

# MAP

Architecture & Planning Limited

## **Terms of Business Hong Kong**

**2017**

1. Introduction
  - 1.1 Our aim is to give you the highest care, skill and attention to your instructions with a view to fostering a long term business relationship with you built on mutual trust.
  - 1.2 While our first priority is as outlined in Paragraph 1.1, we recognise the need for our relationship with you as our client to be formally documented. These are the general terms of business which will apply to the services provided by us. These terms will be subject to the specific matters detailed in our letter to you confirming your instructions ("the Engagement Letter"). The terms of that letter read with these terms of business will together form the contract between us ("the Contract"). Our obligations to each other will therefore be defined exclusively in the Contract, which will therefore supersede all previous communications between us.
  - 1.3 No amendment or variation to the Contract will be binding on us unless in writing signed by our respective duly authorised officers.
  - 1.4 The services we provide are for your benefit only as specified in the Engagement Letter. Unless otherwise agreed, no third party shall have the right to enforce any term of the Contract.
2. Our General Obligations
  - 2.1 We agree to perform the services detailed in the engagement letter ("the Services") subject to and in accordance with these terms of business.
  - 2.2 We shall perform the Services with the skill care and diligence reasonably to be expected of a professional person experienced in the provision of like services.
  - 2.3 We shall liaise, keep fully informed and co-operate fully with your representatives and any other professional advisers or contractors engaged by you. At the same time we shall be entitled to rely upon the information and/or advice given by you, those other professional advisers and contractors.
  - 2.4 We shall advise you of the individual persons who will act on our behalf in the provision of the Services.
  - 2.5 We shall not remove any such persons without prior written notice. We shall be responsible for replacing such persons with a person who shall be similarly qualified.
  - 2.6 The individual persons referred to in Paragraph 2.4 have the necessary qualifications and experience to perform their duties in relation to the Services.
3. Your General Obligations
  - 3.1 In order to enable us to perform the Services you shall within a reasonable time:
    - 3.2 Appoint a Client Representative to provide us with instructions for the project. This person or body corporate will be authorised to deal with the project services on your behalf. Should you change the Client Representative after the commencement of the contract, all fees payable under the contract shall be settled prior to the resumption of our work.
      1. Obtain and provide us with all necessary information (including reports and other relevant documentation) in your possession which relate to the Services or the project in relation to which the Services are being provided ("the Project");
      2. Provide us with all other information which we may reasonably request in a timely manner;
      3. give us your decision as quickly as reasonably possible on all reports, recommendations and any other matters which are referred to you by us; and
      4. Instruct your other professional advisers and contractors to provide us

with all necessary information for and in relation to the Project.

redesign the project to suit a reduced budget, the original fee quoted shall apply.

3.3 Our employees are an important asset of our business. In the circumstances it is a condition of our engagement that you should not solicit our employees, and, in the event that you do employ any member of staff who is or has been within the previous six months an employee and who has been providing services to you on our behalf, you will pay to us the sum of HK\$350,000 immediately upon the employment of that person.

5. Our liability

5.1 We have an interest in limiting the personal liability and exposure to litigation of employees, and consultants. You therefore agree that any claim of any kind arising out of or in connection with the Contract shall be brought only against ourselves MAP and that no claims in respect of the Contract will be brought personally against any of the employees involved in the MAP provision of the Services.

4. Additional Services

4.1 It is possible that it will become necessary for us to provide services which go beyond the Services as detailed in the Engagement Letter. Such additional services may arise out of:

5.2 Further you agree that our maximum aggregate liability in respect of breach of contract or breach of duty or negligence or otherwise arising out of or in connection with the Contract shall be limited in total to the lesser of HK\$10,000,000 or a sum equivalent to ten times the remuneration payable to us as specified in the Engagement Letter.

1. changes in the scope or timing of the Project whether or not caused by changes of instructions by you or your other professional advisers; and/or
2. Delay, defective performance or insolvency of your other professional advisers and contractors.

5.3 As well as us you may have appointed other parties (for example professional advisers or contractors) in connection with the Project. In these circumstances, our aggregate liability to you in respect of breach of contract or breach of duty or negligence or otherwise arising out of or in connection with the Contract shall be limited to that proportion of the loss or damage (including interest and costs) suffered by you which is attributable to us having regard to the contribution to such loss and damage by any other person. You agree that this will remain the position, even if you have agreed a limitation of liability with any of your other advisers so that consequently you may not be able to recover a part of any loss for which they might have otherwise been liable.

4.2 In the circumstances we shall be entitled to be paid such further fee as is then agreed or, in the absence of such agreement, a fee calculated on a time basis in accordance with the hourly rates set out in the HKIA Engagement Terms.

4.3 Lump Sum Fee

In the event that the fee is a Lump Sum fee and not a percentage fee of the overall construction cost, this fee is still linked to the budget expenditure set out in the Agreement. Should this budget be actually exceeded or reduced by a factor of more than 10%, the Lump Sum fee shall be adjusted accordingly as soon as this becomes known. However, if the budget figure is reduced by the Client and results in additional work for the Architect to

5.4 Any claim for breach of contract, breach of duty or negligence or otherwise arising out of or in connection with the Contract shall be brought against us within six years of the act or omission alleged to have caused the loss in question.

5.5 You agree that the provisions of this paragraph 5 shall not be affected by the termination of our appointment (whether or not pursuant to paragraph 7) and that the provisions of this paragraph 5 shall

continue in full force and effect notwithstanding any such termination.

5.6 This paragraph 5 shall not apply to any liability which we may have in relation to death or personal injury caused by our negligence or to any other liability which by law cannot be excluded.

6. Remuneration

6.1 Our fees, both in total and payable on an interim basis, are defined in the Engagement Letter. You shall pay a mobilization fee equivalent to 20% of the total fees, unless otherwise stated in the engagement letter. We shall be entitled to render invoices monthly unless otherwise agreed. Such invoices may include additional fees payable under Paragraph 4 above. Each invoice is to be paid within 28 days of its date of issue.

6.2 The Fee shall be deemed to be payment for the Services and to be exclusive of all expenses and disbursements. You shall reimburse us, against appropriate proof of expenditure, in respect of expenses which shall have been properly and reasonably incurred by us in connection with the Services. Any single expense item, other than the cost of reproducing and printing documents and drawings, in excess of the amount specified in the Engagement Letter must be agreed in advance and in writing by you.

6.3 If in good faith you dispute that any item set out in any invoice is due, you shall give notice in writing within 5 days of the date of such invoice stating the reason for such dispute, leaving the balance of the invoice to be paid in accordance with Paragraph 6.1. We shall both immediately use our best endeavours to agree the amount of any disputed item, but failing agreement the matter may be referred to arbitration in accordance with Paragraph 13.

6.4 Subject to paragraph 6.3 you shall pay all invoices without deduction, set-off, abatement or counter-claim.

6.5 We shall be entitled to be paid interest on invoices or any part thereof due and payable but remaining unpaid 28 days after the date of the invoice at the rate of 2.5% above the base rate of the Hong Kong HSBC provided that in the case of items correctly disputed by you, interest shall run only from the date when the amount of such item is agreed or settled by arbitration.

7. Termination and / or Suspension

7.1 You may by giving not less than 7 working days written notice require us to suspend the Services. You may, by giving not less than 7 working days written notice, require us to resume the Services at any time within a period of 6 months from the date of suspension. In those circumstances we shall use all reasonable endeavours to resume performance of the Services as soon as possible. If you do not request us to resume performance within such period, then our appointment under the Contract shall be deemed to have terminated, and the provisions of Paragraphs 7.5 and 7.6 shall apply.

7.2 Both you and we shall be entitled to terminate the performance of the Services upon giving 7 working days written notice on the other to that effect.

7.3 Both you and we shall be entitled to terminate the Contract immediately in the event that: distress or executive is levied or threatened upon any of the other's property; any judgment against the other remains unsatisfied for more than 14 days; you (being an individual) become bankrupt or unable to pay your debts or seek an arrangement with your creditors; you (being a company) have an administrator appointed or a receiver or manager or administrative receiver is appointed of you or any of your assets or you enter into liquidation or propose or make any voluntary arrangement with your creditors; any petition is presented or any resolution passed or any steps or proceedings taken which may lead to any of the foregoing occurrences; the other is or is deemed to be insolvent or unable to pay its debts; the other ceases to carry on business.

7.4 We shall be entitled to suspend performance of the Services in the event

that you fail to pay any invoice within 28 days in accordance with Paragraph 6.1 (or in the case of items disputed in good faith within 28 days after the date when we agree with you the amount of such item or the amount is settled by arbitration), provided that we give to you 7 days notice of intention to suspend performance of the Services.

7.5 Termination of our appointment under the Contract, however it may arise, shall not affect the rights and remedies of either of us in relation to any default of the other party prior to such termination.

7.6 If the performance of the Services has been suspended or terminated under clause 7.1 or by us under Paragraphs 7.2, 7.3 or 7.4 then:

1. We shall be entitled to be paid (and we shall invoice you accordingly) for all outstanding fees earned by us for the Services performed (whether wholly or in part) all expenses and other disbursements incurred.
2. You shall compensate us for all subsequent and consequential expenses and disbursements incurred or properly to be incurred in consequence of suspension or termination (including but not limited to the cost of engaging, re-deploying or dismissing staff).

7.7 If the performance of the Services has been terminated by you under clauses 7.2 or 7.3, then upon payment under clause 7.6 we shall give to you copies of any drawings or documents for and in relation to the Project prepared by us or on our behalf or in our possession as necessary to minimise any disturbance to the Project.

## 8. Force Majeure

We shall not be liable for any failure to carry out or delay in carrying out our obligations under the Contract where such delay or failure is due to civil commotion, riot, invasion, war, threat or preparation for war, act of terrorism, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other

natural physical disaster, industrial dispute, political interference with our normal operation or any other event attributable to any cause of whatever nature outside our reasonable control ("Force Majeure Event").

We shall immediately notify you in writing of the existence of the Force Majeure Event and of the anticipated duration and shall use reasonable endeavours to overcome the effects of the Force Majeure Event. We shall be entitled to an extension of time sufficient to take account of a Force Majeure Event.

If a Force Majeure Event prevents us from performing its obligations under the Contract or if the extension of time under clause 8.2 continues for a period of 6 months you may terminate this Contract provided that you shall pay us all outstanding fees earned by us for Services performed (whether wholly or in part), all expenses and other disbursements incurred up to and including the date of termination under this clause.

## 9. Intellectual Property Rights

The copyright in all documents provided by us in connection with the Services belongs to us. However, subject to payment of our fees, we will allow you to use them by granting to you an irrevocable, non-exclusive, royalty free license to copy and use the documents for all purposes related to the Project. We shall not be liable for any use of such documents for any purpose other than that for which they were prepared.

## 10. Assignment and Sub-Contracting

Neither you nor we may assign or transfer all or any part of the Contract without the written consent of the other.

We shall not sub-contract any part of the Services under the Contract except with your prior written consent such consent not to be unreasonably withheld or delayed.

## 11. Communications

Any notices to be given under the Contract shall be given in writing and delivered by receipted hand delivery or recorded delivery post or fax or e-mail to the address of the party as stated in the Engagement Letter.

## 12. Resolving problems and complaints

It is our policy to investigate complaints in relation to our conduct of a matter fully and

promptly. We will use all reasonable endeavours to resolve complaints by negotiation or other non adversarial means such as mediation.

### 13. Arbitration

If, despite both sides' best endeavours, any dispute cannot be resolved by negotiation, then such dispute will be referred to arbitration by a single Arbitrator to be agreed between us or, failing agreement within 14 days from the time when either party has given to the other a written request to concur in the appointment of an Arbitrator, nominated at the request of either party by the President of the Hong Kong International Arbitration Centre.

### 14. Governing Law

These terms of business and any contract between us are governed by Hong Kong Law.

We also refer you to the Hong Kong Institute of Architects "Agreement Between Client & Architect & Scale of Professional Charges". We are a member firm of this organisation. Rights and obligations of both client and Architect are set out in general terms in this document. If not specifically referred to in the Service Agreement, the HKIA Agreement shall be referred to. A copy of this document can be made available to you on request.

### 15. Site Visits Ex Hong Kong

Any request or demand from the Client to MAP to attend a site outside Hong Kong, prior to the execution of this formal contract, forms a separate standalone agreement.

The Client hereby agrees to pay MAP for its time, at HKIA hourly rates, for the personnel attending the site visit, on the basis of 8 hours billable time per day for the time the personnel are outside the MAP office.

Sites located outside Hong Kong, involving international travel, the Client will provide all air fares, and hotels. Where MAP is required to pay for Hotels and Accommodation in advance the Client will sign a purchase order agreeing to reimburse MAP for these expenses.

In addition there will be a per diem payment of HK\$1,000 for each member of the MAP staff attending the site visit for meals and out of pocket expenses.

In response to any request for travel for the purposes of Site Visits from the Client will be responded to by the issue of a purchase order from MAP stating that the Client will pay for the cost of the time and expenses for the site visit.

In the absence of such purchase order, the receipt of these standard terms by the Client are sufficient for MAP to charge for time and expenses for any site visit or consultation outside Hong Kong.