

Piledesigns Limited is constituted as a limited liability company in accordance with the Companies Act, 1989 (with registered number 5072190) and with its registered office at Unit 23, Chiltern Trading Estate, Earl Howe Road, Holmer Green, Bucks, HP15 6QT.

## 1. Definitions

“*Agreement*” means these Terms & Conditions.

“*Client*” means the individual or organisation with whom this Agreement applies following commencement of works required.

“*Consultant*” means Piledesigns Limited of Unit 23, Chiltern Trading Estate, Earl Howe Road, Holmer Green, Bucks, HP15 6QT.

“*Sub consultant*” refers to work carried out by a designer not directly employed by Piledesigns Limited.

“*Parties*” means the Consultant and the Client and “*party*” shall mean either the Consultant or the Client

“*Services*” means the services carried out by the Consultant, as necessary to undertake a geotechnical design for a project and includes all other works performed by the Consultant pursuant to the works and this Agreement.

“*Site*” means the area(s) in which the Services or any part of the Services are to be provided by the Consultant.

1.1. These Terms and Conditions shall apply to all work carried out by the Consultant and any terms of conditions of the Client shall be excluded from this Agreement and shall not apply to the Services undertaken by the Consultant unless expressly agreed in writing by a director of the Consultant. Acceptance of our commencement of the provision of Services shall be deemed to be acceptance of these Terms and Conditions.

1.2. The Services provided to the Client and the contract under which those services are provided is with the Consultant and not with any individual director, employee, sub consultant or agent of the Consultant.

1.3. The scope of works which the Consultant will carry out will be as necessary from any correspondence/communications received from the Client at the time of instruction. As the project develops the Client’s brief /scope of works may change for which the Consultant shall be entitled to additional payment at the agreed hourly rates for additional time expended beyond that allowed or initially taken.

1.4. Whilst every effort will be made to respond and/or achieve delivery of a required design, the Consultant cannot accept liability or be held financially responsible for any targets or deadlines being missed.

## 2. Exclusions and Limitations on Liability

2.1. The Consultant shall not be liable for any failure or delay or for the consequences of any failure or delay in performance of any instructions or the Services if such failure is due to any event beyond the Consultants reasonable control such as (without limiting the foregoing): acts of God, war, industrial disputes, legislation, protests, fire, flood, storm, tempest, explosion, acts of terrorism, failure /interruption of IT systems, power supply, or other utilities, and national emergencies. The Consultant shall have no liability in connection with matters related to contaminated land, pollution, asbestos, mining and slope stability.

2.2. The Consultants total liability of whatever nature, whether arising under tort (including without limitation negligence), under statute or otherwise for any or all loss (which shall include all loses, damages, costs and liabilities whatsoever) arising from or in any way in connection with the Services carried out by the Consultant shall be limited to the indemnity provided by the Professional Indemnity insurance maintained by the Consultant which shall not exceed £2,000,000 (two million pounds) with the exception of any liability of the Consultant which is not covered by such insurance in which case the liability of the Consultant shall not exceed six times the relevant Consultants fee for tender design fee or twelve times the Consultants fee for Services related to the relevant contract works design fee.

2.3. The liability of the Consultant shall be further limited to that proportion of the Clients loss which is just and equitable for the Consultant to pay, having regard to the extent of the Consultant’s responsibility for it and on the basis that all other consultants and contractors engaged in relation to the project will be deemed to owe the Client a duty of care and have the benefit of no exclusions or limitations of liability, nor joint nor co-

insurance provisions and will be deemed to have paid the Client such proportion of the loss as it would be just and equitable for them to pay having regard to the extent of their responsibility.

2.4. Nothing in these Terms and Conditions shall affect any liability which the Consultant may have to the Client in respect of any personal injury or death resulting from the Consultants negligence, any loss caused by fraudulent misrepresentation or reckless disregard of the Consultants professional obligations or any situation where the law prohibits excluding or limiting liability.

2.5. The Consultant shall maintain, for the duration of its liability, as described herein, professional indemnity insurance provided that such insurance remains available to the Consultant at commercially reasonable rates and terms.

2.6. The Client shall not assign the Consultants work or any benefit arising from it without the Consultants prior written consent. Where the Consultant gives consent to an assignment or where by other means any other person is entitled to rely on the Consultants work they shall have no greater rights than the Client has under this Agreement and the Consultant shall have no greater or longer liability than he has to the Client under this Agreement.

2.7. The Consultant shall have no liability for loss of profit, loss of business opportunity, increased operating costs, loss of goodwill or consequential or economic loss arising under or in connection with this Agreement and/or the Services undertaken by the Consultant.

2.8. The Consultant will accept no claim/liability from the client if the payment for the design services has not been made or agreed.

## 3. Fees & Expenses

3.1. The Consultants fees typically reflect an hourly rate which have been determined as appropriate for the design engineers within the Consultant.

3.2. Hourly rates are, however, not the only factor reflected in our charges; other influences may affect the final amount, including the complexity of the task, level of risk, the urgency with which the work was carried out, the importance of the work the client, the value of the transaction involved, and the responsibility on the Consultant.

3.3. In the event the Consultant provides an estimate for the Services this is an indication of the likely fees for carrying out the work specified and is given on the basis of information provided to the Consultant at the appropriate time and is based on experience and the Consultants assessment of the tasks requested by the Client. There are many factors beyond the Consultants control that can result in an estimate being exceeded, for example, changes to instructions, requirements of third parties, lack of timely response from others and unexpected developments. Should the Consultant have to undertake more work than anticipated the Consultant reserves the right to charge additional fees as appropriate (typically in accordance with the hourly rates). Any additional external costs will typically be charged at cost plus 15%.

3.4. Unless the Consultant specifically agrees otherwise, the Client will be responsible for paying the Consultants fees and expenses even if the Services are for any reason not concluded or cancelled. In these circumstances, the Consultants charges will be calculated to reflect a fair and proper rate for the work carried out, whether or not a fixed rate was agreed for the successful completion of the whole work.

3.5. The Consultant has made no allowance for entering into or providing any collateral warranty and additional charges shall be applicable if one is required.

## 4. Payment

4.1. All fees quoted exclude VAT, which will be added as appropriate. Invoices for the Consultants Services will typically be submitted for payment on a monthly basis.

4.2. All sums invoiced by the Consultant are due on the date of invoice and the final date of payment shall be 30 days after the invoice date.

4.3. In some cases the Consultant may request that an invoice is paid before completion of the services and the Consultant reserves the right not to complete the Services until payment of the invoice and any other fees and expenses have been received by the Consultant.

4.4. Any complaints or queries in relation to an invoice must be notified in writing to the Consultant not later than 25 days after the date of the invoice. After that period the invoice must be paid in full. Where the sum due under an invoice is not paid in full by the final date for payment and no valid reasons for withholding payment have been received by the Consultant within the 25 day period, the Consultant may suspend work until full payment is made.

#### **5. Quality of Service**

5.1. The responsibility and liability of the Consultant in undertaking the Services shall be limited to the exercise of reasonable skill and care. The Consultant shall not have any responsibility or liability to ensure that the Services or the result of providing the Services is fit for purpose.

5.2. The Client agrees that the Consultant is entitled to rely upon the Client responding promptly to requests for information or instructions, and to notify the Consultant promptly of any change in circumstances relevant to the work being undertaken by the Consultant, including but not limited to any matters which the Client agrees directly with any other party involved in the matter to which the Services relates.

5.3. The Consultant has a complaints handling policy which is designed to respond promptly and effectively to any complaint with a view to putting matters right and enabling the relationship with the Client to be maintained. A copy of the Complaints Handling Procedure is available on request. If, as any matter progresses, the Client is dissatisfied with the service received, they should speak as soon as possible to the person responsible for the work, if the complaint remains unresolved after discussion with him/her, the Client should contact the Consultants Director(s).

#### **6. Copyright**

6.1. Subject to the prompt and proper payment of all fees and expenses due to the Consultant and to the extent that the copyright in any plans, drawings, reports or other design documents provided by the Consultant to the Client are vested in the Consultant, the Consultant grants the client a license to use such documents for all the purposes stated within the Agreement or the initial instructions received by the Consultant. The Consultant accepts no responsibility for and the Client shall indemnify the Consultant against the use by the Client or others on the Client's behalf of such design documents for any purpose other than for which they were intended, prepared and provided by the Consultant. Should such design documents be provided to any third party then the Client shall indemnify the Consultant against any liability which may be incurred by the Consultant.

#### **7. Geotechnical Work / Pile Design**

7.1. The design undertaken by the Consultant will be based on the information made available and usually provided from the Client. The Consultant shall be entitled to place reliance upon the information provided to him by the Client or on the Client's behalf.

7.2. The design will be based upon the ground condition information provided by the Client to the Consultant, which unless otherwise noted will be deemed to be site specific. Where the information provided is limited in geotechnical data or depth relative to the proposed design, then any assumptions made or further information used will be detailed in the design. It is specifically brought to the attention of the Client that these assumptions and further information together with the design profile and parameters shall be verified by others prior to and during any site works, the subject of the Services, being undertaken. The Consultant shall have no liability where the Client has not undertaken such verification.

7.3. The Consultant shall take no liability for any design should any retrospective, third party comments be raised after the commencement of the works on site by the Client which uses the design produced by the Consultant.

7.4. The Consultant is to be provided with any further information which may become available to the Client during the works on site. The Consultant shall not be liable if this information is not provided and shall be paid, at the normal rate, for such additional work, as necessary.

7.5. The Consultants interpretation of any regulatory database information is based upon the data provided as being accurate. A

disclaimer provided by database search companies is as follows: "...the data is derived from historical sources or information available in public records or from third parties and is supplied to us without warranty by data suppliers and we cannot warrant the accuracy or completeness of the data or the reports." The Consultant cannot therefore accept any responsibility for the accuracy of the data used in this respect and shall only have a responsibility for its interpretation being carried out with reasonable skill and care.

7.6. The Consultants interpretation of the physical properties of the ground materials encountered within the information provided to it depends upon the technique of measurement, investigation and testing used. It should be noted that investigation can only test a small amount of the total of any individual stratum. Parameters given should therefore not necessarily be regarded as characteristic of the strata as a whole.

7.7. Unless otherwise agreed by the Consultant the Consultant shall have no responsibility or liability in respect of any matter associated with overall slope stability due to mining and / or slope stability either in the temporary or permanent condition. It shall be the responsibility of the Client to commission a specialist report from a suitably qualified structural soils company in this respect.

7.8. If the Services form part of a development for which includes the design of piles for support of part of a structure the Consultant shall have no responsibility for any differential movement which shall be the responsibility of the Client as part of the overall Sub Structure design by others employed by the Client.

7.9. As part of most designs and Services the Consultant will compile a pile schedule, which is carried out against the information received and also incorporates other appropriate information. Where any such pile schedule is used by the Client the information should be checked and verified by the Client as accurate by cross reference to the drawings and design.

7.10. Where relevant, the Consultant shall take no liability for site location or pile positions in relation to proximity of the site to nearby structures, position of boreholes, unless clearly notified prior to the design being undertaken by the Consultant.

#### **8. Disputes**

8.1. In the event of any dispute or difference between the parties in connection with or arising out of this Agreement or carrying out the Services, whether arising during the period of this Agreement or afterwards, the dispute or difference shall be dealt with in accordance with the following provisions;

- The parties shall use their reasonable endeavours to resolve the dispute or difference in a cost effective and proportionate manner by negotiation or mediation
- If the parties are unable to resolve the dispute or difference by negotiation or mediation then the dispute or difference shall be referred to and finally resolved by arbitration under the provisions of the Arbitration Act 1996.
- Reference to arbitration shall not be made until eight weeks since the dispute or difference shall have arisen.

8.2. Nothing in this Agreement confers or purports on any third party any benefit or right to enforce any term of this agreement pursuant to the Contracts (Rights of Third Parties) Act, 1999.

8.3. This Agreement shall be governed by and shall be construed in accordance with the law of England & Wales and any dispute arising hereunder between the parties shall be subject to the exclusive jurisdiction of the Courts of England & Wales.