

OCF Standard Terms and Conditions (the "Conditions")

1. Definitions

- 1.1 In this Agreement (unless the context otherwise requires):
- 1.2 "Agreement" means the Proposal (including any documentation attached to or referred to therein) together with these Conditions;
- 1.3 "Brexite" means any change in any law, order, rules, regulations, codes of practice and/or decisions of a government body, and/or the UK having ceased to be a member state of the EU, the European Union (Withdrawal Agreement) Act 2020 ceasing to apply, and/or any trade agreement between the UK, the EU the USA and/or any country being entered into, amended, abandoned or delayed;
- 1.4 "Client" means as defined in the Proposal;
- 1.5 "Consultant" means O'Carroll Fitzgerald Project & Commercial Management Limited here after called OCF, a company incorporated in Ireland with company number 477670 and whose registered office is unit 19 Charleville Town Centre, Charleville County Cork.
- 1.6 "Fee" is as defined in the Proposal;
- 1.7 "Force Majeure" means any event or circumstances outside the Consultant's control, including without limitation, war, terrorism, acts of God, flood, drought, earthquake or other natural disaster, and any epidemic or pandemic and/or any consequences of such an event or circumstances;
- 1.8 "Insolvent" means if:
- (a) a party suspends, or threatens to suspend, payment of its debts or is unable to pay its or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 570 of the Companies Act 2014;
 - (b) a party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with its winding up;
 - (d) an application or an order is made for the appointment of a receiver or examiner;
 - (f) being an individual, it is the subject of a bankruptcy petition or order; or
 - (i) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above.
- 1.9 "Parties" means the Client and Consultant;
- 1.10 "Project" is the project stated in the Proposal;
- 1.11 "Proposal" is the letter to which these Conditions relate and where details of the Fee, Project, Services, and other particular requirements are set out; and
- 1.12 "Services" are as defined in the Proposal.

2. Services

- 2.1 The Consultant shall exercise reasonable skill and care in the performance of the Services. Notwithstanding any other provision of this Agreement, the Consultant shall have no greater obligation in respect of the Services than to exercise the level of skill and care required under this clause. Nothing in this Agreement or otherwise shall impose any obligation, warranty or guarantee (whether express or implied) on or from the Consultant that the Services shall be fit for any particular purpose or suitable for use.
- 2.2 Insofar as it relates to the Services, the Consultant provides no warranty or guarantee in respect of achieving any design life, and the Parties agree that OCF shall have no liability for or arising from any design life obligation.
- 2.3 The Consultant shall comply with the Client's reasonable written instructions in connection with the Services.
- 2.4 Any timescale provided in the Proposal for completion of the Services are estimates only. Where any programme is agreed by the Client and OCF from time to time, the Consultant shall use reasonable endeavours to comply with such programme.
- 2.5 Where for reasons beyond the Consultant's reasonable control the Consultant is delayed in performing the Services and/or is required to carry out any Additional Services (hereinafter defined), the Consultant shall be entitled to additional time to perform the Services and the Additional Services and shall not be in breach of these Conditions as a result of such delay. The Consultant shall also not be liable for any delays related to obtaining permits, whether caused by the Client, regulatory bodies, or other third parties.

3. Additional Services

Any services that are not included in the Services identified in the Proposal shall be additional services (Additional Services) and subject to the payment of an additional fee calculated on a time spent basis in accordance with the Consultant's standard hourly rates in place from time-to-time.

4. Client obligations

The Client shall:

- 4.1 provide all data, information and materials, obtain and maintain any necessary licences, permits, consents and other approvals, give all access and give any decisions, approvals, confirmations or instructions, as the Consultant may reasonably require and/or are necessary for the performance of the Services in a timely manner; and
- 4.2 comply with its duties, and ensure that the principal designer and all other designers engaged in respect of the Project are competent (construed in accordance with section 2(2) of the Safety, Health and Welfare at Work (Construction) Regulations, 2013) and shall comply with their respective duties, under the Building Regulations 1997 – 2021 (Building Regulations) and the Building Control Acts 1990 - 2014 and all relevant amendments and sub-ordinate legislation including the Building Control Regulations 1997 to 2020 as amended or replaced (Building Control Regulations).

5. Privacy Practices

The Consultant has systems in place which are designed to maintain a suitable control environment around the Client's Data. The Consultant will notify the Client immediately in the

event of any security breach, actual or suspected, concerning the Client's Data and will engage with the Client in respect of any external communications or notifications required in respect of any such breach.

6. Limitation of Liability or Disclaimers / Insurance

- 6.1 Provided that such insurance continues to be available at commercially reasonable rates and terms, the Consultant will maintain Professional Indemnity, Public Liability and Employer's Liability insurance at a level proportionate to the Fee and the Project. Professional Indemnity insurance shall be held for a period of 6 years after the earlier of Practical Completion of the Project, completion of the Services or termination of the proposal. Insurance shall be held subject to standard exclusions and endorsements prevalent in the insurance market for consultant's carrying out services similar to the Consultant.
- 6.2 Notwithstanding anything to the contrary contained in this Agreement and without prejudice to any other provision in this Agreement whereby the Consultant's liability is excluded or limited to a lesser amount, the Consultant's total aggregate liability (including, without limitation, legal costs and interest) under or in connection with this Agreement shall not exceed the lesser of i) ten times the Fee or ii) €1,000,000.00 (One Million Euros) howsoever that liability arises including, without limitation, in contract, in tort, in negligence, for breach of statutory duty or otherwise, provided that this clause 6.2 shall not exclude or limit the Consultant's liability for death or personal injury caused by the Consultant's negligence or for fraud or fraudulent misrepresentation.
- 6.3 Notwithstanding any other provision of this Agreement:
- 6.4 The Consultant shall not be liable for any loss of income, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, wasted management time, loss of anticipated savings, loss of, damage to or corruption of data, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether foreseeable or in the contemplation of the Parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise;
- 6.5 The Consultant's liability to the Client under or in connection with this Agreement shall not exceed such sum as it would be just and equitable for the Consultant to pay, having regard to the extent of the Consultant's responsibility for the loss and/or damage and on the assumption that all other consultants, contractors, sub-contractors and other persons involved in the Project have paid to the Client such sums as it would be just and equitable for them to pay; and
- 6.6 The Consultant shall have no liability whatsoever and however so arising out of or in connection with any claims relating to fire safety or performance, terrorism, asbestos and/or pollution and contamination in relation to the Project. The Client shall indemnify and keep indemnified the Consultant against any losses, claims, costs, damages, or expenses arising out of or in connection with asbestos and/or pollution and contamination in relation to the Project.
- 6.7 The Client agrees not to pursue any claims in contract, tort or for breach of statutory duty (including negligence) or otherwise against any individuals working or employees who work for the Consultant in their personal capacity at any time.
- 6.8 Without prejudice to any shorter statutory limitation period, no action, claim or proceedings arising out of or in connection with this Agreement (howsoever arising) shall be commenced against the Consultant after the expiry of a period of 6 years from the completion of the Services or termination of this Agreement, whichever is earlier.
- 6.9 Building information models produced in performing the Services ("Models") are for the Consultant's use only. The Client shall indemnify and keep indemnified the Consultant against any losses, claims, costs, damages, or expenses arising out of or in connection with the use and or reliance on any Models by the Client or any third party.
- 6.10 The Parties agree that any reports or information created by the Consultant in carrying out the Services ("Reports") are for the Client only and no third party is entitled to rely upon any such Reports unless agreed in writing by both Parties. The Client will indemnify the Consultant against any third party's claim purporting reliance on the Consultant's Reports.

7. Indemnity

7.1 The Client agrees to indemnify and save the Consultant harmless from any loss, cost or expense claimed by third parties for property damage and bodily injury, including death, caused solely by the negligence or wilful misconduct of Client, its agents or employees in connection with the Services.

8. Force Majeure

- 8.1 Any delay and/or failure of the Consultant in the performance of its required obligations hereunder shall be excused if and to the extent that any such delay and/or failure is caused by any event or circumstance beyond the control of the Consultant, including but not limited to, acts of God, any pandemic and/or epidemic, decrees or restraint of Government, strikes, fire, flood, windstorm, explosion, riots, war, sabotage, inability to secure labour or materials, and freight embargoes (Force Majeure).
- 8.2 On each and every occasion, if any, the Consultant claims delay and/or failure in the performance of its obligations hereunder due to Force Majeure, the Consultant shall promptly notify the Client in writing of the cause of any such delay and/or failure and the Consultant shall be granted cost and programme relief.
- 8.3 For the avoidance of doubt, the Consultant shall not be in breach of its obligations hereunder and shall have no liability under or in connection with any such delay and/or failure as a result of
- i) any act, omission, or default
 - ii) any failure to perform the Services and any additional services if applicable in accordance with the Project and/or
 - iii) any prolongation or delay to the Services and any additional services, to the extent it is caused or contributed to by any Force Majeure.

9. Payment

9.1 In order to continue to provide a quality service to its Clients, the Consultant requires that all invoices be settled promptly and in any event within 30 days. The date upon which invoices are submitted shall be payment claim dates for the purposes of the Construction Contracts Act 2013 (the "CCA").

9.2 All documents and drawings are issued in draft format and copyright remains with the Consultant until payment has been received in full.

9.3 The Client shall pay the Consultant for the Services on the basis described in the Consultant's Proposal.

9.4 No later than 30 days after receipt of the Consultant's invoice the Client shall pay the sum due as specified in the invoice.

9.5 Payments not received within such time period will be subject to interest of eight per cent (8%) in accordance with S.I. No. 580/2012 – European Communities (Late Payment in Commercial Transitions) Regulations 2012, per month for any unpaid balance. The Consultant shall have the right to suspend and or terminate the Services if payments are not received in accordance with this Agreement.

9.6 All amounts due and payable to the Consultant shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Third Party Fee Payments

All fees to local authorities, statutory bodies, utility providers, or any third parties are to be paid by the Client directly.

11. Termination and Suspension

11.1 If the Client breaches any term of this Agreement and on being notified thereof fails to cure or commence to cure the breach to the satisfaction of the Consultant within seven (7) days from the notification of the breach, the Consultant shall be entitled to terminate the Agreement at its discretion. If the Consultant exercises its right to terminate this Agreement, the Consultant shall be compensated for the Services performed up to the time of termination.

11.2 The Consultant may suspend performance of all or part of the Services by giving not less than seven (7) days' notice in writing if payment of any amount due and payable to the Consultant is not received in accordance with the Agreement. Or, if as a result of any circumstances for which the Consultant is not responsible, the Consultant considers that it is impossible or irresponsible for it to perform all or part of the Services, the Consultant may also suspend the Services. If such suspension continues for fourteen (14) days, the Consultant may terminate by immediate notice.

11.3 The Consultant may serve fourteen (14) days' written notice of its intention to terminate if the Client is in material breach of its obligations in this Agreement and/or payment of any amount due and payable to the Consultant is not received within fourteen (14) days of the due date for payment in accordance with clause 9.4. In the event of the Client becoming insolvent, the Consultant shall be entitled to immediately terminate the Agreement.

11.4 If for any reason the Consultant's employment is suspended or terminated, the Consultant shall be paid the amount of the Fee due and payable at the date of termination or suspension, any reasonable costs, expenses and/or losses incurred by the Consultant as a result of such suspension or termination, and a fair and reasonable proportion of any Fee instalments in respect of which the Services are part-performed at the date of termination.

11.5 If, as a result of Brexit, and any consequences of Brexit (all together a "Relevant Event"), Additional Services are performed and/or the Services are delayed and/or prolonged, the Consultant shall be entitled to an extension of time to the extent of the delay and/or prolongation and to additional payment in accordance with clause 3. If any Relevant Event prevents or significantly impedes or impacts the performance by the Consultant of the Services or any Additional Services under this Agreement, and/or materially increases the cost of performance, the Consultant may upon not less than 28 days' notice suspend the performance of all or any part of the Services under this Agreement.

12. Patent Infringement

12.1 The intellectual property rights in all drawings, reports and/or other documents produced by the Consultant pursuant to this Agreement ("Documents") shall vest in or remain vested in the Consultant. The Client shall have a perpetual non-exclusive and royalty free licence to use the Documents for any purpose connected with the Project. The Parties agree that the Consultant will not be liable for any use of the Documents other than for the purposes for which they were prepared. The Client's licence shall have the ability to grant sub-licences.

12.2 Both the Client and the Consultant undertake to indemnify and hold each other harmless from and against any directly incurred and fully mitigated claim being made and/or proceedings instituted against either party to this Agreement pursuant to any alleged infringement of patent committed by the other, except where such claims arise out of the information or directions given by one party to the other. In the event of any such claim and/or proceedings, the party affected shall promptly notify the other who shall resolve such claim and pay and/or incur to its account all costs and expenses arising therefrom.

13. Governing Law and Disputes Resolution

This Agreement and any disputes arising thereunder will be governed by the laws of Ireland. Any disputes, which cannot be settled amicably between the parties, shall first be referred to conciliation. In the absence of agreement, the conciliator shall be appointed by the President of the time being of Engineers Ireland. The conciliation shall be conducted in accordance with the Engineers Ireland Conciliation Procedure. Any dispute shall be finally settled by Arbitration. Every or any such reference to Arbitration shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010 or any amendment thereto. The seat of any arbitration shall be Dublin, Ireland. The rules applicable to the Arbitration shall be the latest version of the Engineers Ireland Arbitration Procedure.

14. Entire Agreement & Variations

14.1 This Agreement constitutes the entire agreement between the Consultant and the Client. All prior terms, conditions, warranties, guarantees, representations, and communications,

however expressed or implied, including terms and conditions preprinted on Clients purchase orders are hereby expressly superseded by this Agreement.

14.2 Any variation to this agreement shall be in writing and agreed between the parties. The Client shall indemnify the Consultant in respect of its reasonable legal costs in relation to any variation of or substitution of this Agreement.