

**ARCHDIGITAL
TERMS OF BUSINESS**

1.0 Introduction

- 1.1 These Terms of Business are for the mutual guidance of the Client and ArchDigital (the “Parties”), so that both Parties are clear as to the terms and conditions applying to the Services arrangement between them.
- 1.2 Whilst these standard Terms of Business are appropriate for the majority of projects, it is recognised that the Client and ArchDigital may wish to enter into a specific agreement on an individual project, in which case they can either modify these terms or draw up a specific agreement to which these Terms of Business may apply in full or in part. In the absence of any such modified or additional written agreement entered into between the Parties, these Terms of Business will be deemed to apply.
- 1.3 No addition to, variation of, exclusion or attempted exclusion of these terms or any of them will be binding upon ArchDigital unless in writing and signed by the owner of ArchDigital.
- 1.4 For the purposes of these Terms of Business, the following definitions will apply:
 - 1.4.1 **Agreement**” means the agreement detailing the Services, the Fee Proposal, the Payment Schedule and Client Declaration to which these terms are appended;
 - 1.4.2 the “**Client**” means the person or corporate body as defined in the Agreement who is responsible for undertaking the Project or appointing ArchDigital as contract administrator and will be responsible for discharging the Fee;
 - 1.4.3 “**Fee Proposal**” means the fee proposal as detailed in the Agreement;
 - 1.4.4 the “**Fee**” shall mean the fee agreed between the Parties as detailed in the Agreement and for the purposes hereof shall include any fees for additional services agreed between the Parties;
 - 1.4.5 the “**Project**” means the building operation or other work for which the Client wishes to engage ArchDigital to perform the Services;
 - 1.4.6 the “**Services**” means the services, the scope of which are more particularly described in the Fee Proposal.

2.0 The Services

- 2.1 ArchDigital will perform the Services in accordance with the provisions of these Terms of Business and the Agreement.
- 2.2 ArchDigital shall provide the Services expeditiously and efficiently and in accordance with good industry practice, and shall procure that the Services are provided in a good and workmanlike manner using suitably qualified personnel.
- 2.3 ArchDigital has no duty to investigate, detect, prevent, handle, encapsulate, remove, or dispose of, and will have no responsibility to Client or others for any exposure of persons or property to, asbestos, lead, fuel storage tanks or contents, indoor air pollutants or contaminants, poor air quality, or hazardous, toxic, or regulated waste substances, mold, fungi, mildew, pollutants, or contaminants (collectively, the “**Hazardous Substances**”) at Client’s facilities or their surrounding premises; and such duties have not been included in the Fee. Client will inform ArchDigital of the presence of such Hazardous Substances and acknowledges that ArchDigital employees will not be required to work in any location where they could be exposed to such Hazardous Substances. ArchDigital has advised the Client that it does not provide or assume any responsibility to monitor or remediate mold, fungi, mildew and indoor air quality, and that all determinations and corrective actions regarding mold, fungi, mildew and indoor air quality shall be made by Client or a third party retained by Client.

3.0 The Fees

- 3.2 In consideration of the provision of the Services by ArchDigital, the Client shall pay to ArchDigital the Fee.
- 3.3 Unless otherwise agreed between the Parties, the Fee shall be invoiced monthly by ArchDigital and all undisputed amounts will be paid within 30 days of the invoice date. Interest will be charged at a rate of 2% above the AIB Base Rate on any invoiced amount that remains outstanding 14 days after the payment date.

- 3.4 In the event of a dispute as to the amount of invoiced fees or charges the undisputed invoiced portion shall be paid forthwith pending resolution of the dispute. Any unresolved dispute relating to fees shall initially be referred until the appointment of a mediator. There will be no set off or counterclaim against any fees payable hereunder.
- 3.5 The Project may be divided into stages as detailed in the Agreement and if so the Fee payable at each stage shall be agreed in advance between the Parties. ArchDigital will invoice in respect of such Fee upon the completion of that portion of the Services required to be provided by ArchDigital in respect of each stage of the Project. All undisputed amounts will be payable by the Client within 30 days of the date of the relevant invoice.
- 3.6 The Client may request ArchDigital to provide services in addition to the Services for which ArchDigital shall be entitled to charge an additional reasonable and proportionate fee to be agreed in advance in writing between the Parties.
- 3.7 The Fee shall be subject to the addition of VAT at the rate current at the date of payment irrespective of the Client's tax domicile.
- 3.8 If the Client shall require ArchDigital to have in place Professional Indemnity Insurance cover in excess of that required under the Bye Laws and Regulations, then an additional fee shall be payable by ArchDigital to cover the costs of such additional cover.
- 3.9 If the Project is significantly varied at any stage, the Fee shall be adjusted commensurate with the addition or reduction in the scope of Services provided always that the Client is notified of all adjustments to the Fee in advance.
- 3.10 If the Project is delayed or if ArchDigital incurs additional costs due to changes in, repetition of or abandonment of work, exceptional variations or delays in the Project or any other causes which are beyond the control of ArchDigital and as a direct consequence of the Client's instruction, ArchDigital shall be entitled to an additional reasonable fee to cover the reimbursement of the additional costs arising from any such event as aforementioned.
- 3.11 The provisions of the Prompt Payment of Accounts Act 1997, as amended or revised, and the European Communities (Late Payment in Commercial Transactions) Regulations, 2002 shall apply to all payments.
- 3.12 The Client is responsible for and guarantees payment of the Fee charged by ArchDigital hereunder, notwithstanding that the property in respect of which the Services are being provided is not owned by the Client. In addition, payment of such Fees will not be conditional upon the Client's receipt of payment from a third party, the results of any taxation enquiry or the Client's liability to a third party in relation to a dispute arising from the subject matter of the Project.
- 3.13 If the Client is more than one party, the Fee Proposal should be signed by all Client parties whose liability in respect of payment will be joint and several.
- 3.14 The Client is responsible for any agreed charges for promotion or other costs. Also travelling expenses and other costs such as that for photography, photocopying, research, plans, dispatch, duplication, stationery costs and facsimiles will be reimbursed by the Client to ArchDigital. If ArchDigital finds it necessary to instruct other professionals, such as consultants, to carry out work in relation to this matter, they will be instructed by us as agent on behalf of the Client and, subject to the Client's advance approval, the Client agrees to be responsible for their charges and expenses. If ArchDigital considers it necessary to use solicitors or other third parties to recover agreed fees, costs and charges from the Client, the Client agrees to pay any reasonable costs incurred by ArchDigital in this regard.
- 3.15 On the annual anniversary of the date of signature of the Fee Proposal, ArchDigital shall be entitled to increase the Fee for Services not already provided by an amount equal to the aggregate annual percentage increase in CPI published by the Central Statistics Office during the preceding 12 month period. ArchDigital will not enforce this provision unless the Client is given not less than 30 days prior written notice thereof.

4.0 Copyright

Copyright in all drawings, reports, bills of quantities, specifications, calculations and other similar documents provided by ArchDigital shall remain vested in ArchDigital but, subject to all fees and expenses due having been discharged by the Client, the Client shall have a licence to copy and use such documents for any purpose related to the Project including the construction, completion, maintenance, and letting, of the Project buildings. Other than as set out in this section 4, no right in any intellectual or industrial property rights (including without limitation patents, registered designs, trademarks and copyright) of the Parties or consent to use them are hereby granted to either Party by the other.

5.0 Indemnity and limitation of liability

- 5.1 Each Party will indemnify and hold the other Party, its subsidiaries and affiliated companies, and their respective directors, officers and employees, harmless from any third party liability (including reasonable attorneys' fees and court costs) by reason of the negligent acts or omissions of the indemnifying Party, its employees or agents; provided, that this section will not apply if the occurrence for which the Party seeking indemnification hereunder was caused by such Party's negligence.
- 5.2 To the extent permissible by law, ArchDigital's liability to the Client in respect of the Project shall not under any circumstances exceed the greater of the Fee or the actual proceeds of insurance that ArchDigital receives on the applicable claim (including the deductible portion).
- 5.3 To the fullest extent permitted by applicable Laws, neither Party will be liable to the other Party for any loss of business, business interruption, loss of profits, consequential, special, indirect or punitive damages.
- 5.4 Neither Party excludes its liability in any way which is not permitted by applicable Law.

6.0 Dispute resolution

- 6.1 Subject to Section 10 below and the Parties' respective rights to apply to the courts to enforce a cause of action, the Parties shall seek to resolve any disputes between them arising out of or relation in any way to the issues covered by the Agreement amicably and in good faith. .
- 6.2 Where any difference or dispute arising out of or in connection with the interpretation or application of these Terms of Business cannot be resolved in accordance with sub-section 6.1 hereof, it shall be governed by and construed in accordance with Irish law and the courts of Ireland shall have exclusive jurisdiction over any disputes relating to this Agreement.

7.0 Cancellation of Services

In the event of all or a portion of the Services being cancelled by either Party prior to completion of the Project, an appropriate proportion of the agreed Fee shall be charged on a time allocation basis up to the date of cancellation of the Services. In such circumstances ArchDigital reserves the right to charge the costs of any prepaid vendor contracts which ArchDigital has paid, or on which ArchDigital has incurred an obligation to pay, prior to the cancellation date, for the benefit of Client in relation to the Services or the Project.

8.0 Termination

- 8.1 This Agreement commences upon the execution by the Client of the Agreement and terminates upon its performance by ArchDigital.
- 8.2 Either Party may terminate this Agreement immediately by notice in writing and without liability if the other Party:
 - (a) is adjudged bankrupt, has a petition presented for its winding up, has a liquidator appointed to it or has a receiver or an examiner appointed to it or over part or all of its assets or enters into a composition with its creditors (save for the purposes of a bona fide reconstruction or amalgamation), is unable to pay its debts as they fall due within the meaning of clause 214 of the Companies Act 1963 or any event similar to the foregoing occurs in any other jurisdiction; or
 - (b) breaches any material term of this Agreement (whether repudiatory or not) or consistently breaches this Agreement.
- 8.3 For the avoidance of doubt, ArchDigital may terminate this Agreement immediately by notice in writing and without liability if the Client fails to pay any sums due in accordance with the terms hereof.
- 8.4 Any expiration or termination (for any reason) of this Agreement does not affect any accrued rights or liabilities of either Party under this Agreement nor the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into, or continue, in force on or after such expiration or termination.

9.0 Confidentiality

- 9.1 The Client agrees that ArchDigital may pass on information about the Client to assist ArchDigital and/or others in: (I) providing the Services set out in the Fee Proposal; (II) supplying information about other services we think may be of

interest to you; or (III) for marketing purposes. This information will include contact details and information about work undertaken for the Client. This does not affect the Client's statutory rights under the Data Protection Acts 1988 and 2003.

9.2 The Client will keep confidential and will not disclose any information received by it relating to the business of ArchDigital to any other person, company or organisation, save as may be required by law or any regulatory authority and shall ensure that its employees, agents and advisors are aware of each parties obligations in this regard and abide by them. This clause will continue in full force and effect notwithstanding termination of any arrangement to which these Terms of Business apply.

10.0 Miscellaneous

10.1 ArchDigital reserves the right to assign the benefit of these terms to any affiliate of ArchDigital. Subject to the foregoing, neither ArchDigital nor the Client shall have the right to assign or transfer the benefit and obligations of this Agreement or any part thereof without the consent in writing of the other.

10.2 No waiver will be effective against either Party unless it is in writing and signed by the waiving Party. A waiver of any particular breach of any term contained in this Agreement will not operate as a waiver of that term itself, or as a waiver of any subsequent breach thereof. The failure of ArchDigital or Client to exercise any right or remedy available under this Agreement upon the other Party's breach of the terms, representations, covenants or conditions of this Agreement or the failure to demand the prompt performance of any obligation under this Agreement shall not be deemed a waiver of (i) such right or remedy; (ii) the requirement of punctual performance; or (iii) any right or remedy in connection with any subsequent breach or default on the part of the other Party.

10.3 If any court of competent jurisdiction holds that one or more provisions of this Agreement is invalid, unenforceable, or void, then that ruling will not affect any other provisions of this Agreement, and all other provisions will remain in full force and effect.

11.0 Applicable law and jurisdiction

These Terms of Business and the arrangements to which they apply and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating thereto shall be governed by and construed in accordance with Irish law. The courts of Ireland shall have non-exclusive jurisdiction over any disputes relating to this Agreement.