

Terms of business

1. Confidentiality and conflicts

- 1.1 Neither of us shall disclose to any person any confidential information concerning the business affairs of the other party except as permitted by clause 1.2 below. We may however make public the fact that we act on your behalf.
- 1.2 Each of us may disclose the other's confidential information:
 - 1.2.1 to our employees, officers or advisors who need to know such information for the purposes of exercising the rights or carrying out the obligations under the contract between us governed by these terms of business; and
 - 1.2.2 as may be required by law, a court or competent jurisdiction or any governmental or regulatory authority.
- 1.3 Neither of us shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the contract between us.
- 1.4 It is our practice to check for conflicts of interest before taking on matters in appropriate cases. However, an actual or potential conflict between your interests and the interests of another client of the company may arise during the course of a matter. If this situation arises during our dealings with you we will discuss the position with you and determine the appropriate course of action. In order to protect your interests we may not be permitted to continue to act for you.

2. Data Protection

- 2.1 Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679), the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426). The terms used in this clause 2 will, so far as the context permits and unless otherwise stated, have the meanings given to them in the Data Protection Legislation.
- 2.2 We will at all times comply with our obligations under the Data Protection Legislation.
- 2.3 We acknowledge that for the purposes of the Data Protection Legislation, we are a data controller in respect of any personal data provided to us by you for the purposes of the contract between us, governed by these terms of business, and that we may hold and process personal data relating to you (and your employees and any other individual whose details may be contained within the personal data) for the purposes of fulfilling our obligations to you.
- 2.4 We will ensure that we have in place appropriate technical and organisational measures, to ensure compliance with the requirements of the Data Protection Legislation and in particular to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any such measures.

3. Money Laundering Regulations

- 3.1 We reserve the right to ask for the production of such documents and other evidence and to make such enquiries as may be required in order to satisfy our obligations under the Money Laundering Regulations.

4. Fees

- 4.1 Unless otherwise agreed by us in writing our fees are calculated on a time spent basis by reference to the hourly rates of the personnel who deal with the matter, details of which have been provided to you. Hourly rates vary according to the seniority and experience of personnel.
- 4.2 VAT will be added at the rate which applies when the work is done. All estimates or quotations given by us are exclusive of VAT.
- 4.3 If we have provided to you a written estimate of the total charges, it is given only as a guide to assist you in budgeting and should not be regarded as a fixed quotation unless otherwise agreed in writing. We will update any such estimate from time to time, and at least every six months. If an estimate has been provided, we will subsequently inform you if any unforeseen but significant additional work becomes necessary (for example, due to unexpected difficulties or if your requirements or the circumstances significantly change during the course of the matter). We will inform you in writing before any significant extra costs or expenses are incurred.
- 4.4 For a variety of reasons some matters are not completed. If we do not complete the work, we will charge you for the work done and expenses incurred.

5. Expenses

- 5.1 By appointing us to act on your behalf you also authorise us to incur such expenses and disbursements as we consider necessary. Examples of expenses and disbursements which we may have to pay on your behalf include hire of equipment, counsel's and other experts' fees. These will be provided to you at cost. VAT will be added to those expenses and disbursements which are liable to VAT. We will consult with you before incurring any significant expenses and disbursements.

6. Invoicing and Payment

- 6.1 We reserve the right to request payments on account of our fees expenses and disbursements.
- 6.2 We will send you interim invoices for our fees, expenses and disbursements at monthly intervals, or as otherwise agreed with you, while the work is in progress. In addition, we may also send you an invoice, or request payment on account in advance, where we have to pay substantial expenses on your behalf. We will send a final invoice on completion of the work.
- 6.3 Payment of the amount specified in an invoice is due to us on the date of such invoice ("Due Date") and the final date for payment for each amount specified in an invoice is 28 days from the Due Date. We reserve the right not to provide our final report until full payment is received.
- 6.4 If you have any query about your invoice, including the basis on which it has been calculated, you should contact us as soon as possible and in any event within the 28 day period referred to above.

- 6.5 Interest will be payable at 3% above the base rate of The Royal Bank of Scotland plc from time to time on any sums not paid within 28 days of the date of the invoice. Such interest will be charged on a daily basis from the date payment became due to the date payment is received by us, whether before or after any judgment.
- 6.6 If an invoice is overdue for payment, we reserve the right to suspend work on all matters on which we are instructed by you and to retain all documents and papers belonging to you, irrespective of the matter to which they relate, until all sums due to us have been paid.
- 7. Liability for costs and expenses**
- 7.1 In the event you have entered into an agreement for another party to pay or share responsibility for paying some of our fees you remain jointly and severally responsible for the payment of the full extent of our fees, disbursements and expenses. .
- 7.2 If our instructions in relation to a matter are received from more than one party, each party for whom we are acting will be jointly and severally responsible for payment of the whole of our fees disbursements and expenses.
- 8. Liability**
- 8.1 Without affecting clauses 8.2, and 8.3 below our liability to you under or in connection with the contract between us governed by these terms of business shall be limited to £10,000.00. This limit shall apply however our liability arises including, without limitation, a liability arising by breach of contract, arising by tort (including without limitation, the tort of negligence) or arising by breach of statutory duty.
- 8.2 We shall have no liability to you for any losses, damages, costs and expenses including interest ("Losses") if such Losses are due to the provision of false, misleading or incomplete information or documentation by you or any third party.
- 8.3 Without prejudice to clauses 8.1, and 8.2, above, in the event that we are liable to you for Losses our liability in relation to such Losses shall be limited to that proportion of the Losses which it would be just and equitable to require us to pay having regard to the extent of our responsibility for such Losses and on the basis that other consultants, contractors, sub-contractors or any other third party employed by you or on your behalf shall be deemed to have paid to you such proportion of your Losses which it would be just and equitable for that party or parties to have paid having regard to the extent and nature of their responsibilities.
- 8.4 Nothing in these provisions shall exclude or restrict any liability arising from death or personal injury arising from our negligence, fraud or dishonesty or any other liability which by law cannot be excluded or restricted.
- 8.5 Unless otherwise agreed by us in writing and subject to clauses 8.1, 8.2, 8.3, and 8.4 above, should it be necessary in connection with any matter for us to appoint or otherwise engage a contractor, sub-contractor, consultant, testing laboratory or other third party ("Third Party") we shall appoint and engage such Third Party as agent for you. Always accepting that we shall have exercised reasonable skill and care in selecting or in advising on the selection of any Third Party, we shall not otherwise be responsible for any negligence act or omission breach of duty or failure to perform by any Third Party.
- 8.6 We shall have no liability to you as a result of a delay in performing, or a failure to perform, any of our obligations to you if such delay or failure results directly or indirectly from circumstances relating to the outbreak of the coronavirus known as COVID-19 classified by the World Health Organisation as a pandemic.
- 9. Storage of documents**
- 9.1 We will keep our file for no more than 6 years. We keep the file on the understanding that we have the authority to destroy it 6 years after the date of the final invoice we send you for the matter to which it relates. This applies to all files and papers retained by us.
- 10. Termination**
- 10.1 You may terminate your instructions by written notice to us at any time but we will be entitled to keep all correspondence and documents while there is any money owing to us for our fees disbursements and expenses in respect of any matter on which you have instructed us.
- 10.2 In the event of termination under clause 10.1 you will pay our fees, expenses and disbursements up to the point of termination plus a sum equal to our loss of anticipated profits, arising out of termination of our instruction.
- 10.3 We may decide to stop acting for you where we believe have reasonable grounds to do so (including but not limited to failure to pay invoices in full by the due date or to make payments on account when so requested or if you should become bankrupt or commit an act of bankruptcy or should make any arrangement or composition for the benefit of creditors or should go into liquidation, administrative receivership, receivership, administration or have a winding up order issued against you). We will give you reasonable notice in such circumstances.
- 10.4 In the event of termination under clause 10.3, you will pay our fees expenses and disbursements up to the point of termination.
- 11. Electronic communication**
- 11.1 Unless you tell us otherwise, we may communicate electronically with each other. However, electronic transmission of information cannot be guaranteed to be secure or virus or error free and information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. We each agree to use commercially reasonable procedures to check for the then most commonly known viruses before sending information electronically but you and we recognise that these procedures cannot constitute a guarantee that transmissions will be unaffected by hazards. We confirm that we each accept these risks and authorise electronic communications between us. We will each be responsible for protecting our own systems and interests in relation to electronic communications. Neither you nor we will have any liability to the other on any basis, whether in contract, tort (including negligence) or otherwise in respect of any error, damage, loss or omission arising from or in connection with the electronic communication of information.
- 12. Copyright**
- 12.1 We own all intellectual property rights, including copyright, relating to any material we produce.
- 12.2 Subject to receipt of payment in full of all sums invoiced by us for work performed under these terms and conditions, we grant to you a non-exclusive licence to copy and make use of all Material prepared by us for any purpose relating to the project in relation to which we have been engaged. For the purposes of clauses 12.2 and 12.3 Material means all reports, photographs, calculations and data, prepared by us for you under these terms and conditions but does not include any files associated with the software models used by us.
- 12.3 We shall not be liable for use of the Material for any purpose other than that for which it was prepared and / or provided.
- 13. Additional Documentation**
- 13.1 In the event you request in writing that we provide a letter of reliance in favour of a funder or a purchaser in relation to a report or reports we have prepared and addressed to you we shall be pleased to do so in accordance with the following provisions:

- 13.1.1 the letter(s) will be provided in the form included in the schedule; and
- 13.1.2 the letter(s) will be provided within a reasonable time frame following receipt of a fee of £500 plus VAT per letter.
- 13.2 If you request in writing a letter of reliance in a form differing from that included in Schedule 1 we can discuss your requirements and may be prepared to provide such a letter on terms agreed between us for an additional fee.
- 13.3 If you request in writing that we enter into a bespoke appointment which will subsume all work performed under these terms and conditions we will be prepared to discuss your requirements and may enter in to such appointment subject to:
 - 13.3.1 the appointment (and any pro-forma warranty included within) being on terms which are acceptable to us and signed underhand; and
 - 13.3.2 receipt of a fee agreed between us for entry in to the appointment (and if relevant, warranty) including a sum to cover our legal costs for review and negotiation of the appointment (and if relevant, warranty).
- 13.4 If you request in writing that we enter in to a confidentiality agreement with you we will discuss your requirements and may be prepared to enter in to such agreement subject to:
 - 13.4.1 it being on terms which are acceptable to us and signed underhand; and
 - 13.4.2 receipt of a fee agreed between us for entry into the confidentiality agreement including a sum to cover our legal costs for review and if necessary negotiation of the agreement.
- 13.5 We are not prepared to provide additional information to assist you with any internal or external audit processes.
- 14. Third party rights**
- 14.1 It is agreed between us that the Contracts (Rights of Third Parties) Act 1999 does not apply to the terms of our engagement or any subsequent amendment to it unless expressly confirmed in writing by us that the said Act does apply.
- 15. Assignment**
- 15.1 This agreement or any part or benefit or interest under it may not be assigned without our written consent.
- 16. Governing law and jurisdiction**
- 16.1 The agreement between us shall be governed by and construed in accordance with English law.
- 16.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute which may arise between us. To this end you and we irrevocably agree to submit to the jurisdiction of the courts of England and Wales.
- 15. Whole agreement and Severability**
- 15.1 These terms constitute the entire agreement between us in relation to the work we perform for you.
- 15.2 You are deemed to have accepted these terms of business unless you inform us otherwise in writing within five business days of receipt. These terms shall not be modified or varied except in writing signed by you and us.
- 15.3 If it is decided in any court ruling, or any other dispute resolution procedure that any condition contained in these terms of business is unenforceable, then the unenforceable condition(s) shall be deemed severable, and the remaining conditions of the terms of business shall continue to apply and have full force and effect.

Schedule

[ADDRESSEE]
[ADDRESS LINE 1]
[ADDRESS LINE 2]
[POSTCODE]

[DATE]

Dear [NAME OF ADDRESSEE],
Reliance agreement

1. We, Miller Goodall Limited (Consultant) have been engaged by [NAME OF CLIENT] (Client) to carry out [DESCRIBE TYPE OF SERVICES] (Services) in relation to [DESCRIBE PROPERTY OR REFER TO A LIST] (Property) and have prepared the following report[s]:
 - 1.1.1 [TITLE AND REFERENCE NUMBER OF REPORT(S)], dated [DATE]
 - 1.1.2 [[TITLE AND REFERENCE NUMBER OF REPORT(S)], dated [DATE]]

([together the] Report[s]).
2. As requested by the Client, the Consultant agrees to allow [[BENEFICIARY NAME] (Beneficiary) to use, copy and rely on the content of the Report[s] as if [it] [they] had originally been prepared for the benefit of the Beneficiary.
3. This agreement is made:
 - 3.1.1 with the full knowledge and agreement of the Client; and
 - 3.1.2 in consideration of the payment of one pound (£1.00) by the Beneficiary to the Consultant, receipt of which the Consultant acknowledges.
4. The Consultant warrants that in the preparation of the Report[s] it has exercised all the reasonable skill, care and diligence to be expected of a properly qualified and competent member of its profession experienced in carrying out work similar in scope and character to the Services.
5. The Beneficiary may assign the benefit of this agreement with the Consultant's prior written consent (such consent not to be unreasonably withheld or delayed).
6. The Consultant has in place and will at all times maintain professional indemnity insurance with an appropriate level of indemnity covering its liabilities in respect of the Report[s] until the expiry of 6 years after the date of the [last of the] Report[s]] provided such insurance is available in the UK on commercially reasonable rates and terms. Further, when reasonably requested, the Consultant will provide documentary evidence to the Beneficiary that the insurance required under this reliance agreement is being maintained.
7. The Beneficiary may not commence any legal action against the Consultant under this agreement after 6 years from the date of the [last of the] Report[s].]
8. The construction, validity and performance of this agreement shall be governed by and construed in accordance with English law. The parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

Yours faithfully

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For and on behalf of Miller Goodall Limited