before they are made. Otherwise they will be charged as soon as possible afterwards.

5.3 We will generally raise invoices monthly in arrears, these shall be paid within 30 days after the date of the invoice.



- 5.4 We reserve the right to raise invoices on completion of; a fixed fee service, a specific deliverable or a sub-section of an agreed package of services. Such invoices shall be paid within 30 days after the date of the invoice.
- 5.5 We reserve the right to increase our Fees if, subject to our prior written agreement, there is a material change in the scope of work set out in our Proposal or the assumptions upon which the Proposal is based. Any such increase will be calculated based on our increased costs of providing the Services. We will inform you of the increase as soon as reasonably practicable.
- 5.6 Time of payment is of the essence and, for the purposes of these Conditions, payment is received when we receive it in cleared funds.
- 5.7 Payment by you shall be made without any deduction or set-off.
- 5.8 Despite any provision allowing credit, payment is due and payable to us immediately upon cancellation or termination of the Contract.
- 5.9 We may claim interest on overdue payments and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 if we are not paid in accordance with this Contract.
- 5.10 We are entitled to set off sums owed by us to you against sums owed by you to us.

6. **PERFORMANCE**

We shall perform the Services with reasonable care and skill, but any dates for performance are approximate only and time of performance is not of the essence.

7. **GENERAL DATA PROTECTION REGULATIONS (GDPR)**

- 7.1 The performance of our services and provision of deliverables will be in accordance with the GDPR (effective from 25th May 2018). This may require you to provide us with data and for us to control and /or process such data.
- 7.2 Our privacy policies with respect to the GDPR are available on request and on our web site (details below)
- 7.3 In providing this data to us you consent for us to;
- 7.3.1 Use, store, and delete this data for purposes associated with the provision of services and deliverables as described in our agreements.
- 7.3.2 Use, store, and delete this data for purposes associated with research and furthering the science and art of Town and Country Planning.
- 7.3.3 Share this data with our sub-contractors and sub-consultants for purposes associated with the provision of services and deliverables as described in our agreements



- 7.3.4 Share this data with those agents, consultants and others who have been instructed by you and where we have received written confirmation of your consent to share such data.
- 7.4 It is our policy to retain any data that you provide to us for the duration of the agreement we have with you and for a period of up to 24 months thereafter, unless we are required by regulations to retain this data for a longer period. After this period, it is our policy to delete this data from our electronic files and to shred any hard copies of files.
- 7.5 We may choose to retain this data for more than 24 months associated with using such data for research purposes and furthering the science and art of Town and Country Planning.
- 7.6 You may at any time withdraw your consent for us to use, store, or share this data. Your consent can be withdrawn by communicating in writing to us at the postal or email address below.
- 7.7 In the event that you withdraw consent for us to use, store, or share data this may affect our ability to perform our services and in this circumstance, we reserve the right to vary our professional fees and charges.
- 7.8 We shall each be responsible for any unauthorised disclosure or use of the other's information made by any of our respective employees, agents, or sub-contractors and shall take reasonable precautions to prevent such unauthorised disclosure or use.
- 7.9 Without prejudice to any other rights and remedies we or you may have, we agree that damages may not be an adequate remedy for any breach of this Condition 7 and accordingly we agree that the party alleging breach of this Condition 7 will be entitled without proof of special damage to the remedies of an injunction and other equitable relief for any actual or threatened breach of this Condition 7.

8. **INTELLECTUAL PROPERTY RIGHTS**

- 8.1 The property, copyright and any other intellectual property rights in:
- 8.1.1 any and all documents or other materials you provide to us in connection with the Services ("Your Material") shall belong to you; and
- 8.1.2 any and all documents or other materials and any data or other information provided by us in connection with or relating to the Services ("Our Material") shall belong to us.
- 8.2 You warrant that Your Material and our use of it for the purpose of providing the Services will not infringe the copyright or other intellectual property rights of any third party and you shall indemnify us against any damages, losses, costs, claims or expenses we incur arising from any such infringement.
- 8.3 You acknowledge and agree that all work (including any preliminary reports or other materials or documents) and any idea, invention or improvement made by us or on our behalf pursuant to the Services and all intellectual property rights therein shall be our exclusive property, subject only to Condition 8.5 and 8.6.



- 8.4 You shall execute at our request such documents and do such acts and things as we may reasonably require for the purpose of giving to us the full benefit of this Condition 8.
- 8.5 Subject to the terms of Condition 8.6, we grant you a royalty free licence to copy without alteration or amendment to the Deliverables.
- 8.6 Any Deliverables comprising presentations or other training materials are not provided on a “train the trainer” basis and you are not permitted to (and you shall procure that your employees, agents and sub-contractors shall not) publish, display, copy or otherwise use the Deliverables for subsequent training or instruction of any kind.
- 8.7 The licence to you under Condition 8.5 shall automatically terminate if you do not pay the price in full by the due date or if prior to such payment the Contract is terminated under Condition 14.2 or 14.3.
- 8.8 If any of the Deliverables use any trademarks, trading styles or trade names owned by you, you agree that we shall have the right to use or allow the use of any such devices for the purpose of fulfilling our obligations under the Contract.
- 8.9 Nothing in these Conditions shall have the effect of transferring to you, or requiring the transfer to you, of any intellectual property rights in or any title in or to work created or developed by us.

9. **REJECTION OF DELIVERABLES**

- 9.1 If you believe the Deliverables are not as described under the Proposal you must tell us within 14 days after delivery. If you do not tell us in time, we will not be liable for any error or deviation and you will have to pay us in full for the Services. In any event, you may not reject the Deliverables if any error or deviation is so slight that it would be unreasonable for you to reject them.
- 9.2 If you have a valid claim pursuant to Condition 9.1, we shall be entitled to replace the Deliverables or repeat the Services (or the part or element in question) free of charge or, at our option, refund you the Fee for the relevant Services (or a proportionate part of the Fee), without any further liability to you.

10. **LIMITATION OF LIABILITY**

YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 10.1 The following sets out our entire liability (including any liability for the acts or omissions of our members, employees, agents or subcontractors) to you in respect of any breach of these Conditions, any representation or statement made, or act or omission relating to or done in connection with the Contract including negligence and other tortious liability.
- 10.2 You acknowledge and agree that the Contract is solely with Ethical Planning LLP and you agree not to bring any claim of any nature against any member, employee or agent of Ethical Planning LLP in relation to the Contract, except where such claim cannot be excluded by law.
- 10.3 All warranties, Conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.



10.4 Nothing in these Conditions excludes or limits our liability for death or personal injury caused by our negligence or for fraudulent misrepresentation or excludes or limits any other liability to the extent such liability may not be excluded or limited as a matter of law.

10.5 Subject to Condition 10.4:-

10.5.1 we shall not be liable to you for any loss of profit, loss of production, depletion of goodwill or any indirect loss, damage, costs or expenses whatsoever, in each case which arise out of or in connection with the Contract or its contemplated performance of lack of performance; and

10.5.2 our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance or lack of performance of the Contract shall be limited to the price paid for the Services in respect of which a claim relates.

11. **INDEMNITY**

You agree to indemnify us against any damages, losses, costs, claims or expenses incurred by us towards a third party arising out of or in connection with the Services supplied by us or their operation or use and whether arising by reason of our negligence or otherwise.

12. **CANCELLATION AND DELAY**

12.1 You may only cancel an order with our written agreement and on terms that you shall indemnify us against all loss (including loss of profit), costs, (including the cost of all labour and materials used), damages, fees and expenses incurred by us as a result of cancellation.

12.2 If you extend or delay the Contract with our written agreement you shall indemnify us against all loss (including loss of profit), costs (including the cost of storage and all labour and materials used), damages, fees or expense incurred by us as a result of such extension, delay or failure.

12.3 We reserve the right to defer or suspend the performance of the Services or to cancel the Contract without liability to you if we are prevented from or delayed in carrying on our business by any cause beyond our control. Such delay or failure shall not constitute a breach of the Contract and the time for its performance shall be extended by such period as is equal to the delay or by which performance is prevented.

13. **THE PROVISION OF SERVICES REGULATIONS 2009**

13.1 Our contact details for the purposes of regulation 7 of the Provision of Services Regulations 2009 are as follows:

Postal Address: 28 Windsor Terrace
South Gosforth
Newcastle upon Tyne
NE3 1YL
Tel: 0191 284 6675
e-mail: enquiries@ethicalpartnership.co.uk



Registered Office: 32 Portland Terrace,
Newcastle upon Tyne,
NE2 1QP



- 13.2 The information we are required to make available under regulation 8 of the Provision of Services Regulations 2009 can be accessed via the following website: www.ethicalpartnership.co.uk.

14. **TERMINATION**

- 14.1 Subject to expiry or prior termination under Condition 14.2 or 14.3, we may terminate the Contract by giving you not less than three months' written notice expiring at any time.
- 14.2 The Contract will terminate immediately if you become or are declared insolvent, or a resolution is passed for your winding up, or you convene a meeting of creditors or make or propose to make any arrangement or composition with your creditors, or a liquidator, an administrative receiver, a receiver, manager, trustee or administrator or analogous officer is appointed in respect of all or any part of your property, undertaking or assets, or you become subject to any bankruptcy procedure or analogous insolvency procedure in any jurisdiction, or any person files a notice of intention to appoint an administrator or a notice of appointment of an administrator or applies to court for an administration order in respect of you.
- 14.3 We may terminate the Contract immediately by telling you in writing if you commit a material breach of any of your obligations under the Contract or you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you cease or threaten to cease to trade.
- 14.4 Termination of the Contract shall not affect rights and duties accrued before termination.

15. **GENERAL**

- 15.1 We reserve the right to perform any of our obligations or exercise any of our rights alone or through sub-contractors or agents.
- 15.2 Each right or remedy we have under the Contract is without prejudice to any other right or remedy we have, whether or not under the Contract.
- 15.3 If any provision of the Contract is found by any competent authority to be invalid, unenforceable or unreasonable, it shall be severed from the remainder of the Contract which shall continue in full force and effect.
- 15.4 Failure or delay by us in enforcing or partially enforcing any provision of the Contract is not a waiver of any of our rights under the Contract.
- 15.5 Any waiver by us of any breach by you is not a waiver of any subsequent breach.
- 15.6 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.



- 15.7 Notices shall be delivered personally or sent by first class post or sent by email transmission.
- 15.8 A notice is deemed to have been received: -
- 15.8.1 if delivered personally, at the time of delivery;
 - 15.8.2 if sent by prepaid first-class post, on the second working day after posting (exclusive of the day of posting);
 - 15.8.3 if sent by email, on a working day prior to 4.00pm at the time of completed transmission and otherwise on the next working day.
- 15.9 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

16. **ASSIGNMENT**

You shall not without our prior written consent (which shall not be unreasonably withheld or delayed) assign, transfer, charge, dispose of or deal in any other manner with this Contract or any of your rights or beneficial interests under it, or purport to do any of the same, nor sub-contract any or all of your obligations under this Contract.

17. **ENGLISH LAW**

- 17.1 The Contract shall be governed by English law, and the parties submit to the exclusive jurisdiction of the English courts.
- 17.2 Condition 17.1 is for our benefit only and as a result we shall not be prevented from taking proceedings in any other courts with jurisdiction, whether concurrently or not.