

CLARKEBOND (UK) LIMITED STANDARD TERMS OF ENGAGEMENT

1. Definitions

"Appointment"	The letter of engagement or other agreement in writing entered into between the Client and CBUK for the performance of the Services which shall be carried out in accordance with and subject to these Standard Terms.
"Business Day"	A day other than Saturday, Sunday or public holiday in England, when banks in London are closed for business.
"CBUK"	Clarkebond (UK) Limited incorporated and registered in England and Wales with company number 07775761 and whose registered address is 129 Cumberland Road, Bristol, England, BS1 6UY.
'Cladding Claims'	Any claim in respect of: The combustibility of any Aluminium Composite Panels (and associated core/filler and insulation material) and/or any equivalent external wall systems (and any associated core/filler and insulation material) which failed the BRE testing programme undertaken on behalf of The Department for Communities and Local Government in July & August 2017 and/or fails any BS8414 test set out in the current Building Regulations guidance
"Client"	The person or company who purchases the Services from CBUK.
"Data Protection Legislation"	UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.
"Fee"	The fee payable by the Client for the supply of the Services in accordance with Clause 5 and the Appointment.
"GDPR"	General Data Protection Regulation ((EU) 2016/679).
"Insolvency Event"	A party suffers and insolvency event if: <ul style="list-style-type: none"> (a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (b) it commences negotiation 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 in connection with its winding up; (d) an application is made to court, or an order is made, for the appointment of an administrator, or is a notice of intention to appoint an administrator is given or if an administrator is appointed, over it; (e) the holder of a qualifying floating charge over its assets has become entitled to appoint or has appointed an administrative receiver; (f) a person becomes entitled to appoint a receiver over its assets or a receiver is appointed over its assets; (g) a creditor or encumbrancer of it attached or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 4 days; (h) any event occurs, or proceedings is taken, with respect to it in any jurisdiction to which it is subject that has an affect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive); (i) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or (j) If it is 'insolvent' for the purpose of Section 113 of the Housing Grants, Construction and Regeneration Act 1996.
"Intellectual Property Rights"	patents, rights to inventions, copyright, neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (Including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future or any part of the world.
"Materials"	All designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Services and all updates, amendments, additions and revisions to them and any works, designs or inventions incorporated or referred to in them for any purpose relating to the Services.
"Services"	The Services to be provided by CBUK for the Client as defined in the Appointment and any subsequent variation thereof agreed in writing.
"Standard Terms"	Shall mean these terms and conditions.
"UK Data Protection Legislation"	Any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

2. CBUK's Duties

- 2.1. CBUK shall exercise reasonable skill and care in providing the Services in conformity with the normal standards of engineering consultancy professionals.
- 2.2. CBUK acknowledges that in respect of all Services performed for the Client prior to the date of the Appointment such Services shall have been deemed to have been performed pursuant to these Standard Terms and with the same degree of skill and care required by clause 2.1.
- 2.3. CBUK shall not be responsible for submitting any planning proposals or applications for any licenses or permissions required by the Client in respect of the Services or any associated project, development or works.
- 2.4. CBUK shall use reasonable endeavours to carry out and perform the Services by the dates reasonably required by the Client and agreed with CBUK.
- 2.5. CBUK shall give reasonable notice in writing to the Client of any circumstances that make it impracticable for CBUK to carry out any of the Services in accordance with any previously agreed timetable. Where such notice is given CBUK will not be liable for any losses suffered by the Client, however occasioned, arising out of delays in the performance of the Services.

3. Client's Duties

- 3.1. The Client shall:
 - 3.1.1. ensure that its instructions to CBUK are complete and accurate;
 - 3.1.2. provide CBUK, its employees, agents, consultants and sub-contractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by CBUK;
 - 3.1.3. provide CBUK with such information and materials as CBUK may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 3.1.4. obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 3.2. If CBUK's performance of any of its duties or completion of the Services is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant duty or procure any necessary permission (**Client Default**):
 - 3.2.1. without limiting or affecting any other right or remedy available to it, CBUK shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of its obligation in each case to the extent the Client Default prevents or delay's CBUK's performance of the Services or any of its duties;
 - 3.2.2. CBUK shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Client's failure or delay to perform any of its duties set out in this clause 3;
 - 3.2.3. the Client shall reimburse CBUK on written demand for any costs or losses sustained or incurred by CBUK arising directly or indirectly from the Client Default; and
 - 3.2.4. The Client shall remain liable in respect of any Fees due and owing which have accrued by CBUK in relation to the Services performed or undertaken by CBUK up to the time of the Client Default.

4. Modifications

- 4.1. Where the Client wishes to make any modifications to the Services or scope of CBUK's Appointment, the Client shall notify CBUK in writing as soon as reasonably practicable identifying the modification required. The Client acknowledges that where any modification to the Services is requested by the Client, CBUK shall be entitled to adjust the Fee accordingly.
- 4.2. Upon receiving the Client's written notice in accordance with clause 4.1, CBUK shall provide the Client within a reasonable period with a written estimate in respect of the modification or additional services required.
- 4.3. The provision of any additional Services or where additional expense is incurred by CBUK as a result of a modification under clause 4.1, and any additional Fee shall be calculated on a time charge basis and CBUK shall provide the Client with a copy of its hourly rates which may change from time to time.

5. Invoices

- 5.1. Invoices shall be rendered every calendar month on a lump sum, measured work or time charge basis at CBUK's current scale rates (which may change from time to time) together with any reimbursable costs and expenses associated with the Services for travel, subsistence, accommodation, printing, computer or other properly incurred expenses. Invoices shall include sub-contractor services where applicable as well as any adjustment to the Fee in accordance with clause 4.
- 5.2. CBUK shall submit to the Client an invoice for each monthly instalment of Fee specifying the sum due and the basis on which the sum is calculated.
- 5.3. Payment is due on the invoice date.
- 5.4. No later than five days after payment becomes due, the Client shall notify CBUK of the sum that the Client considers to have been due at the payment date and the basis on which that sum is calculated.
- 5.5. The final date for payment will be 30 days after the payment due date.
- 5.6. Unless the Client has served a notice under clause 5.7, it shall pay CBUK the sum referred to in the Client's notice under clause 5.4 (of, if the Client has not served a notice under clause 5.4 the sum referred to in CBUK's invoice) on or before the final date for payment of each invoice.
- 5.7. Not less than two days before the final date for payment, the Client may give CBUK a notice that it intends to pay less than the notified sum and the notice shall specify:
 - 5.7.1. the sum the Client considers to be due on the date the notice is served; and
 - 5.7.2. The basis on which that sum is calculated.
- 5.8. If the Client fails to pay any amount due to CBUK by the final date for payment and has not provided a pay less notice under clause 5.7, simple interest shall be added to the unpaid amount from the final date for payment until payment is made. The interest rate applied shall be 5% above the Bank of England base rate (as amended from time to time).
- 5.9. All rights of set off which the Client may otherwise exercise or purport to exercise are hereby expressly excluded.
- 5.10. The Client shall in addition to the Fee pay to CBUK Value Added Tax on goods and services supplied by CBUK to the Client.

6. Termination and suspension

- 6.1. Without affect any other right or remedy available to it, CBUK may terminate the Appointment if the Client;
 - 6.1.1. fails to pay to CBUK any amount properly due and owing;
 - 6.1.2. suffers an Insolvency Event; and/or
 - 6.1.3. In any way commits a material breach of the Appointment.
- 6.2. CBUK may terminate the Appointment by providing the Client with 7 days written notice, specifying the event or breach. At its sole discretion, CBUK may agree to allow the Client a period of time within which to remedy the breach. If the Client fails to remedy the breach within the agreed rectification period, the CBUK may serve further written notice to the Client terminating the Appointment with immediate effect.
- 6.3. Without affecting any other right or remedy available to it, the Client may terminate the Appointment if CBUK:
 - 6.3.1. without reasonable cause fails to proceed regularly and diligently with the Services;
 - 6.3.2. without reasonable cause suspends the execution of the Services; and/or
 - 6.3.3. Shall otherwise be in breach of the terms of the Appointment.

- 6.4. The Client shall serve written notice on CBUK specifying the event or breach and allowing CBUK a period of no less than 14 days to remedy the breach. If CBUK fails to remedy the breach within this period, then the Client may serve a further written notice on CBUK terminating the Appointment, provided that such notice shall not be given unreasonably or vexatiously.
- 6.5. Upon the determination of the Appointment the Client shall pay all of CBUK's outstanding unpaid invoices and interest in respect of the Services supplied up to the date of termination. Where Services have been provided for which no invoice has been submitted, CBUK shall submit an invoice for which it shall be entitled to payment by the Client in accordance with the provisions of clause 5.
- 6.6. The Client shall return to CBUK any Materials or goods for which it has not been fully paid. If the Client fails to do so, then CBUK reserves the right to enter the Client's premises and take possession of any Materials or goods for which the Client has not paid. Until they have been returned, the Client shall be solely responsible for their safekeeping and will not use them for any purpose.
- 6.7. Termination shall not affect any rights, remedies, obligations or duties, or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of contract which existed before the date of termination.
- 6.8. CBUK shall be entitled to suspend performance of all or any part of the Services and any other duties owed to the Client where the Client fails to pay any sums due to CBUK in accordance with clause 5 provided that CBUK shall first give the Customer not less than 7 days written notice of its intention to suspend all or any part of the Services. CBUK will recommence the Services (or part thereof) upon receipt of any outstanding payment from the Customer.
- 6.9. In the event of suspension in accordance with clause 6.8, the Client shall pay CBUK a reasonable amount in respect of the costs and expenses reasonably incurred by CBUK as a result of any exercise of its rights referred to in clause 6.8.

7. Professional Indemnity Insurance

- 7.1. CBUK currently holds professional indemnity insurance cover and details can be supplied to the Client on request.
- 7.2. CBUK shall use reasonable endeavours to maintain such insurance for a period of not less than 6 years from the date of the completion of the performance of the Services provided that such insurance is available to CBUK at commercially reasonable rates and terms in the EU or UK.

8. Limitation on Liability

- 8.1. Save as provided otherwise by this clause 8, the maximum total liability of CBUK for any actions claims, demands, losses, costs and expenses, howsoever arising in connection with the Appointment and the Services shall be limited to the lesser of:
 - (i) a sum not exceeding twenty times the total Fee; and
 - (ii) £1,000,000 (one million pounds)

In the aggregate and irrespective of the number of incidents or causes of action giving rise to a claim or claims.
- 8.2. No action or proceedings for any breach by CBUK of the terms of the Appointment, the Standard Terms or any claim arising in Tort shall be commenced by the Client against CBUK after the expiry of 6 years from the date of completion of the Services or earlier determination of the Appointment.
- 8.3. Without prejudice to clause 8.1 above the liability of CBUK for any actions claims demands, losses, costs and expenses arising out of a breach of the Appointment shall be limited to such sum as CBUK ought reasonably to pay having regard to its responsibility for the same on the basis that all other consultants specialists and contractors shall where appointed be deemed to have provided to the Client equivalent contractual undertakings in respect of their services and shall be deemed to have paid to the Client such contribution as may be appropriate having regard to the extent of their responsibility for such losses as aforesaid.
- 8.4. Unless otherwise agreed the Services are performed exclusively for the Client. The parties agree that any and all rights under the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.
- 8.5. CBUK shall have no liability to the Client in respect of:
 - 8.5.1. any delay to the development or project to which the Services relate or form part;
 - 8.5.2. loss of profit;
 - 8.5.3. loss of sale or business;
 - 8.5.4. loss of agreement or contracts;
 - 8.5.5. loss of anticipated savings;
 - 8.5.6. loss of use or corruption of software, data or information;
 - 8.5.7. loss of or damage to goodwill or reputation; and
 - 8.5.8. Losses incurred by the Client arising out of or in connection with any third party claim made or liquidated damages levied against the Client caused or allegedly caused by the act(s) or omission(s) of CBUK. For these purposes third party claims shall include, but not be limited to, demands, fines, penalties, actions, investigations, proceedings, claims brought by the Client's personnel, regulators and customers of the Client.
- 8.6. CBUK liability to the Client in respect of Cladding Claims will:
 - 8.6.1 not exceed in the aggregate the sum(s) expressed in this agreement
 - 8.6.2 be limited to actual direct losses, costs and expense, incurred in respect of rectifying any part of the works where such losses, costs and expenses are incurred as a direct result of any negligent act, negligent error, or negligent omission

CBUK shall not be liable for that part of any claim for consequential losses arising directly or indirectly out of negligent advice, design or specification, which do not form part of the rectification costs of any part of the works
- 8.7. This clause 8 shall survive termination of the Appointment

9. Intellectual Property Rights

- 9.1. All Intellectual Property Rights in relation to any Materials prepared by CBUK in connection with the Services shall remain vested in CBUK.
- 9.2. Without prejudice to clause 9.1, CBUK hereby grants a transferable licence to the Client to use the Materials in respect of any project for which the Services are undertaken. The license entitles the Client to use the Materials in connection with any extension of the project to which the Services relate but not to reproduce the Materials in any such extension.
- 9.3. CBUK reserves the right to revoke this license in the event that the Client fails to pay CBUK any Fee in accordance with clause 5.
- 9.4. The name "CBUK" shall not be used for advertising or other promotional purposes by the Client without the prior written consent of CBUK.
- 9.5. CBUK shall not be liable for any use of the Materials for any purpose other than that for which they are intended.

10. Data Protection and Data Processing

- 10.1. Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 10.2. The parties acknowledge that for the purpose of the Data Protection Legislation, the Client is the data controller and CBUK is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 10.3. Without prejudice to the generality of clause 10.1, each party shall, in relation to any Personal Data processed in connection with the performance by the parties of their duties under the Appointment;
 - 10.3.1. process that Personal Data only on the written instructions of the other party unless the parties are required by Data Protection Legislation to otherwise process that Personal Data;
 - 10.3.2. ensure that it has in place appropriate technical and organisational measures 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 measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it); and
 - 10.3.3. Ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential.

11. Confidentiality

- 11.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.
- 11.2. Each party may disclose the other party's confidential information:
 - 11.2.1. To its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's duties under the Appointment and the Standard Terms. Each party shall ensure that its employees, offices, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.2;
 - 11.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and
 - 11.2.3. To its legal advisers or insurance providers as may be necessary or required in accordance with these Standard Terms.
- 11.3. Neither party shall use the other party's confidential information for any purpose other than to perform its duties under the Appointment and the Standard Terms.

12. Assignment

- 12.1. Neither CBUK nor the Client shall assign the whole or any part of the benefit of or in any way transfer the obligation of the Appointment to any other person without the prior written consent of the other.
- 12.2. In the event the Client requires CBUK to enter into:
 - (i) a collateral warranty; and/or
 - (j) deed of novation,CBUK's consent to entering into such document(s) (which may be withheld at CBUK's discretion) shall be subject to payment of such additional fee which may be agreed between the parties and conditional upon the provisions of such collateral warranty and/or deed of novation being acceptable to CBUK (at CBUK's discretion).

13. Anti-Bribery

- 13.1. Both parties agree that they shall:
 - 13.1.1. not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010;
 - 13.1.2. have and maintain in place throughout the term of the Appointment policies and procedures, including but not limited to "adequate procedures" as defined by the Bribery Act 2010, to ensure compliance with best practice ethical and anti-corruption practices and will enforce them where appropriate;
 - 13.1.3. ensure that all directors and employees and other persons associated with the parties comply with this clause 13; and
 - 13.1.4. Co-operate and undertake a joint investigation with the other of any alleged breaches of the Bribery Act 2010.
- 13.2. Breach of this clause 13 shall constitute a material breach of the Appointment.

14. Notices

- 14.1. Any notices served under or in connection with the Standard Terms or the Appointment shall be in writing and be properly served if sent by recorded delivery or registered post to the address of the party receiving it as notified from time to time by either party to the other.

15. CDM and Safety at Work

- 15.1. The Client shall observe and perform all its obligations under the Construction (Design and Management) Regulations 2015 or any amendment thereof for the duration of the Appointment.
- 15.2. The Client shall provide conditions of work on site which enable CBUK, its employees and sub-contractors to carry out the Services without injury to any person or loss or damage to property.
- 15.3. The Client shall make a full disclosure of all information it possesses which CBUK may reasonably consider to be relevant in connection with the carrying out and performance of the Services. This shall include all information relating to any site conditions which may be considered prejudicial to safe working practices including (but not limited to) information concerning underground installations, pipe work, cables, drains or other service media. Where CBUK considers the information is incomplete, CBUK will inform the Client that in order for CBUK to proceed, further survey and investigation work will be required to complete the information necessary for a Construction Phase Plan to be prepared. In the event CBUK are instructed by the Client to undertake this additional work, the Fee shall be adjusted accordingly.
- 15.4. For Principal Designer instructions the Services shall exclude any dealings with the HSE or any third party relating to any accidents, prohibition notices, legal proceedings etc. In the event CBUK are instructed by the Client to undertake any such work the Fee shall be adjusted accordingly.

15. Retention of Samples

- 15.1 Unless otherwise instructed by the Client in writing, in accordance with industry standard practice all geotechnical cores and samples will be disposed of one month after the date that the laboratory provides test results. Likewise all contamination samples will be disposed of one month after receipt of the samples at the laboratory.

16. Governing Law

- 16.1. The validity construction and performance of these Standard Terms and the Appointment shall be governed exclusively by English law.
- 16.2. The parties irrevocably agree that the Courts of England shall have exclusive jurisdiction to settle any dispute or difference arising out of or in connection with the Appointment and/or the Services which for the avoidance of doubt shall include all non-contractual disputes or claims.

17. Illegality

- 17.1. If any provision or term of these Standard Terms or the Appointment shall become or be declared illegal invalid or unenforceable for any reason whatsoever such terms or provisions shall be divisible from these Standard Terms and/or the Appointment as the case may be and shall be deemed to be deleted from these Standard Terms provided that all remaining provisions shall continue to have full force and effect.

18. Entire Agreement

- 18.1 These Standard Terms together with anything contained in the Appointment shall apply to the exclusion of all other terms that the Client seeks to incorporate or impose upon CBUK or which are implied by trade, custom, practice or previous course of dealing.
- 18.2 Where there is any discrepancy or conflict between these Standard Terms and anything contained in the Appointment these Standard Terms shall prevail.

19. Interpretation

- 19.1 A reference to any statute or statutory provision is a reference to that statute or statutory provision as amended, extended or re-enacted from time to time.