

Terms of Appointment



The project:

between

The Client:

and

The Architectural Consultant: Blue Ridge Designs Ltd

1 Architectural Services

Blue Ridge Designs shall:

- Perform the services with due regard to the Client's requirements.
- Advise on progress in the performance of the services and of any issue that may materially affect the delivery, the cost or quality of the project
- Act on behalf of the client in the matters set out or implied in this agreement
- If acting as contract administrator of the building contract exercise impartial and independent judgement when dealing between the Client and the Contractor
- Collaborate with any other persons appointed by the client and, as applicable, shall coordinate and integrate information received into Blue Ridge Designs' work and shall pass relevant information to them
- Make no material alteration to the services or the approved design without the consent of the Client, except in an emergency.
- Blue Ridge Designs will have the right to publish photographs of the project, and the Client shall give reasonable access to the Project for this purpose for two years after practical completion of the construction works.

2 Client's Responsibilities

The Client Shall:

- Advise Blue Ridge Designs of the requirements and of any subsequent changes required
- Provide free of charge, the information in the client's possession, or which is reasonably obtainable, and which is necessary for the proper and timely performance of the services and Blue Ridge Designs shall be entitled to rely on such information.
- Give decisions and approvals necessary for the performance of the services within seven days of information being provided or requested.
- Issue reasonable instruction to Blue Ridge Designs

- Hold the Contractor or Contractors and not Blue Ridge Designs responsible for the proper carrying out and completion of the construction work.
- Not liaise with the Contractor or Contractors directly without prior consent from Blue Ridge Designs.
- The Client acknowledges that Blue Ridge Designs does not warrant: Compliance with any programme and/or any target cost for building work which may need to be reviewed for:
 - (a) variations requested or approved by the client
 - (b) delays caused by any other person
 - (c) any other factors beyond the control of Blue Ridge Designs
- The competence, performance, work, services, products or solvency of any other persons.

3 Fees and Expenses

The fees for performance of the Services and/or any additional services shall be as specified in the Letter of Appointment and Schedule of Fees & Expenses:

Percentages are applied to the final approved tender price of appointed Contractor. This price shall form the contract sum.

- The cost shall exclude VAT, fees and any claims made by or against the contractor or contractors.
- Lump sums, rates for time charges, mileage and printing shall be revised every 12 month in accordance with changes in the Consumer Price Index. Each 12-month period commences on the anniversary of the date on which Blue Ridge Designs commenced performance of the services.

The basic fee:

- Shall be adjusted, including due allowances for any loss and/or expense, if material changes are made to the Brief and/or the latest approved estimate of the cost of the building work and/or the programme and/or the Services are varied by agreement.
- Shall not be adjusted for any reduction of the cost of the building works arising solely from deflationary market conditions not prevailing at the date of this agreement. The basic fee shall continue to be based on the approved cost of the building works current prior to the date of such reduction

If Blue Ridge Designs is involved in extra work or incurs extra expense for reasons beyond Blue Ridge Designs' reasonable control, additional fees shall be calculated on a time basis in accordance details listed elsewhere.

Blue Ridge Designs will inform the client on becoming aware of such extra work which may result in additional fees.

The client shall reimburse Blue Ridge Designs for expenses in the manner specified in the Letter of Appointment.

Blue Ridge Designs shall issue accounts monthly or as specified in the Letter of Appointment setting out any accrued instalments of the basic Fee and any additional fees, expenses, disbursements or VAT, less any amounts previously paid and stating the basis of calculation of the amounts due.

Payments shall become due to Blue Ridge Designs seven days after the issue of Blue Ridge Designs account.

The client shall not withhold any amount due to Blue Ridge Designs under this agreement unless the amount has been agreed by Blue Ridge Designs or has been decided by any tribunal to which the matter is referred as not being due to Blue Ridge Designs. All rights of set-off at common law or in equity which the Client would otherwise be entitled to exercise are expressly excluded.

If performance of any or all services, obligations and client responsibilities are delayed, suspended or ended by either party, Blue Ridge Designs shall be entitled:

- To payment of any part of the fee and other amounts properly due; together with
- Reimbursement of any loss and/or expense properly and necessarily incurred by Blue Ridge Designs by reason of the suspension or the termination, except where Blue Ridge Designs is in material or persistent breach of obligations under the agreement.

In the event that any amounts are not paid when properly due, the payee shall be entitled to simple interest on such amounts until the date that payment is received at 8% over the dealing rate of the Bank of England Rate current at the date that payment becomes overdue, together with such costs reasonably incurred by the payee (including costs of time spent by employees and advisors) in obtaining payment of any sums due under this agreement.

The client or Blue Ridge Designs shall pay to the other party who successfully pursues, resists or defends any claim or part of a claim brought by the other:

- Such costs reasonably incurred where the matter is resolved by mediation or negotiation; or
- Such costs as may be determined by any tribunal to which the matter is referred.

In addition to the fees and expenses, the client shall pay any Value Added Tax chargeable on Blue Ridge Designs fees and expenses.

4 Liability and Insurance

Blue Ridge Design's Liability:

No action or proceedings arising from failure of Blue Ridge Designs to keep to this agreement shall be commenced after the expiry of six years from the date of the last services performed under this agreement or, if earlier, practical completion of construction of the project or such earlier date as prescribed by law.

In any such action or proceedings:

- Blue Ridge Designs liability for loss or damage shall not exceed the amount of Blue Ridge Designs professional indemnity insurance specified in the Letter of Appointment, providing Blue Ridge Designs has notified the insurer of the relevant claim or claims as required by the terms of such insurance.
- No employee of Blue Ridge Designs or any agent of Blue Ridge Designs shall be personally liable to the client for any negligence, default or any other liability whatsoever arising from performance of services.
- Without prejudice to the provisions above, the liability of Blue Ridge Designs shall not exceed such sum as it is just and equitable for Blue Ridge Designs to pay having regard to the extent of Blue Ridge Designs responsibility for the loss and/or damage in question and on the assumptions that:
- All other consultants and contractors providing work or services for the project have provided to the client contractual undertakings on terms no less onerous than those of Blue Ridge Designs under this agreement.
- There are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the client and any other person referred to in this condition, and all the persons referred to in this condition have paid to the client such sums as it would be just and equitable for them to pay having regard to the extent of their responsibility for that loss and/or damage.
- Blue Ridge Designs shall maintain until at least the expiry of the period specified above for professional indemnity insurance with a limit of indemnity not less than the amount or amounts specified in the Letter

of Appointment, provided such insurance continues to be offered on commercially reasonable terms to Blue Ridge Designs at the time when the insurance is taken out or renewed.

- Blue Ridge Designs, when reasonably requested by the client, shall produce for inspection a broker's letter or certificate confirming that such insurance has been obtained and/or is being maintained.
- Nothing in this agreement confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it, other than lawful assignees.

5 Suspension or Termination

The client may suspend or end performance of the services and other obligations by giving at least 7 days' written notice and stating the reason for doing so.

Blue Ridge Designs may suspend or end performance of the services and other obligations but giving at least 7 days' written notice and stating the reason for doing so. Such reasons include, but are not limited, to the client's failure to pay fees or other amounts due by the final date for payment, unless the consultant has given effective notice of the intention to withhold payment of any part of Blue Ridge Designs Account.

If the reason for a notice of suspension arises from a default:

- which is remedied, Blue Ridge Designs shall resume performance of the services and other obligations within a reasonable period; or
- which is not remedied by the defaulting party, the Agreement will end by giving at least 7 days' further written notice.

Where services are suspended by the client and not resumed within 3 months, Blue Ridge Designs has the right to treat performance of the services affected as ended on giving at least 7 days' further written notice to the client.

6 Dispute Resolution

In the event of any dispute or difference arising under the Agreement, the parties may attempt to settle the matter by negotiation or mediation or as specified in the Letter of Appointment.

The provisions for adjudication are:

- Where a dispute or difference is to be referred to adjudication, the parties may agree who shall act as adjudicator, or the adjudicator shall

be a person nominated at the request of either party by the nominator specified in the Letter of Appointment.

- For the avoidance of doubt, the adjudicator may allocate between the parties the costs relating to the adjudication, including fees and expenses of the adjudicator.
- This provision is ineffective unless it is confirmed in writing by the referring party to the other party and to the adjudicator after notice is given of the intention to refer the dispute to adjudication.

The provisions for arbitration are:

- Without prejudice to any right of adjudication, where in the Letter of Appointment and arbitration agreement is made and either party requires a dispute or difference (except in connection with the enforcement of any decision of an adjudicator) to be referred to arbitration then that party shall serve on the other party a notice of arbitration to that effect and the dispute or difference shall be referred to a person to be agreed between the parties or,
- failing agreement within 14 days of the date on which the notice is served, a person appointed by the appointer specified in the Letter of Appointment on the application of either party.
- Where the law of England and Wales or Northern Ireland is the applicable law:
 - The client or Blue Ridge Designs may litigate any claim for a pecuniary remedy which does not exceed £5,000 or such other sum as is provided by order made under section 91 of the Arbitration Act 1996;
 - In such arbitration the Construction Industry Model Arbitration Rules (CIMAR) current at the date of the reference shall apply;
 - The arbitrator shall not have the power referred to in Section 38(3) of the Arbitration Act 1996.
- Where the law of Scotland is the applicable law such arbitration shall be conducted under the rules set out in the current edition of the Scottish Arbitration Code for use in Domestic and International Arbitration.