

Terms and Conditions of Appointment

Definitions

Throughout this document, the consultant (EMEC Ecology) is defined as a professional ecologist or environmental manager, or any other person, acting within these areas, belonging to the Institute of Ecology and Environmental Management. A client is defined as any individual, group, body, authority, private or public company to whom a consultant provides professional services. The agreement is represented by this document and contains the terms of the employment and such additional clauses and specifications as may be deemed necessary. The project specification is the document detailing the works to be undertaken by the consultant for the client and, where appropriate, the methodology to be adopted.

General Conditions

1. *Duty of Care*

As a member of the Chartered Institute of Ecology and Environmental Management (CIEEM), the consultant shall operate within the terms of the Institute's Code of Professional Conduct and within the law of the country he is working in. As such, the consultant shall use reasonable skill and care and diligence in the performance of their duties and show due care and regard for the environment, their clients and their colleagues.

2. *Consultant's Authority*

The consultant shall act on behalf of the client as an impartial advisor, investigator or agent in those matters defined in this agreement.

3. *Professional Standards and Conduct*

- i) All members of permanent staff are members of the Institute of Ecology and Environmental Management. All work will be undertaken in accordance with the Institute's Code of Professional Conduct.
- ii) To meet standard legislative and local authority requirements, survey reports will normally contain recommendations which will follow industry good practice. These will be based on the professional interpretation of survey results and may also include recommendations in relation to protected species observed on the site other than those for which the survey was commissioned.
- iii) No responsibility will be accepted for any repercussions arising from a client not carrying out recommendations in full.

4. *Liaison with Responsible Authorities*

It is often necessary, and beneficial to the client, for the consultant to discuss details of the approach to and/or results of surveys and other contracts with the responsible authorities (local authorities, Natural England etc.), particularly where planning permission or a protected species licence is required. This helps the consultant to ensure that the approach will provide precisely the information required by the relevant authority in order to determine an application, and therefore this will normally be undertaken on behalf of the client. Where possible this will be discussed with the client in advance; however, on occasion (e.g. where the authority has contacted us directly to clarify certain issues) such discussions may be undertaken without further reference to the client, unless expressly instructed not to do so in advance.

5. *Wildlife Crime*

If the consultant considers a potential wildlife crime has been committed, or believes a crime may be about to be committed, this will be brought to the client's attention immediately. There are certain circumstances where the consultant will be constrained to notify the relevant authorities if a crime has been committed or is about to be committed. The consultant reserves the right to communicate with the relevant authorities directly at any stage should it be felt that this is necessary in order to report or prevent the commission or continued commission of a crime.

6. *Modifications and Revision to Agreement*

Any modifications to this agreement that are deemed necessary by either the consultant or the client should be notified to the other party at the earliest opportunity. Consent for modifications arising from unforeseen circumstances or factors should not be unreasonably withheld by either party.

7. *Dealings with and Appointment of other Consultants/Sub Consultants*
Additional consultants or sub consultants may be appointed by either the client directly or by the principal consultant, subject to the acceptance of each party.

8. *Liability for Other Consultants*

- i) The consultant shall not be responsible for the actions and/or omissions of another consultant except where this is explicitly laid down in this agreement.
- ii) The liability for sub-consultants rests with the employing consultant.

9. *Insurance*

It shall be the duty of the consultant and client to provide evidence that each holds sufficient and appropriate insurance to meet their respective liabilities in relation to this project.

10. *Client Responsibilities*

i) Information from the client

The client shall provide the consultant with such information as is necessary for the proper performance of the agreed service, in particular any copies of previous ecological surveys undertaken on the site and available to the client. If it is found that such documents, or any other pertinent information, have been withheld without good reason, the consultant reserves the right to terminate the contract without notice and to require payment for any expenses incurred.

ii) Representative of client

The client, if a company or other group of persons, shall be required by the consultant to nominate one specific representative for the duration of the project.

11. *Copyright*

Copyright on all documents including survey information, text, photographs, drawings and other illustrations prepared by the consultant shall, unless otherwise agreed, remain the property of the consultant. The client shall be entitled to use documents prepared by the consultant in the execution of this agreement provided that:

- i) all fees due to the consultant at that stage have been paid;
- ii) the use relates only to the project or part of the project for which the material was prepared; and
- iii) the consultant shall not be liable for the use of the documents described in this clause for purposes other than those for which they were prepared and provided.

12. *Scientific Data*

Scientific data collected during the course of the contract will be made available to appropriate biodiversity records centres (as per the IIEEM Code of Professional Conduct Clause 5.8) in order to better inform future ecological surveys. If a client has any objection to this they must inform the consultant in advance in writing.

13. *Acceptance of Terms and Conditions*

No work will be booked into the consultant's programme nor undertaken until the quoted costs and all terms and conditions have been accepted in writing.

14. *Delays and Cancellations*

If agreed work dates have to be altered as a result of delays caused by the weather, or by availability of access permissions, or by safety issues, or by any other circumstances outside the consultant's control, the next available date will be programmed, taking into account pre-existing bookings. The consultant makes no guarantee that revised work dates can be arranged to meet the original deadlines. Any cancellations resulting from such delays will be subject to an appropriate charge. Work that is curtailed by a client or for other reasons beyond the consultant's control part way through a pre-booked day (e.g. supervisory works) or cancelled at less than 24 hours notice will be charged the full daily rate.

15. *Modification of Project*

If either party to this agreement considers modifications to the project to be necessary, full details must be provided in writing. If agreement for appropriate modifications cannot be reached within 30 days, dispute procedures may be implemented (see Clause 19).

16. Termination by the Client: Grounds

The length of notice for the termination or suspension of all or part of this agreement shall be 10 days. If, after 30 days following notification of suspension of this agreement, the consultant has not received instructions from the client, the consultant shall make a final, written application for instructions. In the event of no instructions being received by the consultant within a further 30 days of the final application, this agreement shall be deemed to have terminated. Any costs already incurred by the consultant (e.g. biological data purchase) shall be payable to the consultant.

17. Termination by the Consultant: Grounds

The length of notice for the termination of all or part of this agreement by the consultant shall be 10 days. The consultant shall give full details of reasons leading to the termination and a suitable course of action for the closure of the project shall be agreed in writing.

18. Death or Incapacity

In the event of death or serious incapacity of a sole practitioner or specialist preventing the continuation of this agreement, it shall be deemed to have terminated. As soon as all outstanding fees have been paid, the client shall be entitled to use all data prepared on the project subject to the provisions of Clause 11.

19. Settlement of Disputes

i) By agreement

Differences or disputes arising out of the appointment in relation to professional, ethical or any other matter may be settled by agreement between the parties.

ii) By mediation

If agreement cannot be reached, the client or consultant is free to invite a third party to act as mediator.

iii) By arbitration

Any difference or dispute arising out of the appointment which cannot be resolved in accordance with either Clause 19i or 19ii shall be referred to arbitration by a person agreed between the parties. If agreement cannot be reached after 14 days, the matter shall be referred by either party to the Chartered Institute of Arbitrators for the appointment of an arbitrator.

20. Governing Laws

The application of this agreement shall be governed by the laws of the country in which the agreement is implemented. The client and consultant shall comply with all relevant legislation. The laws of England/Wales are applicable and court action will be in England/Wales.

21. Limitation

No actions or proceedings for any breach of this agreement shall be commenced against the consultant after the expiry of 6 years from the date of the relevant report.

Site Work

22. Resident Consultants

Where a requirement for frequent or constant professional supervision is agreed, a resident professional shall be appointed on a full or part-time basis by the consultant under specific terms of appointment and remuneration.

23. Site Safety

Surveys will be undertaken on the basis that the site is in a safe condition. If at any time the consultant's surveyors feel it is unsafe to proceed, work will be terminated until the site can be made safe.

24. Risk Assessment

All work will be subject to risk assessment. If a client knows of any particular risk associated with a site (e.g. asbestos is present), then it is their duty to inform the consultant.

25. Welfare

Where a continued presence on site is required (e.g. supervision of roof removal, installation of fencing etc.), adequate toilet and hand-washing facilities must be provided or made available.

26. Access Permission

We will require full access permission to be arranged. No site survey will commence until all such permissions are confirmed.

27. Bat Surveys

For bat surveys, access is required to all loft spaces and other areas as detailed in the quote. If access is not possible to all areas, the assessment may be incomplete and the local authority may require further surveys to be undertaken. If the consultant has to visit the site a second time because full access was not available on the first visit, an additional charge will be made.

Remuneration

28. Costs

- i) The quoted costs do not include VAT, which will be charged at the standard rate.
- ii) Costs are valid for 30 days from the date of the quotation and include one paper copy of the final report if required; additional paper copies will be charged at cost.
- iii) Any additional meetings or other work that may be required will be charged at the consultant's standard daily rate as indicated in the quote.
- iv) Unless otherwise stated, travel to and from site is included in the time allocation quoted.
- v) Rates are normally reviewed annually. Revised rates may therefore apply to work that has been quoted for within or leading up to a given survey season but is not undertaken within that survey season, unless agreed otherwise.
- vi) Costs are based on the understanding that appropriate base maps, in suitable electronic format, will be supplied free of charge, together with any copyright permissions (e.g. OS licence numbers) needed for their use. If the necessary basemaps are not supplied, these will be purchased and the purchase price will be passed on to the client at cost.

29. Payment Terms

- i) Written (including email) confirmation of acceptance of costs & terms, by the person /company ultimately responsible for payment is required before works commence.
- ii) Payment is due within 30 days of the date of invoice.
- iii) If the total fee (including expenses) exceeds £10,000 or if the project is expected to last for more than three months, staged payments shall be agreed between the consultant and the client in advance.
- iv) Acceptance of any quotation provided by EMEC means you wholly submit to our payment terms. No other terms will be accepted unless authorised by a Director of EMEC in advance of your project commencement.
- v) The issue of all purchase orders or order confirmation of any kind means agreement to these terms. No other documentation will supersede our terms.
- vi) The consultant will exercise their statutory right to claim interest and compensation for debt recovery costs under the late payment legislation if they are not paid according to *our* terms.



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